3 1761 08262481 8

THE

LAWS OF ENGLAND.

VOLUME XXVI.

Digitized by the Internet Archive
in 2015

https://archive.org/details/lawsofenglandbei26hals

THE

LAWS OF ENGLAND

BEING

A COMPLETE STATEMENT OF THE WHOLE LAW OF ENGLAND.

BY

THE RIGHT HONOURABLE THE

EARL OF HALSBURY

LORD HIGH CHANCELLOR OF GREAT BRITAIN,
1885-86, 1886-92, and 1895-1905,

AND OTHER LAWYERS.

VOLUME XXVI.

SHIPPING AND NAVIGATION.
SMALL HOLDINGS AND SMALL DWELLINGS.
SOLICITORS.

138246
7/7/14

LONDON:
BUTTERWORTH & CO., BELL YARD, TEMPLE BAR.
Law Publishers.
SYDNEY: BUTTERWORTH & CO. (AUSTRALIA), LTD.
CALCUTTA: BUTTERWORTH & CO. (INDIA), LTD.
WINNIPEG: BUTTERWORTH & CO. (CANADA), LTD.

1914.

BRADBURY, AGNEW, & CO. LD., PRINTERS,
LONDON AND TONBRIDGE.

Editor in Chief.

THE RIGHT HONOURABLE THE

EARL OF HALSBURY,

LORD HIGH CHANCELLOR OF GREAT BRITAIN, 1885-86, 1886-92, and 1895-1905

Revising Editors:

For Equity and Chancery Titles:

THE RIGHT HON. SIR CHARLES SWINFEN EADY,

A LORD JUSTICE OF APPEAL.

Assisted by

T. H. CARSON, ESQ., K.C.

For Real Property and Conveyancing Titles:

ARTHUR UNDERHILL, ESQ., M.A., LL.D.,

OF LINCOLN'S INN, BARRISTER-AT-LAW,
ONE OF THE CONVEYANCING COUNSEL OF THE COURT.

For Common Law Titles, and Practice and Procedure:

T. WILLES CHITTY, ESQ.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW,
A MASTER OF THE SUPREME COURT.

For Local Government Titles, and Licensing:

WILLIAM MACKENZIE, ESQ., M.A.,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

Managing Editor.

T. WILLES CHITTY, ESQ.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW,
A MASTER OF THE SUPREME COURT.

Sub-Editors:

The HON. JOHN W. MANSFIELD, M.A., of the Inner Temple.
G. M. EDWARDES JONES, ESQ., M.A., of the Inner Temple.
J. R. V. MARCHANT, ESQ., M.A., of Gray's Inn.
CHARLES EDWARD ALLAN, ESQ., M.A., LL.B., of the Inner Temple.
ARTHUR ANDERSON BETHUNE, ESQ., M.A., of the Inner Temple.
HAROLD B. BOMPAS, ESQ., M.A., of the Inner Temple.
W. ADDINGTON WILLIS, ESQ., LL.B., of the Inner Temple.
S. W. CLARKE, ESQ., of the Inner Temple.
HUBERT F. F. GREENLAND, ESQ., B.A., of Lincoln's Inn.
D. D. ROBERTSON, ESQ., M.A., LL.B., of Lincoln's Inn.
KENNETH E. CHALMERS, ESQ., B.A., of the Inner Temple.
A. W. BAKER WELFORD, ESQ., M.A., of Lincoln's Inn.
G. STUART ROBERTSON, ESQ., of the Inner Temple.
W. W. OTTER-BARRY, ESQ., of the Inner Temple.
W. A. ROBERTSON, ESQ., of the Inner Temple.
HUMPHREY H. KING, ESQ., B.A., LL.B., of the Inner Temple.
R. E. ROSS, ESQ., LL.B., of the Middle Temple.

BARRISTERS-AT-LAW.

The Titles in this Volume have been contributed by the following gentlemen:—

TITLE.	CONTRIBUTED BY
SHIPPING AND NAVIGATION.	The Right Hon. Sir William Rann Kennedy, a Lord Justice of Appeal, and A. R. Kennedy, Esq. (Part XIII.); The Hon. Lord Salvesen, one of the Judges of Appeal in the Court of Session in Scotland, and Arthur Pritchard, Esq., M.A. (Part XI.); J. D. A. Johnson, Esq., LL.D. (Parts V., VI., XXI.); H. Stuart Moore, Esq., F.S.A. (Parts IV., XII., XVII., XIX.); A. W. Baker Welford, Esq., M.A. (Part VII.); Thomas Cuthbertson, Esq. (Parts VIII., IX., X.); G. P. Langton, Esq. (Parts XIV., XVIII., XX.); H. M. Robertson, Esq. (Parts I., II., III., XVI., XX., XXII.); E. A. Digby, Esq. (Part XV.), and G. M. Edwardes Jones, Esq., M.A., Barristers-at-Law.
SMALL HOLDINGS AND SMALL DWELLINGS.	His Honour Judge H. B. Hans Hamilton, and the late Urquhart A. Forbes, Esq., Barrister-at-Law.
SOLICITORS . .	Ernest Todd, Esq., assisted by Miles E. Hansell, Esq., B.A., Barristers-at-Law.

In this Volume the Law is stated as at February 2nd, 1914.

TABLE OF CONTENTS

AND

TABLE OF CROSS-REFERENCES.

PAGE

Table of Abbreviations - - - - - - - - - - xxix

Table of Statutes - - - - - - - - - - - xlvii

Table of Cases - - - - - - - - - - - - lxxix

SHIPPING AND NAVIGATION - - - - - - - 1—662

PART I. OBJECTS AND APPLICATION OF LAW AS TO MERCHANT SHIPPING - - - - - - - - - 10

SECT. 1. Application of Merchant Shipping Acts Generally - 10

SECT. 2. Application of Merchant Shipping Acts to Foreigners - - - - - - - - - - 12

SECT. 3. Application of Merchant Shipping Acts to Colonies- 13

SECT. 4. Definitions - - - - - - - - - - 14

PART II. OWNERSHIP AND CONTROL OF BRITISH SHIPS - 15

SECT. 1. Ownership - - - - - - - - - - 15

SECT. 2. Registration - - - - - - - - - - 16

Sub-sect. 1. Obligation to Register and Effect of Registration - - - - - - - 16

Sub-sect. 2. Procedure and Requirements on Registration - - - - - - - - 17

Sub-sect. 3. Measurement of Ship and Tonnage - - 19

Sub-sect. 4. Ports of Registry - - - - - 20

Sub-sect. 5. Certificate of Registry - - - - 20

SECT. 3. Transfer and Transmission of Property in Ships - 21

Sub-sect. 1. Mode of Transfer - - - - - 21

Sub-sect. 2. Transmission of Title - - - - 22

Sub-sect. 3. Prohibition of Transfer - - - - 23

Sub-sect. 4. Transfer by Way of Mortgage - - - 23

(i.) Formalities - - - - - - 23

(ii.) Rights of Mortgagees - - - - - 24

(iii.) Discharge of Mortgage - - - - 30

(iv.) Dealings with Mortgagee's Interest - - 30

Sub-sect. 5. Certificates of Mortgage and Sale - - 30

Sub-sect. 6. Equitable Interests - - - - - 30

SECT. 4. Registration of Alterations and Renewal of Registration - - - - - - - - - 31

SECT. 5. Returns by Registrars - - - - - - 31

PAGE

PART II. OWNERSHIP AND CONTROL OF BRITISH SHIPS—*continued.*

SECT. 6. Admissibility of Documents as Evidence - - 31
SECT. 7. Offences and Penalties - - - - - - 32
SECT. 8. Liability of Owners of Ships as Such - - - 34
Sub-sect. 1. Who are Liable as Owners - - - 34
Sub-sect. 2. Liability while the Ship is Chartered - 34
Sub-sect. 3. Liability as between Part Owners - - 34

PART III. MASTER AND CREW - - - - - - - 38

SECT. 1. Qualifications of Officers and Men - - - - 38
Sub-sect. 1. Officers - - - - - - - - 38
Sub-sect. 2. Seamen - - - - - - - - 39
SECT. 2. Contracts of Service by Master and Crew - - 40
Sub-sect. 1. Engagement of Master - - - - 40
Sub-sect. 2. Apprenticeship to Sea Service - - - 41
Sub-sect. 3. Engagement of Seamen - - - - 41
SECT. 3. Care of Seamen during Currency of Agreement - 44
SECT. 4. Wages - - - - - - - - - - - 46
Sub-sect. 1. When Whole Wages Payable - - - 46
Sub-sect. 2. Time and Mode of Payment - - - 47
Sub-sect. 3. Loss of Right to Wages - - - - 49
Sub-sect. 4. Agreement for Extra Remuneration - 50
Sub-sect. 5. Payment in Case of Seaman's Death - 51
Sub-sect. 6. Advance and Allotment of Wages - - 51
Sub-sect. 7. Remittance of Wages - - - - 52
Sub-sect. 8. Compensation for Premature Discharge - 52
Sub-sect. 9. Proceedings to Recover Wages - - 52
SECT. 5. Protection of Seamen from Imposition - - - 54
Sub-sect. 1. Assignment of Salvage and Wages - - 54
Sub-sect. 2. Lodging-house Keepers - - - - 54
SECT. 6. Discharge of Seamen - - - - - - 55
SECT. 7. Destitute and Distressed Seamen - - - - 56
SECT. 8. Relief to Families of Seamen - - - - 57
SECT. 9. Property of Deceased Seamen - - - - 58
SECT. 10. Discipline - - - - - - - - - 59
Sub-sect. 1. Authority of Master - - - - 59
Sub-sect. 2. General Duties of Seamen - - - 60
Sub-sect. 3. Offences against Discipline - - - 60
Sub-sect. 4. Other Offences - - - - - 62
Sub-sect. 5. Entry of Offences - - - - - 63
SECT. 11. Seamen Volunteering for Royal Navy - - - 63
SECT. 12. Registration and Returns Respecting Seamen - 63

PART IV. AUTHORITY AND LIABILITY OF MASTER AS CUSTODIAN OF SHIP AND CARGO - - - 64

SECT. 1. General Authority as to Contracts for Employment of Ship - - - - - - - - - - 64
SECT. 2. Limitations on General Authority - - - - 65
SECT. 3. Authority of Master as to Necessaries - - - 66
Sub-sect. 1. Authority to make Owner Liable - - 66
Sub-sect. 2. Authority to make Ship Liable - - 67
Sub-sect. 3. What are Necessaries - - - - 68

PAGE

PART IV. AUTHORITY AND LIABILITY OF MASTER AS CUSTODIAN OF SHIP AND CARGO—*continued.*

SECT. 4. Authority to Hypothecate Ship and Freight - - 69
SECT. 5. Authority to Transhipment - - - - - - 74
SECT. 6. Authority to Jettison - - - - - - 74
SECT. 7. Authority to Sell Ship or Cargo - - - - 75

PART V. GENERAL STATUTORY PROVISIONS FOR SAFETY OF SHIP AND CARGO - - - - - - - 77

SECT. 1. Seaworthiness of Ship - - - - - - 77
SECT. 2. Equipment - - - - - - - - - 77
SECT. 3. Marking of Ships - - - - - - - 78
SECT. 4. Carriage of Dangerous Goods - - - - - 79
SECT. 5. Deck Cargoes - - - - - - - - - 79
SECT. 6. Stowage of Grain Cargo - - - - - - 80
SECT. 7. Detention of Unsafe Ships - - - - - 81

PART VI. CONDUCT OF THE VOYAGE - - - - - 81

SECT. 1. Clearances - - - - - - - - - 81
SECT. 2. Official Logs - - - - - - - - - 82
SECT. 3. Compliance with Warranties - - - - - 83
SECT. 4. Protests - - - - - - - - - - 84

PART VII. CARRIAGE OF GOODS - - - - - - - 84

SECT. 1. Charterparties - - - - - - - - 84
Sub-sect. 1. General Nature of the Contract - - 84
Sub-sect. 2. The Parties - - - - - - 88
Sub-sect. 3. Usual Stipulations - - - - - 91
(i.) As to the Ship - - - - - - 91
(ii.) As to the Voyage or Time - - - - 92
(iii.) As to the Cargo - - - - - - 99
(iv.) As to the Freight or Hire - - - - 103
(v.) As to Signing Bills of Lading - - - - 105
(vi.) As to Excepted Perils Relieving the Shipowner 107
(vii.) As to Loading and Discharge - - - - 118
(viii.) As to the Time for Loading and Discharge - 119
(ix.) Demurrage and Damages for Detention - - 124
(x.) Exceptions Relieving the Charterer - - - 129
(xi.) Cesser of Liability Clause - - - - 133
(xii.) Lien Clause - - - - - - - 134
(xiii.) Penalty Clause - - - - - - 135
(xiv.) Other Stipulations - - - - - - 136
Sub-sect. 4. The Construction of Charterparties - - 138
(i.) General Principles of Construction - - - 138
(ii.) Conditions Precedent - - - - - 142
SECT. 2. Bills of Lading - - - - - - - - 144
Sub-sect. 1. The Nature of a Bill of Lading - - 144
Sub-sect. 2. The Form of a Bill of Lading - - - 150
Sub-sect. 3. The Delivery of the Bill of Lading: the Mate's Receipt - - - - - - 151

PAGE

PART VII. CARRIAGE OF GOODS—*continued.*

SECT. 2. Bills of Lading—*continued.*

Sub-sect. 4. The Signature of the Bill of Lading - - 153
Sub-sect. 5. The Transfer of the Bill of Lading - - 157
Sub-sect. 6. The Effect of the Transfer of a Bill of Lading - - - - - - - 164
Sub-sect. 7. The Bill of Lading where the Ship is Chartered - - - - - - - 168
(i.) In General - - - - - - - - 168
(ii.) The Inconsistency, if any, between the Charter-party and the Bill of Lading - - - 168
(iii.) The Authority of the Master - - - - 173
(iv.) The Incorporation of the Bill of Lading - - 175

SECT. 3. The Loading - - - - - - - - - 177

Sub-sect. 1. The Readiness of the Ship - - - 177
Sub-sect. 2. The Provision of a Cargo - - - 190
Sub-sect. 3. The Delivery and Stowage of the Cargo - 195
Sub-sect. 4. The Measure of Damages - - - 207

SECT. 4. The Voyage - - - - - - - - - 211

Sub-sect. 1. The Seaworthiness of the Ship - - 211
Sub-sect. 2. The Prosecution of the Voyage - - 218
Sub-sect. 3. The Preservation of the Cargo - - 224
Sub-sect. 4. Transhipment of the Cargo - - - 233
Sub-sect. 5. Hypothecation of the Cargo - - - 240
Sub-sect. 6. Sale of the Cargo - - - - - 247

SECT. 5. The Unloading - - - - - - - - 254

Sub-sect. 1. The Arrival of the Ship - - - - 254
Sub-sect. 2. The Delivery of the Cargo - - - 264
(i.) The Person to whom Delivery should be Made - 264
(ii.) The Method of Discharging the Cargo - - 265
(iii.) The Time within which the Delivery must Take Place - - - - - - - - 271
Sub-sect. 3. The Warehousing of the Cargo - - - 279
Sub-sect. 4. Lien - - - - - - - - 283
Sub-sect. 5. The Measure of Damages - - - 288

SECT. 6. The Payment of Freight - - - - - - - 291

Sub-sect. 1. The Person by whom Payment is to be Made - - - - - - - - 291
Sub-sect. 2. The Person to whom Payment should be Made - - - - - - - - 296
Sub-sect. 3. When the Freight is Payable - - - 303
Sub-sect. 4. The Amount Payable - - - - 307
Sub-sect. 5. Advance Freight - - - - - 311
Sub-sect. 6. *Pro Ratâ* Freight - - - - - 314

SECT. 7. General Average - - - - - - - - 315

Sub-sect. 1. Definitions - - - - - - 315
Sub-sect. 2. When the Right to Contribution Arises - 316
Sub-sect. 3. The Liability to Contribution - - - 322

SECT. 8. The Shipowner as a Common Carrier - - - 325

PART VIII. CARRIAGE OF PASSENGERS - - - - - 327

SECT. 1. The Contract of Carriage - - - - - 327

SECT. 2. Statutory Requirements - - - - - - - 331

Sub-sect. 1. Definitions - - - - - - 331

PAGE

PART VIII. CARRIAGE OF PASSENGERS—*continued.*

SECT. 2. Statutory Requirements—*continued.*

Sub-sect. 2. Surveys of Ships - - - - - 332
(i.) Passenger Steamers - - - - - 332
(ii.) Emigrant Ships - - - - - - 335
Sub-sect. 3. Equipment of Ships - - - - 336
Sub-sect. 4. Passenger's Contract - - - - 336
Sub-sect. 5. Number of and Accommodation for Passengers - - - - - - 337
Sub-sect. 6. Provisions, Water, and Stores - - 338
Sub-sect. 7. Medical Officer and Crew - - - 341
Sub-sect. 8. Requirements before Sailing - - - 342
(i.) Medical Inspection - - - - - - 342
(ii.) Master's Bond - - - - - - 343
(iii.) Passenger Lists - - - - - - 344
Sub-sect. 9. Carriage of Cattle and Dangerous Cargo - 345
Sub-sect. 10. Breach of Contract of Carriage - - 346
Sub-sect. 11. Requirements on Arrival - - - 347
Sub-sect. 12. Provisions in Case of Wreck - - - 348
Sub-sect. 13. Passage Brokers - - - - - 350
Sub-sect. 14. Emigrant Runners - - - - 351
Sub-sect. 15. Frauds in Procuring Passages - - 352
Sub-sect. 16. Emigration Officers - - - - 353
Sub-sect. 17. Legal Proceedings - - - - - 353

PART IX. CARRIAGE OF MAILS - - - - - - - 354

SECT. 1. Application of Mail Ships Act, 1891, to certain Mail Ships - - - - - - - - - 354
SECT. 2. Prohibition of Conveyance of Letters by Crew and Passengers - - - - - - - - 354
SECT. 3. Exemptions Enjoyed by Mail Ships - - - 355

PART X. CONTRACT OF TOWAGE - - - - - - - 357

SECT. 1. Ordinary Obligations - - - - - - 357
Sub-sect. 1. Efficiency of Tug - - - - - 357
Sub-sect. 2. Mutual Obligation to Use Due Care - 357
Sub-sect. 3. Tug under Control of Tow - - - 358
SECT. 2. Special Conditions Relieving the Tug - - - 358

PART XI. COLLISIONS - - - - - - - - - - 359

SECT. 1. Statutory Provisions as to the Sea Regulations; and Construction and Observance of these Regulations 359
Sub-sect. 1. Authority to Make the Regulations - 359
Sub-sect. 2. Principles of Construction - - - 360
Sub-sect. 3. Statutory Provisions as to Observance of the Sea Regulations, and the Enforcement thereof - - - - - - 362
Sub-sect. 4. Principles as to Observance of the Sea Regulations, and as to Exceptions thereto - - - - - - - 363
Sub-sect. 5. Subsidiary Statutory Provisions - - 371
(i.) As to Rendering Assistance after Collision - 371
(ii.) As to Entry in Log - - - - - - 372
SECT. 2. Regulations for Preventing Collisions, etc. - - 372
Sub-sect. 1. History of General Collision Regulations 372

PAGE

PART XI. COLLISIONS—*continued.*

SECT. 2. Regulations for Preventing Collisions—*continued.*

Sub-sect. 2. The Sea Regulations, 1910:— - - - 373
Preliminary Article - - - - - 373
Rules concerning Lights, etc.: Articles 1—14 379
Sound-Signals for Fog, etc.: Article 15 - - 409
Speed of Ships to be Moderate in Fog, etc.: Article 16 - - - - - - - - 414
Steering and Sailing Rules: Articles 17—27 - 425
Sound Signals for Vessels in Sight of one Another: Article 28 - - - - - - 473
No Vessel under any circumstances to neglect proper Precautions: Article 29 - - - 477
Reservation of Rules for Harbours and Inland Navigation: Article 30 - - - - 477
Distress Signals: Article 31 - - - - 479

Sub-sect. 3. Local Rules of Navigation - - - 479
Sub-sect. 4. Rules of Good Seamanship - - - 483

(i.) Scope of Rules - - - - - - 483
(ii.) Usual Events - - - - - - - 484
(a) Launching a Vessel - - - - 484
(b) Getting under Way - - - - 484
(c) Carrying and Dropping Anchor - - 484
(d) Steering Gear - - - - - 485
(e) Taking Tug Assistance - - - 485
(f) Officers and Watch on Look-out - - 485
(g) Speed - - - - - - - - 487
(h) Keeping Clear of Vessel at Anchor - 488
(i) Standing too Close, and Speaking - - 488
(j) Coming to Anchor, and Foul Berth - 489
(k) Anchor Watch - - - - - 489
(iii.) Special Vessels - - - - - - 490
(a) Tug and Tow - - - - - 490
(b) Sailing Vessels - - - - - 492
(c) Dangerous Vessels - - - - 493
(d) Small Vessels - - - - - 494
(e) Dumb Barges - - - - - 494
(iv.) Special Weather - - - - - - 495
(v.) Navigation in Rivers and Narrow Waters - 496
(a) Tide and Current - - - - - 496
(b) Waiting at Bend - - - - - 496
(c) Dredging Stern First - - - - 496
(d) Difficulties of Warping, or Smelling the Ground - - - - - - - 497
(e) Crossing or Turning in a River - - 497
(f) Anchoring or Aground in Fair-way - 498
(g) Incoming Vessel to Wait for Outgoing - 498
(h) Obeying Orders of Dock or Harbour Master - - - - - - - 499

SECT. 3. Negligence Causing Damage; and the Rule of Division of Damage or Loss in Proportion to Fault - 499

Sub-sect. 1. Negligence Causing Damage by Collision between Vessels: Preliminary Rules as Regards Negligence - - - - - 499

(i.) Negligence must cause Collision and Damage - 499
(ii.) Burden of Proof of Negligence in Collision Cases 500
(iii.) Rules as to Proof of Negligence in Collision Cases 501

PAGE

PART XI. COLLISIONS—*continued.*

SECT. 3. Negligence Causing Damage; and the Rule of Division of Damage or Loss in Proportion to Fault—*continued.*

Sub-sect. 1. Negligence Causing Damage by Collision between Vessels: Preliminary Rules as Regards Negligence—*continued.*

(iv.) Negligence in Equipment - - - - 502
(v.) Negligent Navigation - - - - - 502
(a) In General - - - - - - 502
(b) Responsibility of Owner - - - 502
(c) Nature of Negligence in Navigation - 503
Sub-sect. 2. Negligence Causing Damage in Exceptional Cases - - - - - - - 505
Sub-sect. 3. Cases of Negligent Navigation - - - 506

(i.) In General - - - - - - - - 506
(ii.) Negligence of One Vessel - - - - 506
(iii.) Negligence of Two Vessels - - - - 507
(iv.) Negligence of more than Two Vessels - - 516
Sub-sect. 4. The Rule of Division of Damage or Loss in Proportion to Fault- - - - 516

SECT. 4. General Incidence and Extent of Liability - - 525

Sub-sect. 1. Parties Liable - - - - - - - 525

(i.) In General - - - - - - - - 525
(ii.) In Case of Chartered Ship - - - - 526
(iii.) In Case of a Vessel in Tow - - - - 527
(iv.) In Case of Compulsory Pilotage - - - 529
(v.) In Case of Ship Acting under Harbour Authority etc. - - - - - - 532
(vi.) In Case of National Ship - - - - 533
(vii.) In Case of Collision with a Wreck - - - 533

Sub-sect. 2. Presumption of Fault - - - - 534

(i.) For Breach of the Sea Regulations - - - 534
(ii.) For Failure to Stay by and Render Assistance 535

Sub-sect. 3. Inevitable Accident - - - - - 535
Sub-sect. 4. Measure of Damages - - - - 536

SECT. 5. Rights and Remedies of Injured Parties - - - 542

Sub-sect. 1. Persons Entitled to Recover - - - 542

(i.) Owners of Injured Ship - - - - - 542
(ii.) Owners of Cargo - - - - - - 542
(a) Rights against the Carrying Vessel for Damage by Collision - - - - 542
(b) Rights against the Other Vessel for Damage by Collision - - - - 542
(iii.) Crews on Vessels - - - - - - 543
(iv.) Personal Sufferers and their Representatives - 543

Sub-sect. 2. Rights *in Rem* - - - - - - 545
(i.) Maritime Lien - - - - - - 545
(ii.) Statutory Powers of Arrest - - - - 546

Sub-sect. 3. Rights *in Personam* - - - - - 546

SECT. 6. Collision as Affecting Salvage - - - - - 546

SECT. 7. Collision with a Pier etc. - - - - - 547

PART XII. WRECK - - - - - - - - - - 548

SECT. 1. Definitions - - - - - - - - - 548

PAGE

PART XII. WRECK—*continued.*

SECT. 2. Receivers of Wreck - - - - - - - 549
SECT. 3. Vessels in Distress - - - - - - - 549
SECT. 4. Dealing with Wreck - - - - - - - 551
Sub-sect. 1. Duties of Finders of Wreck - - - 551
Sub-sect. 2. Duties of Receiver - - - - - 551
Sub-sect. 3. Claims of Owners to Wreck - - - 552
Sub-sect. 4. Dealing with Unclaimed Wreck - - 552
SECT. 5. Removal of Wreck - - - - - - - 554
Sub-sect. 1. Authorities Empowered to Remove Wreck - - - - - - - - 554
Sub-sect. 2. Extent of Powers - - - - - 554
SECT. 6. Offences in Respect of Wreck - - - - - 556

PART XIII. SALVAGE - - - - - - - - - 557

SECT. 1. Nature of Salvage - - - - - - - 557
SECT. 2. Subjects of Salvage - - - - - - - 559
Sub-sect. 1. Maritime Property - - - - - 559
Sub-sect. 2. Life - - - - - - - - 561
SECT. 3. Conditions of a Salvage Service - - - - 562
SECT. 4. Salvors - - - - - - - - - - 564
Sub-sect. 1. General Rule - - - - - - 564
Sub-sect. 2. Personal Service - - - - - 565
Sub-sect. 3. Voluntary Service - - - - - 566
SECT. 5. Agreements as to Salvage - - - - - 570
Sub-sect. 1. Salvage Agreement - - - - - 570
Sub-sect. 2. Persons Bound by a Salvage Agreement - 572
Sub-sect. 3. Agreements for Apportionment - - 573
SECT. 6. Salvage Reward - - - - - - - 574
Sub-sect. 1. General Principles - - - - - 574
Sub-sect. 2. Circumstances Affecting the Reward - 575
Sub-sect. 3. Recovery of Salvage Reward - - - 579
Sub-sect. 4. Appeals - - - - - - - 581
SECT. 7. Apportionment - - - - - - - 582
Sub-sect. 1. By the Court - - - - - - 582
Sub-sect. 2. To the Owners of Salving Vessels - - 582
Sub-sect. 3. To the Master, Crew, and Passengers - 583
Sub-sect. 4. To Officers and Men of the Royal Navy and Other Services - - - - 584
Sub-sect. 5. To Independent Salvors - - - - 584
Sub-sect. 6. To Separate Sets of Salvors - - - 584
SECT. 8. Contribution - - - - - - - - 586
Sub-sect. 1. General Principles - - - - - 586
Sub-sect. 2. Values of Ship, Cargo, and Freight - - 587

PART XIV. SHIPPING CASUALTIES - - - - - - 590

SECT. 1. Report of Accidents and Loss of Ship - - - 590
SECT. 2. Inquiries and Investigations - - - - - 591

PART XV. PILOTAGE - - - - - - - - - 596

SECT. 1. The Pilotage Act, 1913 - - - - - - 596
SECT. 2. Revision of Pilotage Organisation - - - - 596

PAGE

PART XV. PILOTAGE—*continued.*

SECT. 3. Pilotage Orders - - - - - - - - 597
SECT. 4. Pilotage Authorities and Districts - - - - 598
Sub-sect. 1. In General - - - - - - - 598
Sub-sect. 2. The Trinity House - - - - - 599
SECT. 5. Powers and Duties of Pilotage Authorities - - 599
Sub-sect. 1. Bye-laws - - - - - - - 599
Sub-sect. 2. Licences - - - - - - - 600
Sub-sect. 3. Pilotage Certificates - - - - 601
Sub-sect. 4. Receipts and Expenditure - - - 603
Sub-sect. 5. Pilotage Rates or Dues - - - - 603
Sub-sect. 6. Returns - - - - - - - 604
SECT. 6. Pilots - - - - - - - - - - 604
Sub-sect. 1. Rights and Obligations - - - - 604
Sub-sect. 2. Unqualified Person Acting as Pilot - - 605
SECT. 7. Pilot Boats, Flags, and Signals - - - - 605
SECT. 8. Offences - - - - - - - - - 606
Sub-sect. 1. Offences by Pilots - - - - - 606
Sub-sect. 2. Offences by Master - - - - - 607
Sub-sect. 3. Offences by Other Persons - - - 608
Sub-sect. 4. Further Penalties - - - - - 608
SECT. 9. Appeals - - - - - - - - - 608
SECT. 10. Compulsory Pilotage - - - - - - 609
Sub-sect. 1. Obligation under Compulsory Pilotage - 609
Sub-sect. 2. Excepted Ships - - - - - 610
Sub-sect. 3. Shipowner's Liability - - - - 611

PART XVI. LIMITATION OF LIABILITY OF OWNERS AND OTHERS - - - - - - - - - - 612
SECT. 1. Persons in whose Favour the Limitations Apply - 612
SECT. 2. Losses in Respect of which the Limitations Apply - 613
SECT. 3. Statutory Limits of Liability - - - - - 614
SECT. 4. Procedure - - - - - - - - - 616

PART XVII. LIENS ON SHIP, FREIGHT, AND CARGO - - 617
SECT. 1. Nature and Extent of Maritime Liens - - - 617
SECT. 2. Statutory Rights *in Rem* - - - - - 621
SECT. 3. Possessory Liens - - - - - - - 621
SECT. 4. Ranking of Liens - - - - - - - 621
SECT. 5. Enforcement of Liens - - - - - - 625
Sub-sect. 1. Maritime Liens - - - - - 625
Sub-sect. 2. Statutory Rights *in Rem* - - - - 626
Sub-sect. 3. Possessory Liens - - - - - 626
SECT. 6. Extinction of Liens - - - - - - 626

PART XVIII. LIGHTHOUSES - - - - - - - - 627
SECT. 1. Lighthouse Authorities - - - - - - 627
SECT. 2. Construction of Lighthouses - - - - - 628
SECT. 3. Light Dues - - - - - - - - - 629

PAGE

PART XVIII. LIGHTHOUSES—*continued.*

SECT. 4. Inspection and Control of Local Lighthouses - - 632
SECT. 5. Expenses: General Lighthouse Fund - - - 632

PART XIX. HARBOURS, DOCKS, AND PIERS - - - 634

SECT. 1. Definitions - - - - - - - - - 634
SECT. 2. Collection and Recovery of Rates - - - - 634
Sub-sect. 1. Liability - - - - - - - 634
Sub-sect. 2. Duties of Master of a Vessel - - - 637
Sub-sect. 3. Duties of Owner of Goods - - - 638
Sub-sect. 4. Enforcement - - - - - - - 638
Sub-sect. 5. Disputes - - - - - - - - 639
SECT. 3. Management of Vessels in Harbours - - - 639
Sub-sect. 1. Requirements for Vessels Entering and Remaining in Harbour - - - - 639
Sub-sect. 2. Powers of Harbour Master - - - 640
Sub-sect. 3. Discharge of Cargo - - - - - 642
SECT. 4. Provisions for Safety of Harbour - - - - 643
Sub-sect. 1. Protection of Works from Fire etc. - - 643
Sub-sect. 2. Liability of Owner and Wrongdoer for Damage - - - - - - - 644
SECT. 5. Buoys, Lights, Beacons etc. - - - - - 645
SECT. 6. Power to Make Bye-laws - - - - - 645
SECT. 7. Liabilities of Harbour Authorities - - - - 647

PART XX. MARINE AUTHORITIES - - - - - 649

SECT. 1. The Board of Trade and Other Authorities - - 649
SECT. 2. Local Marine Boards - - - - - - - 652
SECT. 3. Mercantile Marine Offices - - - - - 655
SECT. 4. Registration Authorities - - - - - - 657

PART XXI. PLEASURE YACHTS - - - - - - - 659

SECT. 1. Exemptions and Special Provisions Under Statute - 659
SECT. 2. Privileges Accorded to Yachts Carrying Special Flag - - - - - - - - - - 661
SECT. 3. Measure of Liability in Case of Collision - - - 661

PART XXII. NAVAL AND MARINE COURTS - - - - 662

APPENDIX. TABLE OF COLLISION REGULATIONS, 1840—1910 - - - - - - - - - - - - - i—xii

For Admiralty - - - - *See title* ADMIRALTY; CONSTITUTIONAL LAW.
Admiralty Courts - - ,, ADMIRALTY.
Alien Immigration - - ,, ALIENS.
Anchors, Marking of - - ,, TRADE AND TRADE UNIONS.
Arbitration - - - ,, ARBITRATION.
Blockade - - - - ,, CONSTITUTIONAL LAW; PRIZE LAW AND JURISDICTION.
Blowing up Ship - - ,, CRIMINAL LAW AND PROCEDURE.
Canal Boats - - - ,, PUBLIC HEALTH AND LOCAL ADMINISTRATION.
Canals - - - - ,, RAILWAYS AND CANALS.
Carriers - - - - ,, CARRIERS; RAILWAYS AND CANALS.

For Casting away Ship	*See title*	CRIMINAL LAW AND PROCEDURE.
Chain Cables, Marking of	,,	TRADE AND TRADE UNIONS.
Compensation for Injury	,,	MASTER AND SERVANT.
Concealing Buoys, Lights etc.	,,	CRIMINAL LAW AND PROCEDURE.
Consuls and Consular Officers	,,	CONSTITUTIONAL LAW.
Contraband of War	,,	PRIZE LAW AND JURISDICTION.
Courts of Survey	,,	COURTS.
Criminal Law	,,	CRIMINAL LAW AND PROCEDURE.
Customs	,,	REVENUE.
Cutting away Buoys	,,	CRIMINAL LAW AND PROCEDURE.
Damages	,,	DAMAGES.
Duties and Liabilities of Masters under Customs Acts	,,	REVENUE.
Embargo	,,	CONSTITUTIONAL LAW.
Excise	,,	REVENUE.
False Lights	,,	CRIMINAL LAW AND PROCEDURE.
Fishing Boats	,,	FISHERIES.
Forgery of Documents	,,	CRIMINAL LAW AND PROCEDURE.
Impeding Life Saving	,,	CRIMINAL LAW AND PROCEDURE.
Inland Waters	,,	WATERS AND WATERCOURSES.
Insurance of Seamen	,,	INSURANCE; WORK AND LABOUR.
Insurance of Ships etc.	,,	INSURANCE.
Licences to Trade	,,	REVENUE.
Marine Insurance	,,	INSURANCE.
Marine Store Dealers	,,	TRADE AND TRADE UNIONS.
Master and Servant	,,	MASTER AND SERVANT.
National Health Insurance	,,	WORK AND LABOUR.
Naval Discipline	,,	ROYAL FORCES.
Negligence	,,	NEGLIGENCE.
Old Metal Dealers	,,	TRADE AND TRADE UNIONS.
Piracy	,,	CRIMINAL LAW AND PROCEDURE.
Pleasure Boats	,,	PUBLIC HEALTH AND LOCAL ADMINISTRATION.
Possessory Liens	,,	LIEN.
Prize	,,	PRIZE LAW AND JURISDICTION.
Protection of Public Officers	,,	PUBLIC AUTHORITIES AND PUBLIC OFFICERS.
Quarantine	,,	PUBLIC HEALTH AND LOCAL ADMINISTRATION.
Railway Steamboats	,,	RAILWAYS AND CANALS.
Royal Navy	,,	ROYAL FORCES.
Sealing	,,	FISHERIES.
Through Traffic	,,	CARRIERS; RAILWAYS AND CANALS.
Waterways	,,	EASEMENTS AND PROFITS À PRENDRE; HIGHWAYS, STREETS, AND BRIDGES; WATERS AND WATERCOURSES.
Whaling	,,	FISHERIES.
Wreck, Stealing from	,,	CRIMINAL LAW AND PROCEDURE.
Wrecking	,,	CRIMINAL LAW AND PROCEDURE.

SHIP'S PAPERS.

See SHIPPING AND NAVIGATION.

SHIPWRECK.

See ADMIRALTY; CRIMINAL LAW AND PROCEDURE; INSURANCE SHIPPING AND NAVIGATION.

SHOEBLACKS.

See STREET AND AERIAL TRAFFIC.

SHOOTING.

See CRIMINAL LAW AND PROCEDURE; GAME; WATERS AND WATERCOURSES.

SHOP ASSISTANTS.

See FACTORIES AND SHOPS.

SHOP CLUBS.

See CLUBS.

SHORE.

See BOUNDARIES, FENCES, AND PARTY WALLS; CONSTITUTIONAL LAW; WATERS AND WATERCOURSES.

SHOWS.

See THEATRES AND OTHER PLACES OF ENTERTAINMENT.

SIDESMEN.

See ECCLESIASTICAL LAW.

SIDINGS.

See CARRIERS; RAILWAYS AND CANALS; RATES AND RATING.

SIGN MANUAL.

See CONSTITUTIONAL LAW.

SIGNATURE.

See CONTRACT; DEEDS AND OTHER INSTRUMENTS; GUARANTEE; SALE OF GOODS; WILLS.

SILVER.

See CONSTITUTIONAL LAW.

SIMONY.

See ECCLESIASTICAL LAW.

SINKING FUND.

See LOCAL GOVERNMENT; REVENUE.

SITE VALUE.

See REVENUE.

SITTING AND PEW RENTS.

See ECCLESIASTICAL LAW.

SITTINGS.

See TIME.

SKIMMED MILK.

See FOOD AND DRUGS.

SKY SIGNS.

See HIGHWAYS, STREETS, AND BRIDGES; PUBLIC HEALTH AND LOCAL ADMINISTRATION.

SLANDER.

See CRIMINAL LAW AND PROCEDURE; LIBEL AND SLANDER.

SLANDER OF GOODS.

See TRADE AND TRADE UNIONS.

SLANDER OF TITLE.

See TORT.

SLANDER OF WOMEN.

See LIBEL AND SLANDER.

SLATE CLUBS.

See BANKRUPTCY AND INSOLVENCY; FRIENDLY SOCIETIES.

SLAUGHTER-HOUSES.

See ANIMALS; PUBLIC HEALTH AND LOCAL ADMINISTRATION.

SLAVE TRADE.

See ADMIRALTY; CRIMINAL LAW AND PROCEDURE; TRADE AND TRADE UNIONS.

SMALL DWELLINGS.

See SMALL HOLDINGS AND SMALL DWELLINGS.

PAGE

SMALL HOLDINGS AND SMALL DWELLINGS - - 669—702

PART I. SMALL HOLDINGS - - - - - - - - 670

SECT. 1. Definition of a Small Holding - - - - - 670

SECT. 2. Authorities for the Provision of Small Holdings - 670

Sub-sect. 1. The Board of Agriculture and Fisheries - 670
Sub-sect. 2. The Small Holdings Commissioners - - 672
Sub-sect. 3. County Councils - - - - - 673
Sub-sect. 4. Small Holdings and Allotments Committees 676

SECT. 3. Schemes - - - - - - - - - - 677

Sub-sect. 1. Preparation - - - - - - 677
Sub-sect. 2. Procedure - - - - - - 677
Sub-sect. 3. Enforcement - - - - - - 678

SECT. 4. Acquisition of Land for Small Holdings - - - 678

Sub-sect. 1. By Agreement - - - - - 678
Sub-sect. 2. Compulsorily - - - - - - 680
(i.) Purchase - - - - - - - - 680
(ii.) Hiring - - - - - - - - 682
(iii.) Provisions Relating to Compulsory Purchase and Compulsory Hiring - - - - 684

SECT. 5. Dealings with Land- - - - - - - 686

Sub-sect. 1. Adaptation for Small Holdings - - 686
Sub-sect. 2. Sale - - - - - - - - 687
Sub-sect. 3. Letting - - - - - - - 690
Sub-sect. 4. Registration of Title - - - - 691

SECT. 6. Miscellaneous Powers of County Councils- - - 691

SECT. 7. Finance - - - - - - - - - - 693

PART II. SMALL DWELLINGS - - - - - - - 695

SECT. 1. Power of Local Authorities to make Advances - 695

SECT. 2. Repayment of Advances and Security Therefor - 696

SECT. 3. Conditions Imposed while Advance is Outstanding - 697

SECT. 4. Remedies for Breach of Conditions - - - - 698

Sub-sect. 1. Possession - - - - - - 698
Sub-sect. 2. Sale - - - - - - - - 700

SECT. 5. Finance - - - - - - - - - - 700

Sub-sect. 1. In General - - - - - - 700
Sub-sect. 2. In the Metropolis - - - - - 702

For Agriculture - - - *See title* AGRICULTURE.
Allotments - - - ,, ALLOTMENTS.
Compulsory Purchase - ,, COMPULSORY PURCHASE OF LAND AND COMPENSATION.
Local Government - - ,, LOCAL GOVERNMENT.
Open Spaces - - - ,, COMMONS AND RIGHTS OF COMMON; OPEN SPACES AND RECREATION GROUNDS.
Public Health - - - ,, PUBLIC HEALTH AND LOCAL ADMINISTRATION.
Water Supply to Small Houses - - - ,, WATER SUPPLY.

SMALLPOX.

See MEDICINE AND PHARMACY; PUBLIC HEALTH AND LOCAL ADMINISTRATION.

SMOKE.

See NUISANCE; PUBLIC HEALTH AND LOCAL ADMINISTRATION: RAILWAYS AND CANALS.

SMOKING.

See INFANTS AND CHILDREN.

SMOKING COMPARTMENTS.

See RAILWAYS AND CANALS.

SMUGGLING.

See CRIMINAL LAW AND PROCEDURE.

SNOW.

See HIGHWAYS, STREETS, AND BRIDGES; NUISANCE.

SNUFF.

See REVENUE.

SOCAGE.

See INFANTS AND CHILDREN; REAL PROPERTY AND CHATTELS REAL.

SOCIETIES.

See BUILDING SOCIETIES; CLUBS; FRIENDLY SOCIETIES; INDUSTRIAL, PROVIDENT, AND SIMILAR SOCIETIES; LITERARY AND SCIENTIFIC INSTITUTIONS; LOAN SOCIETIES; TRADE AND TRADE UNIONS.

SODOMY.

See CRIMINAL LAW AND PROCEDURE.

SOLD NOTE.

See SALE OF GOODS; STOCK EXCHANGE.

SOLDIERS.

See ROYAL FORCES.

SOLE CORPORATION.

See CORPORATIONS; ECCLESIASTICAL LAW.

SOLEMN FORM.

See EXECUTORS AND ADMINISTRATORS.

SOLEMNISATION OF MARRIAGE.

See ECCLESIASTICAL LAW; HUSBAND AND WIFE.

SOLICITOR-GENERAL.

See BARRISTERS; CONSTITUTIONAL LAW.

PAGE

SOLICITORS - - - - - - - - - - - **705—860**

PART I. THE LAW SOCIETY - - - - - - - - 707

PART II. ADMISSION AND REGISTRATION - - - - 710

SECT. 1. Conditions of Admission - - - - - - - 710
SECT. 2. Service under Articles - - - - - - - 710
SECT. 3. Examinations - - - - - - - - - 716
SECT. 4. Admission - - - - - - - - - 719
SECT. 5. Practising Certificate - - - - - - 720
SECT. 6. Colonial Solicitors - - - - - - - 722

PART III. RIGHTS AND PRIVILEGES OF SOLICITORS - - 722

SECT. 1. Right to Practise - - - - - - - - 722
SECT. 2. Right of Audience - - - - - - - - 723
SECT. 3. Privileges - - - - - - - - - 726

PART IV. SOLICITOR AND CLIENT - - - - - - - 728

SECT. 1. Retainer - - - - - - - - - 728
Sub-sect. 1. What Constitutes a Retainer - - - 728
Sub-sect. 2. Duration of Retainer - - - - 737
Sub-sect. 3. Ownership of Documents - - - 740
SECT. 2. Authority of Solicitor to Bind his Client - - - 741
Sub-sect. 1. In General - - - - - - - 741
Sub-sect. 2. Contentious Business - - - - 741
Sub-sect. 3. Non-contentious Business - - - 744
SECT. 3. Transactions between Solicitor and Client - - 746
Sub-sect. 1. In General - - - - - - - 746
Sub-sect. 2. Gifts - - - - - - - - 747
Sub-sect. 3. Purchases and Sales - - - - 748
Sub-sect. 4. Mortgages - - - - - - - 751
Sub-sect. 5. Wills - - - - - - - - 752
Sub-sect. 6. Solicitor as Trustee - - - - - 752
SECT. 4. Obligations of Solicitor towards his Client - - 753
Sub-sect. 1. Possession of Legal Skill and Knowledge - 753
Sub-sect. 2. Personal Attention and Protection of Client's Interests - - - - - - 758
Sub-sect. 3. Liability for Acts of Partners - - - 758

PAGE

PART V. REMUNERATION OF SOLICITORS: COSTS - - 760

SECT. 1. Amount Fixed by Law - - - - - - 760
Sub-sect. 1. In General - - - - - - 760
Sub-sect. 2. Non-contentious Business - - - 760
Sub-sect. 3. Contentious Business - - - - 767

SECT. 2. Special Agreements Fixing Amount - - - 770
Sub-sect. 1. In General - - - - - - 770
Sub-sect. 2. Under the Attorneys and Solicitors Act, 1870 - - - - - - - 771
Sub-sect. 3. Under the Solicitors Remuneration Act, 1881 - - - - - - - 773

SECT. 3. Delivery of a Bill of Costs - - - - - 774

SECT. 4. Taxation of Costs - - - - - - - 780
Sub-sect. 1. Jurisdiction of the Court - - - - 780
Sub-sect. 2. The Making of the Order - - - 784
Sub-sect. 3. The Conduct of the Taxation - - - 793
Sub-sect. 4. Review of Taxation - - - - 795

SECT. 5. What Costs Allowed on Taxation - - - - 797
Sub-sect. 1. In General - - - - - - 797
Sub-sect. 2. Costs as between Solicitor and Client - 797
Sub-sect. 3. Costs as between Party and Party - - 799
Sub-sect. 4. Costs Regulated by Statute - - - 807
Sub-sect. 5. Costs of Taxation - - - - - 807

SECT. 6. Interest on Costs - - - - - - - 809

SECT. 7. Security for Costs - - - - - - - 811

SECT. 8. Solicitor's Remedies for Costs - - - - 812
Sub-sect. 1. Action - - - - - - - 812
Sub-sect. 2. Proceedings in Bankruptcy - - - 813
Sub-sect. 3. Proceedings on Allocatur - - - 813

SECT. 9. LIEN - - - - - - - - - - 814
Sub-sect. 1. Kinds of Lien - - - - - - 814
Sub-sect. 2. Retaining Lien - - - - - 814
Sub-sect. 3. Common Law Lien on Property or Funds Recovered - - - - . - 820
Sub-sect. 4. Statutory Lien and Charging Orders - 823

PART VI. LIABILITIES OF SOLICITORS AS OFFICERS OF THE HIGH COURT - - - - - - - - 828

SECT. 1. In General - - - - - - - - - 828

SECT. 2. Liability upon Undertakings given as a Solicitor - 830

SECT. 3. Liability to Pay Costs - - - - - - 832

SECT. 4. Liability to Third Persons - - - - - 835

SECT. 5. Liability to Client - - - - - - - 837
Sub-sect. 1. To Pay over Money Received - - - 837
Sub-sect. 2. To Deliver up Papers - - - - 840

PART VII. PARTNERSHIPS BETWEEN SOLICITORS - - 842

SECT. 1. In General - - - - - - - - - 842
SECT. 2. Profits of Offices and Premiums - - - - 842
SECT. 3. Goodwill - - - - - - - - - - 843

PAGE

PART VIII. LONDON AGENTS - - - - - - - 844

SECT. 1. Scope of Country Certificate - - - - - - 844

SECT. 2. Relations between London Agent and Country Solicitor's Client - - - - - - - - - 844

SECT. 3. Relations between London Agent and Country Solicitor - - - - - - - - - - 846

SECT. 4. Relations between London Agent and Opposite Parties - - - - - - - - - 847

PART IX. DISCIPLINE - - - - - - - - - - 848

SECT. 1. Grounds for Striking Solicitor off the Rolls - - 848

SECT. 2. Procedure - - - - - - - - - - 852

SECT. 3. Appeal - - - - - - - - - - 855

PART X. UNQUALIFIED PERSONS - - - - - - - 855

PART XI. COMMISSIONERS FOR OATHS - - - - - 857

PART XII. PERPETUAL COMMISSIONERS - - - - - 859

For Agency - - - - *See title* AGENCY.
Arbitrations - - - ,, ARBITRATION.
Attorney-General - - ,, BARRISTERS; CONSTITUTIONAL LAW.
Barristers - - - ,, BARRISTERS.
Champerty - - - ,, ACTION.
Deeds, Preparation of - ,, BILLS OF SALE; BONDS; DEEDS AND OTHER INSTRUMENTS; FAMILY ARRANGEMENTS; LANDLORD AND TENANT; MORTGAGE; PARTNERSHIP; REAL PROPERTY AND CHATTELS REAL; SALE OF LAND; SETTLEMENTS.
Maintenance - - - ,, ACTION.
Notaries - - - - ,, NOTARIES.
Pleadings - - - - ,, PLEADING; PRACTICE AND PROCEDURE.
Practice and Procedure - ,, ACTION; ADMIRALTY; BANKRUPTCY AND INSOLVENCY; CORONERS; COUNTY COURTS; COURTS; CRIMINAL LAW AND PROCEDURE; CROWN PRACTICE; DISCOVERY, INSPECTION, AND INTERROGATORIES; ECCLESIASTICAL LAW; EVIDENCE; EXECUTION; EXECUTORS AND ADMINISTRATORS; INJUNCTION; INTERPLEADER; JUDGMENTS AND ORDERS; LIMITATION OF ACTIONS; MAGISTRATES; MAYOR'S COURT, LONDON; PLEADING; PRACTICE AND PROCEDURE; SET-OFF AND COUNTERCLAIM.
Solicitor-General - - ,, BARRISTERS; CONSTITUTIONAL LAW.
Title, Investigation of - ,, SALE OF LAND.
Wills, Preparation of - ,, WILLS.

SOMALILAND.

See Dependencies and Colonies.

SORCERY.

See Criminal Law and Procedure.

SOUTH AFRICA.

See Dependencies and Colonies.

SOUTH AUSTRALIA.

See Dependencies and Colonies.

SOUTHERN NIGERIA.

See Dependencies and Colonies.

SOUTHERN RHODESIA.

See Dependencies and Colonies.

SOVEREIGN.

See Constitutional Law.

SOVEREIGNS AND STATES.

See Constitutional Law; Conflict of Laws.

SPARKS.

See Agriculture; Negligence; Railways and Canals.

SPEAKER IN THE HOUSES OF PARLIAMENT.

See Parliament.

SPECIAL CASE.

See Courts; Intoxicating Liquors; Magistrates; Practice and Procedure.

SPECIAL CONSTABLE.

See Police.

SPECIAL DAMAGE.

See Damages.

SPECIAL GRANTS OF ADMINISTRATION.

See EXECUTORS AND ADMINISTRATORS.

SPECIAL INDORSEMENT.

See JUDGMENTS AND ORDERS; PLEADING; PRACTICE AND PROCEDURE.

SPECIAL JURY.

See JURIES; PRACTICE AND PROCEDURE.

SPECIAL LICENCE TO MARRY.

See HUSBAND AND WIFE.

SPECIAL OCCUPANT.

See DESCENT AND DISTRIBUTION; REAL PROPERTY AND CHATTELS REAL.

SPECIAL RESOLUTION.

See COMPANIES.

SPECIAL SESSIONS.

See COURTS; INTOXICATING LIQUORS; MAGISTRATES.

SPECIAL VERDICT.

See JURIES.

SPECIALTY DEBTS.

See BONDS; CONTRACT; EXECUTORS AND ADMINISTRATORS.

SPECIFIC DELIVERY OF CHATTELS.

See SPECIFIC PERFORMANCE; TROVER AND DETINUE.

SPECIFIC DEVISE.

See EXECUTORS AND ADMINISTRATORS; WILLS.

SPECIFIC GOODS.

See SALE OF GOODS.

SPECIFIC LEGACY.

See EXECUTORS AND ADMINISTRATORS; WILLS.

ABBREVIATIONS

USED IN THIS WORK.

A. C. (preceded by date) ..	Law Reports, Appeal Cases, House of Lords, since 1890 (*e.g.* [1891] A. C.)
A.-G.	Attorney-General
Act.	Acton's Reports, Prize Causes, 2 vols., 1809—1841
Ad. & El.	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols., 1834—1842
Adam	Adam's Justiciary Reports (Scotland), 1893—(current)
Add.	Addams' Ecclesiastical Reports, 3 vols., 1822—1826
Adv.-Gen.	Advocate-General
Alc. & N.	Alcock and Napier's Reports, King's Bench (Ireland), 1 vol., 1813—1833
Alc. Reg. Cas.	Alcock's Registry Cases (Ireland), 1 vol., 1832—1841
Aleyn	Aleyn's Reports, King's Bench, fol., 1 vol., 1646—1649
Amb.	Ambler's Reports, Chancery, 2 vols., 1725—1783
And.	Anderson's Reports, Common Pleas, fol., 2 parts in one vol., 1535—1605
Andr.	Andrews' Reports, King's Bench, fol., 1 vol., 1737—1740
Anon.	Anonymous
Anst.	Anstruther's Reports, Exchequer, 3 vols., 1792—1797
App. Cas.	Law Reports, Appeal Cases, House of Lords, 15 vols., 1875—1890
Arkley	Arkley's Justiciary Reports (Scotland), 1 vol., 1846—1848
Arm. M. & O.	Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1840—1842
Arn.	Arnold's Reports, Common Pleas, 2 vols., 1838—1839
Arn. & H.	Arnold and Hodges' Reports, Queen's Bench, 1 vol., 1840—1841
Asp. M. L. C.	Aspinall's Maritime Law Cases, 1870—(current)
Ashb.	Ashburner's Principles of Equity, 1902
Atk.	Atkyns' Reports, Chancery, 3 vols., 1736—1754
Ayl. Pan.	Ayliffe's New Pandect of Roman Civil Law
Ayl. Par.	Ayliffe's Parergon Juris Canonici Anglicani
B. & Ad.	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830—1834
B. & Ald.	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817—1822
B. & C.	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822—1830
B. & S.	Best and Smith's Reports, Queen's Bench, 10 vols., 1861—1870
Bac. Abr.	Bacon's Abridgment
Bail Ct. Cas.	Bail Court Cases (Lowndes and Maxwell), 1 vol., 1852—1854
Baild.	Baildon's Select Cases in Chancery (Selden Society, Vol. X.)
Ball & B.	Ball and Beatty's Reports, Chancery (Ireland), 2 vols., 1807—1814
Bankr. & Ins. R. ..	Bankruptcy and Insolvency Reports, 2 vols., 1853—1855

Bar. & Arn.	Barron & Arnold's Election Cases, 1 vol., 1843—1846
Bar. & Aust.	Barron & Austin's Election Cases, 1 vol., 1842
Barn. (CH.)	Barnardiston's Reports, Chancery, fol., 1 vol., 1740—1741
Barn. (K. B.)	Barnardiston's Reports, King's Bench, fol., 2 vols., 1726—1734
Barnes	Barnes' Notes of Cases of Practice, Common Pleas, 1 vol., 1732—1760
Batt.	Batty's Reports, King's Bench (Ireland), 1 vol., 1825—1826
Beat.	Beatty's Reports, Chancery (Ireland), 1 vol., 1813—1830
Beav.	Beavan's Reports, Rolls Court, 36 vols., 1838—1866
Beav. & Wal.	Beavan and Walford's Railway Parliamentary Cases, 1 vol., 1846
Beaw.	Beawes's Lex Mercatoria
Bellewe	Bellewe's Cases *temp.* Richard II., King's Bench, 1 vol.
Bell, C. C.	T. Bell's Crown Cases Reserved, 1 vol., 1858—1860
Bell, Ct. of Sess. ..	R. Bell's Decisions, Court of Session (Scotland), 1 vol., 1790—1792
Bell, Ct. of Sess. fol. ..	R. Bell's Decisions, Court of Session (Scotland), fol., 1 vol., 1794—1795
Bell, Dict. Dec. ..	S. S. Bell's Dictionary of Decisions, Court of Session (Scotland), 2 vols., 1808—1833
Bell, Sc. App.	S. S. Bell's Scotch Appeals, House of Lords, 7 vols., 1842—1850
Belt's Sup.	Belt's Supplement to Vesey Sen., Chancery, 1 vol., 1746—1756
Benl.	Benloe's (or Bendloe's) Reports, King's Bench and Common Pleas, fol., 1 vol., 1515—1627
Ben. & D.	Benloe and Dalison's Reports, Common Pleas, fol., 1 vol., 1357—1579
Bing.	Bingham's Reports, Common Pleas, 10 vols., 1822—1834
Bing. (N. C.)	Bingham's New Cases, Common Pleas, 6 vols., 1834—1840
Bitt. Prac. Cas.	Bittleston's Practice Cases in Chambers under the Judicature Acts, 1873 and 1875, 1 vol., 1875—1876
Bitt. Rep. in Ch. ..	Bittleston's Reports in Chambers (Queen's Bench Division), 1 vol., 1883—1884
Bl. Com.	Blackstone's Commentaries
Bl. D. & Osb.	Blackham, Dundas, and Osborne's Reports, Practice and Nisi Prius (Ireland), 1 vol., 1846—1848
Bli.	Bligh's Reports, House of Lords, 4 vols., 1819—1821
Bli. (N. S.)	Bligh's Reports, House of Lords, New Series, 11 vols., 1827—1837
Bos. & P.	Bosanquet and Puller's Reports, Common Pleas 3 vols., 1796—1804
Bos. & P. (N. R.) ..	Bosanquet and Puller's New Reports, Common Pleas, 2 vols., 1804—1807
Bract.	Bracton De Legibus et Consuetudinibus Angliæ
Bro. Abr.	Sir J. Brooke's Abridgment
Bro. C. C.	W. Brown's Chancery Reports, 4 vols., 1778—1794
Bro. Ecc. Rep.	W. G. Brooke's Ecclesiastical Reports, Privy Council, 1 vol., 1850—1872
Bro. (N. C.)	Sir R. Brooke's New Cases, 1 vol., 1515—1558
Bro. Parl. Cas.	J. Brown's Cases in Parliament, 8 vols., 1702—1800
Bro. Supp. to Mor. ..	M. P. Brown's Supplement to Morison's Dictionary of Decisions, Court of Session (Scotland), 5 vols.
Bro. Synop.	M. P. Brown's Synopsis of Decisions, Court of Session (Scotland), 4 vols., 1532—1827
Brod. & Bing.	Broderip and Bingham's Reports, Common Pleas, 3 vols., 1819—1822

Brod. & F.	Brodrick and Fremantle's Ecclesiastical Reports, Privy Council, 1 vol., 1705—1864
Broun	Broun's Justiciary Reports (Scotland), 2 vols., 1842—1845
Brown. & Lush. ..	Browning and Lushington's Reports, Admiralty, 1 vol., 1863—1866
Brownl.	Brownlow and Goldesborough's Reports, Common Pleas, 2 parts, 1569—1624
Bruce	Bruce's Decisions, Court of Session (Scotland), 1714—1715
Buchan.	Buchanan's Reports, Court of Session and Justiciary (Scotland), 1806—1813
Buck	Buck's Cases in Bankruptcy, 1 vol., 1816—1820
Bulst.	Bulstrode's Reports, King's Bench, fol., 3 parts in 1 vol., 1610—1626
Bunb.	Bunbury's Reports, Exchequer, fol., 1 vol., 1713—1741
Burr.	Burrow's Reports, King's Bench, 5 vols., 1756—1772
Burr. S. C.	Burrow's Settlement Cases, King's Bench, 1 vol., 1733—1776
Burrell	Burrell's Reports, Admiralty, ed. by Marsden, 1 vol., 1648—1840
C. A.	Court of Appeal
C. B.	Common Bench Reports, 18 vols., 1845—1856
C. B. (N. S.)	Common Bench Reports, New Series, 20 vols., 1856—1865
C. C. A.	Court of Criminal Appeal
C. C. Ct. Cas.	Central Criminal Court Cases (Sessions Papers), 1834—(current)
C. L. R.	Common Law Reports, 3 vols., 1853—1855
C. P. D.	Law Reports, Common Pleas Division, 5 vols., 1875—1880
C. & P.	Carrington and Payne's Reports, Nisi Prius, 9 vols., 1823—1841
Cab. & El.	Cababé and Ellis's Reports, Queen's Bench Division, 1 vol., 1882—1885
Cald. Mag. Cas. ..	Caldecott's Magistrates Cases, 1 vol., 1777—1786
Calth.	Calthrop's City of London Cases, King's Bench, 1 vol., 1609—1618
Camp.	Campbell's Reports, Nisi Prius, 4 vols., 1807—1816
Carp. Pat. Cas.	Carpmael's Patent Cases, 2 vols., 1602—1842
Car. & Kir.	Carrington and Kirwan's Reports, Nisi Prius, 3 vols., 1843—1853
Car. & M.	Carrington and Marshman's Reports, Nisi Prius, 1 vol., 1841—1843
Cart.	Carter's Reports, Common Pleas, fol., 1 vol., 1664—1673
Carth.	Carthew's Reports, King's Bench, fol., 1 vol., 1687—1700
Cary	Cary's Reports, Chancery, 1 vol.
Cas. in Ch.	Cases in Chancery, fol., 3 parts, 1660—1697
Cas. Pract. K. B. ..	Cases of Practice, King's Bench, 1 vol., 1655—1775
Cas. Sett.	Cases of Settlements and Removals, 1 vol., 1689—1727
Cas. *temp.* Finch ..	Cases *temp.* Finch, Chancery, fol., 1 vol., 1673—1680
Cas. *temp.* King ..	Select Cases *temp.* King, Chancery, fol., 1 vol., 1724—1733
Cas. *temp.* Talb... ..	Cases in Equity *temp.* Talbot, fol., 1 vol., 1730—1737
Ch. (preceded by date) ..	Law Reports, Chancery Division, since 1890 (*e.g.*, [1891] 1 Ch.)
Ch. App...	Law Reports, Chancery Appeals, 10 vols., 1865—1875
Ch. D.	Law Reports, Chancery Division, 45 vols., 1875—1890
Ch. Rob...	Christopher Robinson's Reports, Admiralty, 6 vols. 1798—1808

Char. Pr. Cas.	Charley's New Practice Reports, 3 vols., 1875—1876
Char. Cham. Cas.	Charley's Chamber Cases, 1 vol., 1875—1876
Chit.	Chitty's Practice Reports, King's Bench, 2 vols., 1770—1822
Cl. & Fin.	Clark and Finnelly's Reports, House of Lords, 12 vols., 1831—1846
Clay.	Clayton's Reports and Pleas of Assises at Yorke, 1 vol., 1631—1650
Clif. & Rick.	Clifford and Rickards' Locus Standi Reports, 3 vols., 1873—1884
Clif. & Steph.	Clifford and Stephens' Locus Standi Reports, 2 vols., 1867—1872
Cockb. & Rowe	Cockburn and Rowe's Election Cases, 1 vol., 1833
Co. Ent.	Coke's Entries
Co. Inst.	Coke's Institutes
Co. Litt.	Coke on Littleton (1 Inst.)
Co. Rep.	Coke's Reports, 13 parts, 1572—1616
Coll.	Collyer's Reports, Chancery, 2 vols., 1844—1846
Coll. Jurid.	Collectanea Juridica, 2 vols.
Colles	Colles' Cases in Parliament, 1 vol., 1697—1713
Colt.	Coltman's Registration Cases, 1 vol., 1879—1885
Com.	Comyns' Reports, King's Bench, Common Pleas, and Exchequer, fol., 2 vols., 1695—1740
Com. Cas.	Commercial Cases, 1895—(current)
Com. Dig.	Comyns' Digest
Comb.	Comberbach's Reports, King's Bench, fol., 1 vol., 1685—1698
Con. & Law.	Connor and Lawson's Reports, Chancery (Ireland), 2 vols., 1841—1843
Cooke & Al.	Cooke and Alcock's Reports, King's Bench (Ireland), 1 vol., 1833—1834
Cooke, Pr. Cas.	Cooke's Practice Reports, Common Pleas, 1 vol., 1706—1747
Cooke, Pr. Reg.	Cooke's Practical Register of the Common Pleas, 1 vol., 1702—1742
Coop. G.	G. Cooper's Reports, Chancery, 1 vol., 1792—1815
Coop. Pr. Cas.	C. P. Cooper's Reports, Chancery Practice, 1 vol., 1837—1838
Coop. *temp.* Brough.	C. P. Cooper's Cases *temp.* Brougham, Chancery, 1 vol., 1833—1834
Coop. *temp.* Cott.	C. P. Cooper's Cases *temp.* Cottenham, Chancery, 2 vols., 1846—1848 (and miscellaneous earlier cases)
Corb. & D.	Corbett and Daniell's Election Cases, 1 vol., 1819
Couper	Couper's Justiciary Reports (Scotland), 5 vols., 1868—1885
Cowp.	Cowper's Reports, King's Bench, 2 vols., 1774—1778
Cox, C. C.	E. W. Cox's Criminal Law Cases, 1843—(current)
Cox & Atk.	Cox and Atkinson's Registration Appeal Cases, 1 vol., 1843—1846
Cox, Eq. Cas.	S. C. Cox's Equity Cases, 2 vols., 1745—1797
Cox, M. & H.	Cox, Macrae, and Hertslet's County Courts Cases and Appeals, Vol. I., 1846—1852
Cr. & J.	Crompton and Jervis's Reports, Exchequer, 2 vols., 1830—1832
Cr. & M.	Crompton and Meeson's Reports, Exchequer, 2 vols., 1832—1834
Cr. M. & R.	Crompton, Meeson, and Roscoe's Reports, Exchequer, 2 vols., 1834—1835
Cr. & Ph.	Craig and Phillips' Reports, Chancery, 1 vol., 1840—1841
Cr. App. Rep.	Cohen's Criminal Appeal Reports, 1909—(current)
Craw. & D.	Crawford and Dix's Circuit Cases (Ireland), 3 vols., 1838—1846

Craw. & D. Abr. C. ..	Crawford and Dix's Abridged Cases (Ireland), 1 vol., 1837—1838
Cress. Insolv. Cas. ..	Cresswell's Insolvency Cases, 1 vol., 1827—1829
Cripps' Church Cas. ..	Cripps' Church and Clergy Cases, 2 parts, 1847—1850
Cro. Car.	Croke's Reports *temp.* Charles I., King's Bench and Common Pleas, 1 vol., 1625—1641
Cro. Eliz.	Croke's Reports *temp.* Elizabeth, King's Bench and Common Pleas, 1 vol., 1582—1603
Cro. Jac.	Croke's Reports *temp.* James I., King's Bench and Common Pleas, 1 vol., 1603—1625
Cru. Dig.	Cruise's Digest of the Law of Real Property, 7 vols.
Cunn.	Cunningham's Reports, King's Bench, fol., 1 vol., 1734—1735
Curt.	Curteis' Ecclesiastical Reports, 3 vols., 1834—1844
Dalr.	Dalrymple's Decisions, Court of Session (Scotland), fol., 1 vol., 1698—1720
Dan.	Daniell's Reports, Exchequer in Equity, 1 vol., 1817—1823
Dan. & Ll.	Danson and Lloyd's Mercantile Cases, 1 vol., 1828—1829
Dav. & Mer.	Davison and Merivale's Reports, Queen's Bench, 1 vol., 1843—1844
Dav. Pat. Cas.	Davies' Patent Cases, 1 vol., 1785—1816
Dav. Ir.	Davys' (or Davies' or Davy's) Reports (Ireland), 1 vol., 1604—1611
Day	Day's Election Cases, 1 vol., 1892—1893
Dea. & Sw.	Deane and Swabey's Ecclesiastical Reports, 1 vol., 1855—1857
Deac.	Deacon's Reports, Bankruptcy, 4 vols., 1834—1840
Deac. & Ch.	Deacon and Chitty's Reports, Bankruptcy, 4 vols., 1832—1835
Dears. & B.	Dearsly and Bell's Crown Cases Reserved, 1 vol., 1856—1858
Dears. C. C.	Dearsly's Crown Cases Reserved, 1 vol., 1852—1856
Deas & And.	Deas and Anderson's Decisions (Scotland), 5 vols., 1829—1832
De G.	De Gex's Reports, Bankruptcy, 1 vol., 1844—1848
De G. F. & J.	De Gex, Fisher, and Jones's Reports, Chancery, 4 vols., 1859—1862
De G. & J.	De Gex and Jones's Reports, Chancery, 4 vols., 1857—1859
De G. J. & Sm... ..	De Gex, Jones, and Smith's Reports, Chancery, 4 vols., 1862—1865
De G. M. & G.	De Gex, Macnaghten, and Gordon's Reports, Chancery, 8 vols., 1851—1857
De G. & Sm.	De Gex and Smale's Reports, Chancery, 5 vols., 1846—1852
Delane	Delane's Decisions, Revision Courts, 1 vol., 1832—1835
Den.	Denison's Crown Cases Reserved, 2 vols., 1844—1852
Dick.	Dickens' Reports, Chancery, 2 vols., 1559—1798
Dig.	Justinian's Digest or Pandects
Dirl.	Dirleton's Decisions, Court of Session (Scotland), fol., 1 vol., 1665—1677
Dods.	Dodson's Reports, Admiralty, 2 vols., 1811—1822
Donnelly	Donnelly's Reports, Chancery, 1 vol., 1836—1837
Doug. El. Cas.	Douglas' Election Cases, 4 vols., 1774—1776
Doug. (K. B.)	Douglas' Reports, King's Bench, 4 vols., 1778—1785
Dow	Dow's Reports, House of Lords, 6 vols., 1812—1818
Dow & Cl.	Dow and Clark's Reports, House of Lords, 2 vols., 1827—1832
Dow. & L.	Dowling and Lowndes' Practice Reports, 7 vols., 1843—1849

Dow. & Ry. (K. B.)	Dowling and Ryland's Reports, King's Bench, 9 vols., 1822—1827
Dow. & Ry. (M. C.)	Dowling and Ryland's Magistrates' Cases, 4 vols., 1822—1827
Dow. & Ry. (N. P.)	Dowling and Ryland's Reports, Nisi Prius, 1 part, 1822—1823
Dowl.	Dowling's Practice Reports, 9 vols., 1830—1841
Dowl. (N. S.)	Dowling's Practice Reports, New Series, 2 vols., 1841—1843
Dr. & Wal.	Drury and Walsh's Reports, Chancery (Ireland), 2 vols., 1837—1841
Dr. & War.	Drury and Warren's Reports, Chancery (Ireland), 4 vols., 1841—1843
Drew.	Drewry's Reports, Chancery, 4 vols., 1852—1859
Drew. & Sm.	Drewry and Smale's Reports, Chancery, 2 vols., 1859—1865
Drinkwater	Drinkwater's Reports, Common Pleas, 1 vol., 1839
Drury *temp.* Nap.	Drury's Reports *temp.* Napier, Chancery (Ireland), 1 vol., 1858—1859
Drury *temp.* Sug.	Drury's Reports *temp.* Sugden, Chancery (Ireland), 1 vol., 1841—1844
Dugd. Orig.	Dugdale's Origines Juridiciales
Dunl. (Ct. of Sess.)	Dunlop, Court of Session Cases (Scotland), 2nd series, 24 vols., 1838—1862
Dunning	Dunning's Reports, King's Bench, 1 vol., 1753—1754
Durie	Durie's Decisions, Court of Session (Scotland), fol., 1 vol., 1621—1642
Dyer	Dyer's Reports, King's Bench, 3 vols., 1513—1581
E. & B.	Ellis and Blackburn's Reports, Queen's Bench, 8 vols., 1852—1858
E. & E.	Ellis and Ellis's Reports, Queen's Bench, 3 vols., 1858—1861
E. B. & E.	Ellis, Blackburn, and Ellis's Reports, Queen's Bench, 1 vol., 1858—1860
Eag. & Y.	Eagle and Younge's Tithe Cases, 4 vols., 1223—1825
East	East's Reports, King's Bench, 16 vols., 1800—1812
East, P. C.	East's Pleas of the Crown
Ecc. & Ad.	Spinks' Ecclesiastical and Admiralty Reports, 2 vols., 1853—1855
Eden	Eden's Reports, Chancery, 2 vols., 1757—1766
Edgar	Edgar's Decisions, Court of Session (Scotland), fol., 1724—1725
Edw.	Edwards' Reports, Admiralty, 1 vol., 1808—1812
Elchies	Elchies' Decisions, Court of Session (Scotland), 2 vols., 1733—1754
Eng. Pr. Cas.	Roscoe's English Prize Cases, 2 vols., 1745—1858
Eq. Cas. Abr.	Abridgment of Cases in Equity, fol., 2 vols., 1667—1744
Eq. Rep.	Equity Reports, 3 vols., 1853—1855
Esp.	Espinasse's Reports, Nisi Prius, 6 vols., 1793—1810
Exch.	Exchequer Reports (Welsby, Hurlstone, and Gordon), 11 vols., 1847—1856
Ex. D.	Law Reports, Exchequer Division, 5 vols., 1875—1880
F. & F.	Foster and Finlason's Reports, Nisi Prius, 4 vols., 1856—1867
F. (Ct. of Sess.)	Fraser, Court of Session Cases (Scotland), 5th series, 1898—1906
Fac. Coll. (with date)	Faculty of Advocates, Collection of Decisions, Court of Session (Scotland), fol., 1st and 2nd series, 21 vols., 1752—1825

Fac. Coll. (N. S.) (with date)	Faculty of Advocates, Collection of Decisions, Court of Session (Scotland), New Series, 16 vols., 1825—1841
Falc.	Falconer's Decisions, Court of Session (Scotland), 2 vols., fol., 1744—1751
Falc. & Fitz.	Falconer and Fitzherbert's Election Cases, 1 vol., 1835—1838
Ferg.	Ferguson's Consistorial Decisions (Scotland), 1 vol., 1811—1817
Fitz-G.	Fitz-Gibbons' Reports, King's Bench, fol., 1 vol., 1728—1731
Fitz. Nat. Brev. ..	Fitzherbert's Natura Brevium
Fl. & K.	Flanagan and Kelly's Reports, Rolls Court (Ireland), 1 vol., 1840—1842
Fonbl.	Fonblanque's Reports, Bankruptcy, 2 parts, 1849—1852
For.	Forrest's Reports, Exchequer, 1 vol., 1800—1801
Forb.	Forbes' Decisions, Court of Session (Scotland), fol., 1 vol., 1705—1713
Fort. De Laud. ..	Fortescue, De Laudibus Legum Angliæ
Fortes. Rep.	Fortescue's Reports, fol., 1 vol., 1692—1736
Fost.	Foster's Crown Cases, 1 vol., 1743—1760
Fount.	Fountainhall's Decisions, Court of Session (Scotland), fol., 2 vols., 1678—1712
Fox & S. Ir.	M. C. Fox and T. B. C. Smith's Reports, King's Bench (Ireland), 2 vols., 1822—1825
Fox & S. Reg.	J. S. Fox and C. L. Smith's Registration Cases, 1 vol., 1886—1895
Freem. (CH.)	Freeman's Reports, Chancery, 1 vol., 1660—1706
Freem. (K. B.)	Freeman's Reports, King's Bench and Common Pleas, 1 vol., 1670—1704
Gal. & Dav.	Gale and Davison's Reports, Queen's Bench, 3 vols., 1841—1843
Gale	Gale's Reports, Exchequer, 2 vols., 1835—1836
Gib. Cod.	Gibson's Codex Juris Ecclesiastici Anglicani
Giff.	Giffard's Reports, Chancery, 5 vols., 1857—1865
Gilb.	Gilbert's Cases in Law and Equity, 1 vol., 1713—1714
Gilb. C. P.	Gilbert's History and Practice of the Court of Common Pleas
Gilb. (CH.)	Gilbert's Reports, Chancery and Exchequer, fol., 1 vol., 1706—1726
Gilm. & F.	Gilmour and Falconer's Decisions, Court of Session (Scotland), 2 parts, Part I. (Gilmour) 1661—1666, Part II. (Falconer) 1681—1686
Gl. & J.	Glyn and Jameson's Reports, Bankruptcy, 2 vols., 1819—1828
Glanv.	Glanville, De Legibus et Consuetudinibus Regni Angliæ
Glanv. El. Cas.	Glanville's Election Cases, 1 vol., 1623—1624
Glascock	Glascock's Reports (Ireland), 1 vol., 1831—1832
Godb.	Godbolt's Reports, King's Bench, Common Pleas, and Exchequer, 1 vol., 1574—1637
Gouldsb.	Gouldsborough's Reports, Queen's Bench and King's Bench, 1 vol., 1586—1601
Gow	Gow's Reports, Nisi Prius, 1 vol., 1818—1820
Gwill.	Gwillim's Tithe Cases, 4 vols., 1224—1824
H. & C.	Hurlstone and Coltman's Reports, Exchequer, 4 vols., 1862—1866
H. & N.	Hurlstone and Norman's Reports, Exchequer, 7 vols., 1856—1862

H. & Tw.	Hall and Twells' Reports, Chancery, 2 vols., 1848—1850
H. & W.	Hurlstone and Walmsley's Reports, Exchequer, 1 vol., 1840—1841
H. L. Cas.	Clark's Reports, House of Lords, 11 vols., 1847—1866
Hag. Adm.	Haggard's Reports, Admiralty, 3 vols., 1822—1838
Hag. Con.	Haggard's Consistorial Reports, 2 vols., 1789—1821
Hag. Ecc.	Haggard's Ecclesiastical Reports, 4 vols., 1827—1833
Hailes	Hailes's Decisions, Court of Session (Scotland), 2 vols., 1766—1791
Hale, C. L.	Hale's Common Law
Hale, P. C.	Hale's Pleas of the Crown, 2 vols.
Har. & Ruth.	Harrison and Rutherfurd's Reports, Common Pleas, 1 vol., 1865—1866
Har. & W.	Harrison and Wollaston's Reports, King's Bench and Bail Court, 2 vols., 1835—1836
Harc.	Harcarse's Decisions, Court of Session (Scotland), fol., 1 vol., 1681—1691
Hard.	Hardres' Reports, Exchequer, fol., 1 vol., 1655—1669
Hare	Hare's Reports, Chancery, 11 vols., 1841—1853
Hawk. P. C.	Hawkins's Pleas of the Crown, 2 vols.
Hayes	Hayes's Reports, Exchequer (Ireland), 1 vol., 1830—1832
Hayes & Jo.	Hayes and Jones's Reports, Exchequer (Ireland), 1 vol., 1832—1834
Hem. & M.	Hemming and Miller's Reports, Chancery, 2 vols., 1862—1865
Het.	Hetley's Reports, Common Pleas, fol., 1 vol., 1627—1631
Hob.	Hobart's Reports, Common Pleas, fol., 1 vol., 1613—1625
Hodg.	Hodges' Reports, Common Pleas, 3 vols., 1835—1837
Hog.	Hogan's Reports, Rolls Court (Ireland), 2 vols., 1816—1834
Holt (ADM.)	W. Holt's Rule of the Road Cases, Admiralty, 1 vol., 1863—1867
Holt (EQ.)	W. Holt's Equity Reports, 1 vol., 1845
Holt (K. B.)	Sir John Holt's Reports, King's Bench, fol., 1 vol., 1688—1710
Holt (N. P.)	F. Holt's Reports, Nisi Prius, 1 vol., 1815—1817
Home, Ct. of Sess. ..	Home's Decisions, Court of Session (Scotland), fol., 1 vol., 1735—1744
Hop. & Colt.	Hopwood and Coltman's Registration Cases, 2 vols., 1868—1878
Hop. & Ph.	Hopwood and Philbrick's Registration Cases, 1 vol., 1863—1867
Horn & H.	Horn and Hurlstone's Reports, Exchequer, 2 vols., 1838—1839
Hov. Suppl.	Hovenden's Supplement to Vesey Jun.'s Reports, Chancery, 2 vols., 1753—1817
Hud. & B.	Hudson and Brooke's Reports, King's Bench and Exchequer (Ireland), 2 vols., 1827—1831
Hume	Hume's Decisions, Court of Session (Scotland), 1 vol., 1781—1822
Hut.	Hutton's Reports, Common Pleas, fol., 1 vol., 1617—1638
Hy. Bl	Henry Blackstone's Reports, Common Pleas, 2 vols., 1788—1796
I. C. L. R.	Irish Common Law Reports, 17 vols., 1849—1866
I. Ch. R.	Irish Chancery Reports, 17 vols., 1850—1867
I. Eq. R.	Irish Equity Reports, 13 vols., 1838—1851
I. L. R.	Irish Law Reports, 13 vols., 1838—1851

I. L. T.	Irish Law Times, 1867—(current)
I. R. (preceded by date)	Irish Reports, since 1893 (*e.g.* [1894] 1 I. R.)
I. R. C. L.	Irish Reports, Common Law, 11 vols., 1866—1877
I. R. Eq.	Irish Reports, Equity, 11 vols., 1866—1877
Ir. Circ. Cas.	Irish Circuit Cases, 1 vol., 1841—1843
Ir. Jur.	Irish Jurist, 18 vols., 1849—1866
Ir. L. Rec. 1st ser. ..	Law Recorder (Ireland) 1st series, 4 vols., 1827—1831
Ir. L. Rec. (N. S.) ..	Law Recorder (Ireland) New Series, 6 vols., 1833—1838
Irv.	Irvine's Justiciary Reports (Scotland), 5 vols., 1852—1867
J. Bridg.	Sir John Bridgman's Reports, Common Pleas, fol., 1 vol., 1613—1621
J. P.	Justice of the Peace, 1837—(current)
J. Shaw, Just.	J. Shaw's Justiciary Reports (Scotland), 1 vol., 1848—1852
Jac.	Jacob's Reports, Chancery, 1 vol., 1821—1823
Jac. & W.	Jacob and Walker's Reports, Chancery, 2 vols., 1819—1821
Jebb, C. C.	Jebb's Crown Cases Reserved (Ireland), 1 vol., 1822—1840
Jebb & B.	Jebb and Bourke's Reports, Queen's Bench (Ireland), 1 vol., 1841—1842
Jebb & S.	Jebb and Symes' Reports, Queen's Bench (Ireland), 2 vols., 1838—1841
Jenk.	Jenkins' Reports, 1 vol., 1220—1623
Jo. & Car.	Jones and Carey's Reports, Exchequer (Ireland), 1 vol., 1838—1839
Jo. & Lat.	Jones and La Touche's Reports, Chancery (Ireland), 3 vols., 1844—1846
Jo. Ex. Ir.	T. Jones' Reports, Exchequer (Ireland), 2 vols., 1834—1838
John.	Johnson's Reports, Chancery, 1 vol., 1858—1860
John. & H.	Johnson and Hemming's Reports, Chancery, 2 vols., 1860—1862
Jur.	Jurist Reports, 18 vols., 1837—1854
Jur. (N. S.)	Jurist Reports, New Series, 12 vols., 1855—1867
Just. Inst.	Justinian's Institutes
K. & G.	Keane and Grant's Registration Cases, 1 vol., 1854—1862
K. & J.	Kay and Johnson's Reports, Chancery, 4 vols., 1853—1858
K. B. (preceded by date)	Law Reports, King's Bench Division, since 1900 (*e.g.*, [1901] 2 K. B.)
Kames, Dict. Dec. ..	Kames, Dictionary of Decisions, Court of Session (Scotland), fol., 2 vols., 1540—1741
Kames, Rem. Dec. ..	Kames, Remarkable Decisions, Court of Session (Scotland), 2 vols., 1716—1752
Kames, Sel. Dec. ..	Kames, Select Decisions, Court of Session (Scotland), 1 vol., 1752—1768
Kay	Kay's Reports, Chancery, 1 vol., 1853—1854
Keb.	Keble's Reports, fol., 3 vols., 1661—1677
Keen	Keen's Reports, Rolls Court, 2 vols., 1836—1838
Keil.	Keilwey's Reports, King's Bench, fol., 1 vol., 1327—1578
Kel.	Sir John Kelyng's Reports, Crown Cases, fol., 1 vol., 1662—1707
Kel. W.	W. Kelynge's Reports, fol., 1 vol., Chancery, 1730—1732; King's Bench, fol., 1731—1734
Keny.	Kenyon's Notes of Cases, King's Bench, 2 vols., 1753—1759

Keny. (CH.)	Chancery Cases in Vol. II. of Kenyon's Notes of Cases, 1753—1754
Kilkerran	Kilkerran's Decisions, Court of Session (Scotland), fol., 1 vol., 1738—1752
Knapp	Knapp's Reports, Privy Council, 3 vols., 1829—1836
Kn. & Omb. ..	Knapp and Ombler's Election Cases, 1 vol., 1834—1835
L. A.	Lord Advocate
L. & G. *temp.* Plunk. ..	Lloyd and Goold's Reports *temp.* Plunkett, Chancery (Ireland), 1 vol., 1834—1839
L. & G. *temp.* Sugd. ..	Lloyd and Goold's Reports *temp.* Sugden, Chancery (Ireland), 1 vol., 1835
L. & Welsb.	Lloyd and Welsby's Commercial and Mercantile Cases, 1 vol., 1829—1830
L. G. R.	Local Government Reports, 1902—(current)
L. J.	Law Journal, 1866—(current)
L. J. (ADM.)	Law Journal, Admiralty, 1865—1875
L. J. (BCY.)	Law Journal, Bankruptcy, 1832—1880
L. J. (CH.)	Law Journal, Chancery, 1822—(current)
L. J. (C. P.)	Law Journal, Common Pleas, 1822—1875
L. J. (ECCL.)	Law Journal, Ecclesiastical Cases, 1866—1875
L. J. (EX.)	Law Journal, Exchequer, 1830—1875
L. J. (EX. EQ.)	Law Journal, Exchequer in Equity, 1835—1841
L. J. (K. B. or Q. B.) ..	Law Journal, King's Bench or Queen's Bench, 1822—(current).
L. J. (M. C.)	Law Journal, Magistrates' Cases, 1826—1896
L. J. N. C.	Law Journal, Notes of Cases, 1866—1892 (from 1893, see Law Journal).
L. J. (O. S.)	Law Journal, Old Series, 10 vols., 1823—1831
L. J. (P.)	Law Journal, Probate, Divorce and Admiralty, 1875—(current)
L. J. (P. & M.)	Law Journal, Probate and Matrimonial Cases, 1858—1859, 1866—1875
L. J. (P. C.)	Law Journal, Privy Council, 1865—(current)
L. J. (P. M. & A.) ..	Law Journal, Probate, Matrimonial and Admiralty, 1860—1865
L. M. & P.	Lowndes, Maxwell, and Pollock's Reports, Bail Court and Practice, 2 vols., 1850—1851
L. R.	Law Reports
L. R. A. & E.	Law Reports, Admiralty and Ecclesiastical Cases, 4 vols., 1865—1875
L. R. C. C. R.	Law Reports, Crown Cases Reserved, 2 vols., 1865—1875
L. R. C. P.	Law Reports, Common Pleas, 10 vols., 1865—1875
L. R. Eq.	Law Reports, Equity Cases, 20 vols., 1865—1875
L. R. Exch.	Law Reports, Exchequer, 10 vols., 1865—1875
L. R. H. L.	Law Reports, English and Irish Appeals and Peerage Claims, House of Lords, 7 vols., 1866—1875
L. R. Ind. App. ..	Law Reports, Indian Appeals, Privy Council, 1873—(current)
L. R. Ind. App. Supp. Vol.	Law Reports, Indian Appeals, Privy Council, Supplementary Volume, 1872—1873
L. R. Ir.	Law Reports (Ireland), Chancery and Common Law, 32 vols., 1877—1893
L. R. P. C.	Law Reports, Privy Council, 6 vols., 1865—1875
L. R. P. & D.	Law Reports, Probate and Divorce, 3 vols., 1865—1875
L. R. Q. B.	Law Reports, Queen's Bench, 10 vols., 1865—1875
L. R. Sc. & Div. ..	Law Reports, Scotch and Divorce Appeals, House of Lords, 2 vols., 1866—1875
L. T.	Law Times Reports, 1859—(current)
L. T. Jo.	Law Times Newspaper, 1843—(current)
L. T. (O. S.)	Law Times Reports, Old Series, 34 vols., 1843—1860

Lane	Lane's Reports, Exchequer, fol., 1 vol., 1605—1611
Lat.	Latch's Reports, King's Bench, fol., 1 vol., 1625—1628
Laws. Reg. Cas. ..	Lawson's Registration Cases, 1885—(current)
Ld. Raym.	Lord Raymond's Reports, King's Bench and Common Pleas, 3 vols., 1694—1732
Leach	Leach's Crown Cases, 2 vols., 1730—1814
Lee	Sir G. Lee's Ecclesiastical Judgments, 2 vols., 1752—1758
Lee *temp.* Hard. ..	T. Lee's Cases *temp.* Hardwicke, King's Bench, 1 vol., 1733—1738
Le. & Ca.	Leigh and Cave's Crown Cases Reserved, 1 vol., 1861—1865
Leon.	Leonard's Reports, King's Bench, Common Pleas and Exchequer, fol., 4 parts, 1552—1615
Lev.	Levinz's Reports, King's Bench and Common Pleas, fol., 3 vols., 1660—1696
Lew. C. C.	Lewin's Crown Cases on the Northern Circuit, 2 vols., 1822—1838
Ley	Ley's Reports, King's Bench, fol., 1 vol., 1608—1629
Lib. Ass.	Liber Assisarum, Year Books, 1—51 Edw. III.
Lilly	Lilly's Reports and Pleadings of Cases in Assize, fol., 1 vol.
Litt.	Littleton's Reports, Common Pleas, fol., 1 vol., 1627—1631
Lofft	Lofft's Reports, King's Bench, fol., 1 vol., 1772—1774
Long. & T.	Longfield and Townsend's Reports, Exchequer (Ireland), 1 vol., 1841—1842
Lud. E. C.	Luders' Election Cases, 3 vols., 1784—1787
Lumley, P. L. C. ..	Lumley's Poor Law Cases, 2 vols., 1834—1842
Lush.	Lushington's Reports, Admiralty, 1 vol., 1859—1862
Lut.	Sir E. Lutwyche's Entries and Reports, Common Pleas, 2 vols., 1682—1704
Lut. Reg. Cas.	A. J. Lutwyche's Registration Cases, 2 vols., 1843—1853
Lynd.	Lyndwood, Provinciale, fol., 1 vol.
M. & S.	Maule and Selwyn's Reports, King's Bench, 6 vols., 1813—1817
M. & W.	Meeson and Welsby's Reports, Exchequer, 16 vols., 1836—1847
Mac. & G.	Macnaghten and Gordon's Reports, Chancery, 3 vols., 1849—1852
Mac. & H.	Macrae and Hertslet's Insolvency Cases, 1 vol., 1847—1852
M'Cle.	M'Cleland's Reports, Exchequer, 1 vol., 1824
M'Cle. & Yo.	M'Cleland and Younge's Reports, Exchequer, 1 vol., 1824—1825
Macfarlane	Macfarlane's Jury Trials, Court of Session (Scotland), 3 parts, 1838—1839
Macl. & Rob.	Maclean and Robinson's Scotch Appeals (House of Lords), 1 vol., 1839
Macph. (Ct. of Sess.) ..	Macpherson, Court of Session (Scotland), 3rd series, 11 vols., 1862—1873
Macq.	Macqueen's Scotch Appeals, House of Lords, 4 vols., 1849—1865
Macr.	Macrory's Patent Cases, 2 parts, 1847—1856
Madd.	Maddock's Reports, Chancery, 6 vols., 1815—1821
Madd. & G.	Maddock and Geldart's Reports, Chancery, 1 vol., 1819—1822 (Vol. VI. of Madd.)
Madox	Madox's Formulare Anglicanum
Madox, Exch.	Madox's History and Antiquities of the Exchequer 2 vols.
Man. & G.	Manning and Granger's Reports, Common Pleas, 7 vols., 1840—1845

Man. & Ry. (K. B.) ..	Manning and Ryland's Reports, King's Bench, 5 vols., 1827—1830
Man. & Ry. (M. C.) ..	Manning and Ryland's Magistrates' Cases, 3 vols., 1827—1830
Mans.	Manson's Bankruptcy and Company Cases, 1893—(current)
Mar. L. C.	Maritime Law Reports (Crockford), 3 vols., 1860—1871
March	March's Reports, King's Bench and Common Pleas, 1 vol., 1639—1642
Marr.	Marriott's Decisions, Admiralty, 1 vol., 1776—1779
Marsh.	Marshall's Reports, Common Pleas, 2 vols., 1813—1816
Mayn.	Maynard's Reports, Exchequer Memoranda of Edw. I. and Year Books of Edw. II., Year Books, Part I., 1273—1326
Meg.	Megone's Companies Acts Cases, 2 vols., 1889—1891
Mer.	Merivale's Reports, Chancery, 3 vols., 1815—1817
Milw.	Milward's Ecclesiastical Reports (Ireland), 1 vol., 1819—1843
Mod. Rep.	Modern Reports, 12 vols., 1669—1755
Mol.	Molloy's Reports, Chancery (Ireland), 3 vols., 1808—1831
Mont.	Montagu's Reports, Bankruptcy, 1 vol., 1829—1832
Mont. & A.	Montagu and Ayrton's Reports, Bankruptcy, 3 vols., 1832—1838
Mont. & B.	Montagu and Bligh's Reports, Bankruptcy, 1 vol., 1832—1833
Mont. & Ch.	Montagu and Chitty's Reports, Bankruptcy, 1 vol., 1838—1840
Mont. D. & De G. ..	Montagu, Deacon, and De Gex's Reports, Bankruptcy, 3 vols., 1840—1844
Mont. & M.	Montagu and Macarthur's Reports, Bankruptcy, 1 vol., 1826—1830
Moo. P. C. C.	Moore's Privy Council Cases, 15 vols., 1836—1863
Moo. P. C. C. (N. S.) ..	Moore's Privy Council Cases, New Series, 9 vols., 1862—1873
Moo. Ind. App.	Moore's Indian Appeal Cases, Privy Council, 14 vols., 1836—1872
Moo. & P.	Moore and Payne's Reports, Common Pleas, 5 vols., 1827—1831
Moo. & S.	Moore and Scott's Reports, Common Pleas, 4 vols., 1831—1834
Mood. & M.	Moody and Malkin's Reports, Nisi Prius, 1 vol., 1826—1830
Mood. & R.	Moody and Robinson's Reports, Nisi Prius, 2 vols., 1830—1844
Mood. C. C.	Moody's Crown Cases Reserved, 2 vols., 1824—1844
Moore (K. B.)	Sir F. Moore's Reports, King's Bench, fol., 1 vol., 1485—1620
Moore (C. P.)	J. B. Moore's Reports, Common Pleas, 12 vols., 1817—1827
Mor. Dict.	Morison's Dictionary of Decisions, Court of Session (Scotland), 43 vols., 1532—1808
Morr.	Morrell's Reports, Bankruptcy, 10 vols., 1884—1893
Mos.	Moseley's Reports, Chancery, fol., 1 vol., 1726—1730
Murp. & H.	Murphy and Hurlstone's Reports, Exchequer, 1 vol., 1837
Murr.	Murray's Reports, Jury Court (Scotland), 5 vols., 1816—1830
My. & Cr.	Mylne and Craig's Reports, Chancery, 5 vols., 1835—1841
My. & K.	Mylne and Keen's Reports, Chancery, 3 vols., 1832—1835

Nels.	Nelson's Reports, Chancery, 1 vol., 1625—1692
Nev. & M. (K. B.) ..	Nevile and Manning's Reports, King's Bench, 6 vols., 1832—1836
Nev. & M. (M. C.) ..	Nevile and Manning's Magistrates' Cases, 3 vols., 1832—1836
Nev. & P. (K. B.) ..	Nevile and Perry's Reports, King's Bench, 3 vols., 1836—1838
Nev. & P. (M. C.) ..	Nevile and Perry's Magistrates' Cases, 1 vol., 1836—1837
New Mag. Cas... ..	New Magistrates' Cases (Bittleston, Wise and Parnell), 2 vols., 1844—1848
New Pract. Cas. ..	New Practice Cases (Bittleston and Wise), 3 vols., 1844—1848
New Rep.	New Reports, 6 vols., 1862—1865
New Sess. Cas.	New Sessions Magistrates' Cases (Carrow, Hamerton, Allen, etc.), 4 vols., 1844—1851
Nolan	Nolan's Magistrates' Cases, 1 vol., 1791—1793
Notes of Cases	Notes of Cases in the Ecclesiastical and Maritime Courts, 7 vols., 1841—1850
Noy	Noy's Reports, King's Bench, fol., 1 vol., 1558—1649
O. Bridg.	Sir Orlando Bridgman's Reports, Common Pleas, 1 vol., 1660—1666
O'M. & H.	O'Malley and Hardcastle's Election Cases, 1869—(current)
Owen	Owen's Reports, King's Bench and Common Pleas, fol., 1 vol.. 1557—1614
P. (preceded by date) ..	Law Reports, Probate, Divorce, and Admiralty Division, since 1890 (*e.g.*, [1891] P.)
P. D.	Law Reports, Probate, Divorce, and Admiralty Division, 15 vols., 1875—1890
P. Wms...	Peere Williams' Reports, Chancery and King's Bench, 3 vols., 1695—1735
Palm.	Palmer's Reports, King's Bench, fol., 1 vol., 1619—1629
Park.	Parker's Reports, Exchequer, fol., 1 vol., 1743—1766
Pat. App.	Paton's Scotch Appeals, House of Lords, 6 vols., 1726—1822
Pater. App.	Paterson's Scotch Appeals, House of Lords, 2 vols., 1851—1873
Peake	Peake's Reports, Nisi Prius, 1 vol., 1790—1794
Peake, Add. Cas. ..	Peake's Additional Cases, Nisi Prius, 1 vol., 1795—1812
Peck.	Peckwell's Election Cases, 2 vols., 1803—1804
Per. & Dav.	Perry and Davison's Reports, Queen's Bench, 4 vols., 1838—1841
Per. & Kn.	Perry and Knapp's Election Cases, 1 vol., 1833
Ph.	Phillips' Reports, Chancery, 2 vols., 1841—1849
Phil. El. Cas.	Philipps' Election Cases, 1 vol., 1780
Phillim.	J. Phillimore's Ecclesiastical Reports, 3 vols., 1754—1821
Phillim. Eccl. Jud. ..	Sir R. Phillimore's Ecclesiastical Judgments, 1 vol., 1867—1875
Pig. & R.	Pigott and Rodwell's Registration Cases, 1 vol., 1843—1845
Pitc.	Pitcairn's Criminal Trials (Scotland), 3 vols., 1488—1624
Plowd.	Plowden's Reports, fol., 2 vols., 1550—1579
Poll.	Pollexfen's Reports, King's Bench, fol., 1 vol., 1670—1682
Poph.	Popham's Reports, King's Bench, fol., 1 vol., 1591—1627

Pow. R. & D.	Power, Rodwell, and Dew's Election Cases, 2 vols., 1848—1856
Prec. Ch...	Precedents in Chancery, fol., 1 vol., 1689—1722
Price	Price's Reports, Exchequer, 13 vols., 1814—1824
Q. B.	Queen's Bench Reports (Adolphus and Ellis, New Series), 18 vols., 1841—1852
Q. B. (preceded by date)	Law Reports, Queen's Bench Division, 1891—1901 (*e.g.*, [1891] 1 Q. B.)
Q. B. D.	Law Reports, Queen's Bench Division, 25 vols., 1875—1890
R.	The Reports, 15 vols., 1893—1895
R. (Ct. of Sess.)	Rettie, Court of Session Cases (Scotland), 4th series, 25 vols., 1873—1898
R. P. C.	Reports of Patent Cases, 1884—(current)
R. R.	Revised Reports
R. S. C.	Rules of the Supreme Court
Rast.	Rastell's Entries
Rayn.	Rayner's Tithe Cases, 3 vols., 1575—1782
Real Prop. Cas... ..	Real Property Cases, 2 vols., 1843—1847
Rep. Ch.	Reports in Chancery, fol., 3 vols., 1615—1710
Rick. & M.	Rickards and Michael's Locus Standi Reports, 1 vol., 1885—1889
Rick. & S.	Rickards and Saunders' Locus Standi Reports, 1 vol., 1890—1894
Ridg. *temp.* H.	Ridgeway's Reports, *temp.* Hardwicke, 1 vol., King's Bench, 1733—1736; Chancery, 1744—1746.
Ridg. L. & S.	Ridgeway, Lapp, and Schoales' Reports (Ireland), 1 vol., 1793—1795
Ridg. Parl. Rep. ..	Ridgeway's Parliamentary Reports (Ireland), 3 vols., 1784—1796
Rob. Eccl.	Robertson's Ecclesiastical Reports, 2 vols., 1844—1853
Rob. L. & W.	Roberts, Leeming, and Wallis' New County Court Cases, 1 vol., 1849—1851
Robert. App.	Robertson's Scotch Appeals, House of Lords, 1 vol., 1709—1727
Robin. App.	Robinson's Scotch Appeals, House of Lords, 2 vols., 1840—1841
Roll. Abr.	Rolle's Abridgment of the Common Law, fol., 2 vols.
Roll. Rep.	Rolle's Reports, King's Bench, fol., 2 vols., 1614—1625
Rom.	Romilly's Notes of Cases in Equity, 1 part, 1772—1787
Rose	Rose's Reports, Bankruptcy, 2 vols., 1810—1816
Ross, L. C.	Ross's Leading Cases in Commercial Law (England and Scotland), 3 vols.
Rowe	Rowe's Reports (England and Ireland), 1 vol., 1798—1823
Rul. Cas.	Campbell's Ruling Cases, 25 vols.
Russ.	Russell's Reports, Chancery, 5 vols., 1824—1829
Russ. & M.	Russell and Mylne's Reports, Chancery, 2 vols., 1829—1833
Russ. & Ry.	Russell and Ryan's Crown Cases Reserved, 1 vol., 1800—1823
Ry. & Can. Cas. ..	Railway and Canal Cases, 7 vols., 1835—1854
Ry. & Can. Tr. Cas. ..	Railway and Canal Traffic Cases, 1855—(current)
Ry. & M.	Ryan and Moody's Reports, Nisi Prius, 1 vol., 1823—1826
S. C.	Same Case
S. C. (preceded by date)	Court of Session Cases (Scotland), since 1906 (*e.g.*, [1906] S. C.)
S.-G.	Solicitor-General
Saint	Saint's Digest of Registration Cases, 1843—1906, 1 vol.

Salk.	Salkeld's Reports, King's Bench, 3 vols., 1689—1712
Sau. & Sc.	Sausse and Scully's Reports, Rolls Court (Ireland), 1 vol., 1837—1840
Saund.	Saunders's Reports, King's Bench, 2 vols., 1666—1672
Saund. & A.	Saunders and Austin's Locus Standi Reports, 2 vols., 1895—1904
Saund. & B.	Saunders and Bidder's Locus Standi Reports, 1905—(current)
Saund. & C.	Saunders and Cole's Reports, Bail Court, 2 vols., 1846—1848
Saund. & M.	Saunders and Macrae's County Courts and Insolvency Cases (County Courts Cases and Appeals, Vols. II. and III.), 2 vols., 1852—1858
Sav.	Savile's Reports, Common Pleas, fol., 1 vol., 1580—1591
Say.	Sayer's Reports, King's Bench, fol., 1 vol., 1751—1756
Sc. Jur.	Scottish Jurist, 46 vols., 1829—1873
Sc. L. R.	Scottish Law Reporter, 1865—(current)
Sch. & Lef.	Schoales and Lefroy's Reports, Chancery (Ireland), 2 vols., 1802—1806
Sc. R. R...	Scots Revised Reports
Scott	Scott's Reports, Common Pleas, 8 vols., 1834—1840
Scott (N. R.)	Scott's New Reports, Common Pleas, 8 vols., 1840—1845
Sea. & Sm.	Searle and Smith's Reports, Probate and Divorce, 1 vol., 1859—1860
Sel. Cas. Ch.	Select Cases in Chancery, fol., 1 vol., 1685—1698 (Pt. III. of Cas. in Ch.)
Sess. Cas. (K. B.) ..	Sessions Settlement Cases, King's Bench, 2 vols., 1710—1747
Sh. & Macl.	Shaw and Maclean's Scotch Appeals, House of Lords, 3 vols., 1835—1838
Sh. (Ct. of Sess.) ..	Shaw, Court of Session Cases (Scotland), 1st series, 16 vols., 1821—1838
Sh. Dig.	P. Shaw's Digest of Decisions (Scotland), ed. by Bell and Lamond, 3 vols., 1726—1868
Sh. Just...	P. Shaw's Justiciary Decisions (Scotland), 1 vol., 1819—1831
Sh. Sc. App.	P. Shaw's Scotch Appeals, House of Lords, 2 vols., 1821—1824
Sh. Teind Ct.	P. Shaw's Teind Court Decisions (Scotland), 1 vol., 1821—1831
Shep. Touch.	Sheppard's Touchstone of Common Assurances
Show.	Shower's Reports, King's Bench, 2 vols., 1678—1695
Show. Parl. Cas. ..	Shower's Cases in Parliament, fol., 1 vol., 1694—1699
Sid.	Siderfin's Reports, King's Bench, Common Pleas and Exchequer, fol., 2 vols., 1657—1670
Sim.	Simons' Reports, Chancery, 17 vols., 1826—1852
Sim. (N. S.)	Simons' Reports, Chancery, New Series, 2 vols., 1850—1852
Sim. & St.	Simons and Stuart's Reports, Chancery, 2 vols., 1822—1826
Skin.	Skinner's Reports, King's Bench, fol., 1 vol., 1681—1697
Sm. & Bat.	Smith and Batty's Reports, King's Bench (Ireland), 1 vol., 1824—1825
Sm. & G...	Smale and Giffard's Reports, Chancery, 3 vols., 1852—1858
Smith, K. B.	J. P. Smith's Reports, King's Bench, 3 vols., 1803—1806
Smith, L. C.	Smith's Leading Cases, 2 vols.
Smith, Reg. Cas. ..	C. L. Smith's Registration Cases, 1895—(current)

Smythe	Smythe's Reports, Common Pleas (Ireland), 1 vol., 1839—1840
Sol. Jo.	Solicitors' Journal, 1856—(current)
Spence	Spence's Equitable Jurisdiction of the Court of Chancery
Spinks	Spinks' Prize Court Cases, 2 parts, 1854—1856
Stair Rep.	Stair's Decisions, Court of Session (Scotland), fol., 2 vols., 1661—1681
Stark.	Starkie's Reports, Nisi Prius, 3 vols., 1814—1823
Stat. R. & O. Rev. ..	Statutory Rules and Orders Revised
State Tr.	State Trials, 34 vols., 1163—1820
State Tr. (N. S.).	State Trials, New Series, 8 vols., 1820—1858
Story	Story's Commentaries on Equity Jurisprudence
Stra.	Strange's Reports, 2 vols., 1716—1747
Stu. M. & P.	Stuart, Milne, and Peddie's Reports (Scotland), 2 vols., 1851—1853
Sty.	Style's Reports, King's Bench, fol., 1 vol., 1646—1655
Sw.	Swabey's Reports, Admiralty, 1 vol., 1855—1859
Sw. & Tr.	Swabey and Tristram's Reports, Probate and Divorce, 4 vols., 1858—1865
Swan.	Swanston's Reports, Chancery, 3 vols., 1818—1821
Swin.	Swinton's Justiciary Reports (Scotland), 2 vols., 1835—1841
Syme	Syme's Justiciary Reports (Scotland), 1 vol., 1826—1829
T. & M.	Temple and Mew's Criminal Appeal Cases, 1 vol., 1848—1851
T. Jo.	Sir T. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1669—1684
T. L. R.	The Times Law Reports, 1884—(current)
T. Raym.	Sir T. Raymond's Reports, King's Bench, fol., 1 vol., 1660—1683
Taml	Tamlyn's Reports, Rolls Court, 1 vol., 1829—1830
Taunt.	Taunton's Reports, Common Pleas, 8 vols., 1807—1819
Tax Cas.	Tax Cases, 1875—(current)
Term Rep.	Term Reports (Durnford and East), fol., 8 vols., 1785—1800
Toth.	Tothill's Transactions in Chancery, 1 vol., 1559—1646
Trist.	Tristram's Consistory Judgments, 1 vol., 1873—1892
Tudor, L. C. Merc. Law	Tudor's Leading Cases on Mercantile and Maritime Law
Tudor, L. C. Real Prop. ..	Tudor's Leading Cases on Real Property
Turn. & R.	Turner and Russell's Reports, Chancery, 1 vol., 1822—1825
Tyr.	Tyrwhitt's Reports, Exchequer, 5 vols., 1830—1835
Tyr. & Gr.	Tyrwhitt and Granger's Reports, Exchequer, 1 vol., 1835—1836
Vaugh.	Vaughan's Reports, Common Pleas, fol., 1 vol., 1666—1673
Vent.	Ventris' Reports (Vol. I., King's Bench; Vol. II., Common Pleas), fol., 2 vols., 1668—1691
Vern.	Vernon's Reports, Chancery, 2 vols., 1680—1719
Vern. & Scr.	Vernon and Scriven's Reports, King's Bench (Ireland), 1 vol., 1786—1788
Ves.	Vesey Jun.'s Reports, Chancery, 19 vols., 1789—1817
Ves. & B.	Vesey and Beames's Reports, Chancery, 3 vols., 1812—1814
Ves. Sen.	Vesey Sen.'s Reports, 2 vols., 1747—1756
Vin. Abr.	Viner's Abridgment of Law and Equity, fol., 22 vols.
Vin. Supp.	Supplement to Viner's Abridgment of Law and Equity, 6 vols.

W. Jo.	Sir W. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1620—1640
W. N. (preceded by date)	Law Reports, Weekly Notes, 1866—(current (*e.g.*, [1866] W. N.)
W. R.	Weekly Reporter, 54 vols., 1852—1906
Wallis	Wallis's Reports, Chancery (Ireland), 1 vol., 1766—1791
Web. Pat. Cas.	Webster's Patent Cases, 2 vols., 1602—1855
Welsh, Reg. Cas. ..	Welsh's Registry Cases (Ireland), 1 vol., 1832—1840
Went. Off. Ex.	Wentworth's Office and Duty of Executors
West	West's Reports, House of Lords, 1 vol., 1839—1841
West *temp.* Hard. ..	West's Reports *temp.* Hardwicke, Chancery, 1 vol., 1736—1740
West. Tithe Cas. ..	Western's London Tithe Cases, 1 vol., 1592—1822
White	White's Justiciary Reports (Scotland), 3 vols., 1886—1893
White & Tud. L. C. ..	White and Tudor's Leading Cases in Equity, 2 vols.
Wight.	Wightwick's Reports, Exchequer, 1 vol., 1810—1811
Will. Woll. & Dav. ..	Willmore, Wollaston, and Davison's Reports, Queen's Bench and Bail Court, 1 vol., 1837
Will. Woll. & H. ..	Willmore, Wollaston, and Hodges' Reports, Queen's Bench and Bail Court, 2 vols., 1838—1839
Willes	Willes' Reports, Common Pleas, 1 vol., 1737—1758
Wilm.	Wilmot's Notes of Opinions and Judgments, 1 vol., 1757—1770
Wils.	G. Wilson's Reports, King's Bench and Common Pleas, fol., 3 vols., 1742—1774
Wils. & S.	Wilson and Shaw's Scotch Appeals, House of Lords, 7 vols., 1825—1835
Wils. (CH.)	J. Wilson's Reports, Chancery, 2 vols., 1818—1819
Wils. (EX.)	J. Wilson's Reports, Exchequer in Equity, 1 part, 1817
Win.	Winch's Reports, Common Pleas, fol., 1 vol., 1621—1625
Wm. Bl.	William Blackstone's Reports, King's Bench and Common Pleas, fol., 2 vols., 1746—1779
Wm. Rob.	William Robinson's Reports, Admiralty, 3 vols., 1838—1850
Wms. Saund.	Williams' Notes to Saunders' Reports, 2 vols.
Wolf. & B.	Wolferstan and Bristowe's Election Cases, 1 vol., 1859—1864
Wolf. & D.	Wolferstan and Dew's Election Cases, 1 vol., 1857—1858
Woll.	Wollaston's Reports, Bail Court and Practice, 1 vol., 1840—1841
Wood	Wood's Tithe Cases, Exchequer, 4 vols., 1650—1798
Y. & C. Ch. Cas. ..	Younge and Collyer's Reports, Chancery Cases, 2 vols., 1841—1843
Y. & C. (EX.)	Younge and Collyer's Reports, Exchequer in Equity, 4 vols., 1834—1842
Y. & J.	Younge and Jervis' Reports, Exchequer, 3 vols., 1826—1830
Y. B.	Year Books
Yelv.	Yelverton's Reports, King's Bench, fol., 1 vol., 1602—1613
You.	Younge's Reports, Exchequer in Equity, 1 vol., 1830—1832

TABLE OF STATUTES.

		PAGE
13 Eliz., c. 5.	(Fraudulent Conveyances, 1571)	757
21 Jac. 1, c. 16.	(Statute of Limitations, 1623)	28, 35, 53, 54, 748, 754, 756, 780, 793, 812, 816, 824, 839
29 Car. 2, c. 3.	(Statute of Frauds, 1677), s. 4	729
8 Geo. 1, c. 24.	(Piracy Act, 1721), s. 7	51
33 Geo. 3, c. 67.	(Shipping Offences Act, 1793)—	
	s. 1	60
	s. 3	60
	s. 4	60
4 Geo. 4, c. 80.	(Lascars Act, 1823)	43
6 Geo. 4, c. 50.	(Juries Act, 1825), s. 2	726
2 & 3 Will. 4, c. cv.	(Hull and Humber Pilotage, 1832), s. 33	567
3 & 4 Will. 4, c. 42.	(Civil Procedure Act, 1833), s. 28	810
c. 74.	(Fines and Recoveries Act, 1833)	859
	s. 81	859
	s. 82	859
6 & 7 Will. 4, c. 13.	(Constabulary (Ireland) Act, 1836)	609
1 & 2 Vict. c. 74.	(Small Tenements Recovery Act, 1838)	699
c. 94.	(Public Record Office Act, 1838)	658
c. 110.	(Judgments Act, 1838)—	
	s. 17	810
	s. 18	810
2 & 3 Vict. c. 71.	(Metropolitan Police Courts Act, 1839), s. 5	727
3 & 4 Vict. c. 65.	(Admiralty Court Act, 1840)	626
	s. 3	621
	s. 4	621
	s. 6	67, 545, 621
c. 84.	(Metropolitan Police Courts Act, 1840), s. 7	727
5 Vict. c. 5.	(Court of Chancery Act, 1841)—	
	s. 41	727
	s. 42	727
5 & 6 Vict. c. 97.	(Limitations of Actions and Costs Act, 1842)—	
	s. 1	807
	s. 2	807
6 & 7 Vict. c. 73.	(Solicitors Act, 1843)	847
	s. 2	855
	s. 3	711, 712
	s. 4	713
	s. 5	713
	s. 6	715
	s. 12	714
	s. 13	714
	s. 21	709, 720, 721
	s. 23	720
	s. 26	720, 856
	s. 27	723
	s. 28	714
	s. 29	848
	s. 31	737, 828, 829
	s. 32	842, 849, 856
	s. 37	739, 774, 777, 778, 779, 781, 782, 785, 790, 808, 809, 848
	s. 38	783, 787, 790, 809
	s. 39	784, 809

		PAGE
6 & 7 Vict. c. 73.	(Solicitors Act, 1843)—	
	s. 40	779, 783, 784
	s. 41	787, 809
	s. 42	794
	s. 43	793, 810, 813, 814
	s. 47	710
	s. 48	774
c. 79.	(Sea Fisheries Act, 1843)	395, 396, App. ii., vi.
	s. 1.	App. ii.
	Sched.	App. ii.
7 & 8 Vict. c. 86.	(Solicitors (Clerks) Act, 1844), s. 4	714
c. 101.	(Poor Law Amendment Act, 1844), s. 68	727
8 & 9 Vict. c. 18.	(Lands Clauses Consolidation Act, 1845)	691, 692, 791
	s. 34	681
	s. 83	791
	s. 127	690
	s. 128	690, 691
	s. 129	690, 691
	s. 130	690, 691
	s. 131	691
	s. 132	691
c. 20.	(Railways Clauses Consolidation Act, 1845)—	
	s. 77	680
	s. 78	680
	s. 79	680
	s. 80	680
	s. 81	680
	s. 82	680
	s. 83	680
	s. 84	680
	s. 85	680
c. 127.	(Small Debts Act, 1845—	
	s. 9	728
	s. 12	728
9 & 10 Vict. c. 93.	(Fatal Accidents Act, 1846)	517, 523, 543, 616, 617
	s. 3	524
10 & 11 Vict. c. 27.	(Harbours, Docks and Piers Clauses Act, 1847)	547, 554, 634, 645
	s. 2	634, 640
	s. 3	638
	s. 16	645
	s. 17	645
	s. 18	645
	s. 19	645
	s. 25	635
	s. 26	635
	s. 27	635
	s. 28	636
	s. 29	637
	s. 32	637
	s. 33	635
	s. 35	637
	s. 36	637
	s. 37	635, 638
	s. 38	638
	s. 39	635, 638
	s. 40	635, 639
	s. 41	639
	s. 42	638
	s. 43	638
	s. 44	638, 639
	s. 45	639
	s. 46	638, 639
	s. 47	635, 636
	s. 48	639
	s. 52	499, 641
	s. 53	499, 640, 641
	s. 54	642

		PAGE
10 & 11 Vict. c. 27.	(Harbours, Docks and Piers Clauses Act, 1847)—	
	s. 56	555, 642
	s. 57	642
	s. 58	641
	s. 59	639, 641
	s. 60	640
	s. 61	640, 641
	s. 62	641
	s. 63	640, 641
	s. 64	642
	s. 65	642
	s. 66	643
	s. 67	643
	s. 68	642, 643
	s. 69	643
	s. 70	643
	s. 71 (1)	643
	(2)	643
	(3)	643
	(4)	644
	(5)	644
	s. 73	644
	s. 74	526, 611, 644
	s. 75	526, 644
	s. 76	644
	s. 77	629, 645
	s. 78	629, 645
	s. 82	643
	s. 83	640, 643, 645, 646, 647
	s. 84	640, 647
	s. 85	646
	s. 86	646
	s. 87	646
	s. 88	647
	s. 89	647
	s. 90	647
11 & 12 Vict. c. 43.	(Summary Jurisdiction Act, 1848)—	
	s. 10	724
	s. 11	724
13 & 14 Vict. c. 57.	(Vestries Act, 1850), s. 6	727
15 & 16 Vict. c. 76.	(Common Law Procedure Act, 1852)	801, 802
c. 80.	(Court of Chancery Act, 1852)—	
	s. 17	727
	s. 20	727
17 & 18 Vict. c. 120.	(Merchant Shipping Repeal Act, 1854)	App. iv.
	s. 3	App. iii.
	s. 4	548
	Sched.	App. iii.
18 & 19 Vict. c. 111.	(Bills of Lading Act, 1855)	148, 164, 167, 292, 296
	s. 1	164, 167, 266, 295, 296
	s. 2	165, 166
	s. 3	155, 156
c. 120.	(Metropolis Management Act, 1855)	702
19 & 20 Vict. c. 112.	(Metropolis Management Amendment Act, 1856)	702
20 & 21 Vict. c. 85.	(Matrimonial Causes Act, 1857)—	
	s. 21	731
	s. 25	731
21 & 22 Vict. c. 95.	(Court of Probate Act, 1858), s. 20	728
c. 104.	(Metropolis Management Amendment Act, 1858)	702
c. xcii.	(Mersey Dock Acts Consolidation Act, 1858), s. 163	567
22 & 23 Vict. c. 35.	(Law of Property Amendment Act, 1859), s. 24	837
23 & 24 Vict. c. 38.	(Law of Property Amendment Act, 1860), s. 8.	837
c. 127.	(Solicitors Act, 1860)—	
	s. 1	707
	s. 2	711, 715

		PAGE
23 & 24 Vict. c. 127.	(Solicitors Act, 1860)—	
	s. 3	715
	s. 4	711, 715
	s. 5	712
	s. 6	715
	s. 10	715
	s. 15	711, 715
	s. 18	721
	s. 19	720
	s. 20	721
	s. 21	721
	s. 22	721
	s. 26	842, 856
	s. 27	810
	s. 28	625, 824, 826, 827
	s. 30	858, 860
	s. 33	710
24 & 25 Vict. c. 10.	(Admiralty Court Act, 1861)	37, 546, 626
	s. 2	14
	s. 4	67, 621
	s. 5	67, 621
	s. 6	164, 542, 546, 621
	s. 7	518, 519, 544 545, 546
	s. 8	621
	s. 9	561
	s. 11	28, 621
	s. 18	385
	s. 27	728
	s. 28	728
	s. 35	542, 544, 546
c. 45.	(General Pier and Harbour Act, 1861)	634, 635
c. 47.	(Harbours and Passing Tolls etc. Act, 1861)—	
	s. 2	637
	s. 10	637
c. 96.	(Larceny Act, 1861)—	
	s. 68	655
	s. 71	655
c. 97.	(Malicious Damage Act, 1861)	62
c. ccxxxvi.	(Bristol Channel Pilotage Act, 1861)—	
	s. 36	567
	s. 37	567
25 & 26 Vict. c. 19.	(General Pier and Harbour Act, 1861, Amendment Act, 1862)	634
	s. 13	635
	s. 19	634
c. 69.	(Harbours Transfer Act, 1862), s. 5	645
c. 102.	(Metropolis Management Amendment Act, 1862)	702
26 & 27 Vict. c. 97.	(Stipendiary Magistrates Act, 1863), s. 6	727
c. 125.	(Statute Law Revision Act, 1863)	548
28 & 29 Vict. c. 126.	(Prisons Act, 1865), s. 49	807
30 & 31 Vict. c. 15.	(Shipping Dues Exemption Act, 1867)—	
	s. 3	637
	s. 4	636, 637
	s. 11	637
c. lxxxi.	(Dublin Port Act, 1867)	628
31 & 32 Vict. c. 45.	(Sea Fisheries Act, 1868)	396, App. ii.
	s. 5	396
	s. 6	App. vi.
	s. 20	App. vi.
	s. 71	App. ii.
	Sched.	App. vi.
c. 71.	(County Courts Admiralty Jurisdiction Act, 1868)—	
	s. 3	360, 542, 545
	(3)	546
c. 72.	(Promissory Oaths Act, 1868)	16

		PAGE
32 & 33 Vict. c. cxxx.	(Salford Hundred Court of Record Act, 1868), s. 22	727
c. 51.	(County Courts Admiralty Jurisdiction Amendment Act, 1869)—	
	s. 2 (1)	542
	(2)	542, 546
	s. 3	542, 546, 580
	s. 4	545
c. 62.	(Debtors Act, 1869)—	
	s. 4	713
	(3)	845
	(4)	828, 829, 837, 845
c. 89.	(Clerks of Assize etc. Act, 1869), s. 3	727
33 & 34 Vict. c. 23.	(Forfeiture Act, 1870)—	
	s. 8	732
	s. 30	732
c. 28.	(Attorneys and Solicitors Act, 1870)—	
	s. 4	731, 770, 771, 772
	s. 5	731, 770, 773
	s. 6	731, 770, 772
	s. 7	731, 754, 770, 772
	s. 8	731, 770, 773
	s. 9	770, 773
	s. 10	770, 773
	s. 11	770, 772
	s. 12	770, 771
	s. 13	740, 770, 773
	s. 14	740, 770, 773
	s. 15	770, 771, 772
	s. 16	751, 811
	s. 17	810, 811
c. 77.	(Juries Act, 1870), s. 9	726
	Sched.	726
34 & 35 Vict. c. 105.	(Petroleum Act, 1871), s. 8 (8)	640
35 & 36 Vict. c. 19.	(Pacific Islanders Protection Act, 1872)	33
c. 81.	(Attorneys and Solicitors Act (1860) Amendment Act, 1872)	711
c. 86.	(Borough and Local Courts of Record Act, 1872), s. 12	728
c. 93.	(Pawnbrokers Act, 1872)	857
36 & 37 Vict. c. 66.	(Judicature Act, 1873)	509, 858
	s. 24 (5)	812
	s. 25 (6)	299, 302
	(9)	509, 510, 513, 517
	s. 50	792
	s. 60	728
	s. 84	859
	s. 87	708, 723, 828
37 & 38 Vict. c. 40.	(Board of Arbitrations etc. Act, 1874)	597
c. 68.	(Attorneys and Solicitors Act, 1874)—	
	s. 4	715
	s. 5	715
	s. 12	710, 720, 856
c. 85.	(Public Worship Regulation Act, 1874), s. 11	724
c. 96.	(Statute Law Revision (No. 2) Act, 1874)	856
38 & 39 Vict. c. 17.	(Explosives Act, 1875)	79
	s. 3	345
	s. 104	345
	s. 106	345
c. 55.	(Public Health Act, 1875)—	
	s. 174	733
	s. 178	679
	s. 207	675
	s. 209	675
	s. 210	675

		PAGE
38 & 39 Vict. c. 55.	(Public Health Act, 1875)—	
	s. 233	693
	s. 234	693
	(2)	701
	s. 235	694
	s. 293	671
	s. 294	671
	s. 295	671
	s. 296	671
c. 77.	(Judicature Act, 1875), s. 13	728
c. 79.	(Legal Practitioners Act, 1875), s. 2	775, 785, 812
c. 86.	(Conspiracy and Protection of Property Act, 1875)	15, 61
c. 87.	(Land Transfer Act, 1875)	689, 691, 728
	s. 106	728
	s. 119	728
c. 89.	(Public Works Loans Act, 1875)	694, 701
39 & 40 Vict. c. 36.	(Customs Consolidation Act, 1876)	660, 857
	s. 140	637
	s. 175	660
40 & 41 Vict. c. 18.	(Settled Estates Act, 1877), s. 51	859
c. 25.	(Solicitors Act, 1877)—	
	s. 6	716
	s. 9	718, 719
	s. 10	716, 717
	s. 11	717
	s. 12	711, 718
	s. 13	712
	s. 15	714
	s. 17	723
	Sched. I.	720, 721
c. 42.	(Fisheries (Oyster, Crab, and Lobster) Act, 1877), s. 15	App. ii.
c. 43.	(Justices Clerks Act, 1877), s. 7 (2)	727
c. 55.	(Public Record Office Act, 1877)	658
c. 62.	(Legal Practitioners Act, 1877)—	
	s. 2	857
	s. 3	857
41 & 42 Vict. c. 32.	(Metropolis Management and Building Acts Amendment Act, 1878).	702
c. 54.	(Debtors Act, 1878), s. 1	829
c. 73.	(Territorial Waters Jurisdiction Act, 1878), s. 7	376
42 & 43 Vict. c. 11.	(Bankers' Books Evidence Act, 1879)	805
c. 22.	(Prosecution of Offences Act, 1879)—	
	s. 2	728
	s. 4	728
c. 78.	(Judicature (Officers) Act, 1879)—	
	s. 10	727
	s. 11	728
	Sched. II.	728
43 & 44 Vict. c. 16.	(Merchant Seamen (Payment of Wages and Rating) Act, 1880).	13, 55
c. 42.	(Employers' Liability Act, 1880)	524, 544
	s 4.	524
44 & 45 Vict. c. 41.	(Conveyancing and Law of Property Act, 1881)	684
	s. 14	690
	s. 18	684
	s. 41	689
	s. 45	687
	s. 56	744
c. 44.	(Solicitors' Remuneration Act, 1881)	710, 773
	s. 1	761
	s. 2	710, 761, 774
	s. 3	761
	s. 4	761
	s. 5	761, 811

		PAGE
44 & 45 Vict. c. 44.	(Solicitors' Remuneration Act, 1881)—	
	s. 6	761
	s. 7	761
	s. 8	731, 770
	(1)	774
	(2)	774
	(3)	774
	(4)	774
c. 58.	(Army Act), s. 129	828
c. 68.	(Judicature Act, 1881)—	
	s. 22	728
	s. 24	712, 714
	s. 26	727, 859
c. xlix.	(Mersey Docks Act, 1881), s. 19	567
c. ccxix.	(Solent Navigation Act, 1881), s. 8	481, 507
45 & 46 Vict. c. 22.	(Boiler Explosions Act, 1882)	590
c. 39.	(Conveyancing Act, 1882)	860
	s. 3	736
c. 50.	(Municipal Corporations Act, 1882)	701
	s. 17	728
	s. 18	728
	s. 106	701
	s. 124	727
	s. 159 (1)	727
	(2)	727
	s. 172	728
46 & 47 Vict. c. 3.	(Explosive Substances Act, 1883)	101
	s. 8	79
c. 22.	(Sea Fisheries Act, 1883)—	
	s. 10	548
	s. 30 (2)	App. vii.
	(b)	App. vii.
	Sched. I.	489, 548
c. 51.	(Corrupt and Illegal Practices Prevention Act, 1883), s. 38 (7)	849
c. 52.	(Bankruptcy Act, 1883)—	
	s. 4	757
	s. 22	735
	s. 29 (9)	757
	s. 41 (1)	713, 714
	(2)	714
	s. 57 (3)	735
	s. 72 (1)	753
	s 73 (4)	769
	s. 116 (2)	728
	s. 125	698, 699
	s. 151	723
c. 57.	(Patents, Designs and Trade Marks Acts, 1883)	857
47 & 48 Vict. c. 38.	(Indian Marine Service Act, 1884)	569
c. 54.	(Yorkshire Registries Act, 1884)—	
	s. 37 (1)	728
	(3)	728
c. 70.	Municipal Elections (Corrupt and Illegal Practices, Act, 1884), s. 23	849
48 & 49 Vict. c. 33.	(Metropolis Management Amendment Act, 1885)	702
c. 49.	(Submarine Telegraph Act, 1885)	386
clxxxviii.	(Manchester Ship Canal Act, 1885), s. 198	481
49 & 50 Vict. c. 38.	(Riot (Damages) Act, 1886)	550
50 & 51 Vict. c. 17.	(Metropolis Management (Battersea and Westminster) Act, 1887)	702
c. 48.	(Allotments Act, 1887)	670
c. 55.	(Sheriffs Act, 1887), s. 27 (1)	728
c. 71.	(Coroners Act, 1887), s. 10	728
51 & 52 Vict. c. 20.	(Glebe Lands Act, 1888)	679
c. 25.	(Railway and Canal Traffic Act, 1888), s. 50	725

		PAGE
51 & 52 Vict. c. 41.	(Local Government Act, 1888)	701
	s. 69	693
	(2)	693, 701
	s. 83	727
	s. 120	692
c. 43.	(County Courts Act, 1888)—	807
	s. 25	727
	s. 31	727
	s. 32	727
	s. 72	724
	s. 131	723
	s. 138	699
	s. 139	699
	s. 140	699
	s. 141	699
	s. 142	699
	s. 143	699
	s. 144	699
	s. 145	699
	s. 162	828
	s. 185	724
c. 45.	(Victoria University Act, 1888)	711
	s. 1	716
c. 65.	(Solicitors Act, 1888)	719
	s. 5	709, 713
	s. 7	713
	s. 8	713
	s. 10	719
	s. 11	719
	s. 12	709, 852
	s. 13	854
	s. 16	721, 722
52 & 53 Vict. c. 10	(Commissioners for Oaths Act, 1889)—	
	s. 1	857, 859
	(1)	727
	(2)	857
	(3)	857
	s. 2	858
	s. 5	859
	s. 6	858
	s. 11	857
	s. 12 (b)	858
c. 45.	(Factors Act, 1889), s. 1	159
c. 49.	(Arbitration Act, 1889)	699
c. 63.	(Interpretation Act, 1889)—	
	s. 1 (1)	673
	(b)	18
	s. 12 (20)	652
	s. 18 (4)	332
	s. 19	18
	s. 31	14, 374, 396
53 & 54 Vict. c. 35.	(Boiler Explosions Act, 1890)—	
	s. 2	590
	s. 3	590
c. 37.	(Foreign Jurisdiction Act, 1890)	20
c. 39.	(Partnership Act, 1890)—	
	s. 1	842
	s. 5	759, 842
	s. 7	759
	s. 32 (b)	842
c. 54.	(Metropolis Management Act, 1862, Amendment Act, 1890)	702
c. 66.	(Metropolis Management Amendment Act, 1890)	702
c. 70.	(Housing of the Working Classes Act, 1890), s. 74	680

		PAGE
53 & 54 Vict. c. 71.	(Bankruptcy Act, 1890), s. 15 (3)	735
54 & 55 Vict. c. 21.	(Savings Banks Act, 1891), s. 2 (2)	710
c. 31.	(Mail Ships Act, 1891)	354
	s. 1 (1)	354
	(2)	354
	s. 2	354, 355
	(1)	355
	(2)	355
	(3)	355
	(4)	355
	(5)	355
	s. 3	355
	s. 4	355, 356
	(1)	355
	(2)	356
	(3)	356
	(4)	356
	s. 5	356
	(1)	356
	(2)	356
	s. 6	354
	s. 7 (1)	356
	(2)	355
	(3)	356
	(4)	356
	s. 8	354
	s. 9	354, 355
c. 35.	(Bills of Sale Act, 1891), s. 1	241
c. 39.	(Stamp Act, 1891)—	
	s. 1	844
	s. 8	87
	s. 14	87
	s. 15 (3).	88
	s. 26	712
	s. 27	712
	s. 40	151
	s. 43 (1).	720, 856
	(2).	720
	(3).	721
	s. 44	857
	s. 49 (1).	87
	(2).	87
	s. 50	88
	s. 51	88
	Sched. I.	87, 151, 712, 719, 721, 844
c. 50.	(Commissioners for Oaths Act, 1891), s. 1	857
c. clix.	(Pier and Harbour Order Confirmation Act, 1891, No. 3)	480
55 & 56 Vict. c. 27.	(Parliamentary Deposits and Bonds Act, 1892), s. 1 (2)	734
c. 31.	(Small Holdings Act, 1892)	670, 691
56 & 57 Vict. c. 53.	(Trustee Act, 1893)—	
	s. 17 (1)	745
	(2)	745
c. 55.	(Metropolis Management (Plumstead and Hackney) Act, 1893).	702
c. 61.	(Public Authorities Protection Act, 1893)	353, 807
	s. 1	648, 807
	(c)	799
c. 63.	(Married Women's Property Act, 1893)—	
	s. 1	731
	s. 2	731
c. 71.	(Sale of Goods Act, 1893).	248
	s. 25	159

		PAGE
56 & 57 Vict. c. 73.	(Local Government Act, 1894)—	
	s. 8 (2)	692
	s. 20	727
	s. 21	727
	s. 22	727
	s. 23	727
	s. 24	727
c. ccxxi.	(London County Council (General Powers) Act, 1893)	702
57 & 58 Vict. c. 57.	(Diseases of Animals Act, 1894), s. 46	618
c. 60.	(Merchant Shipping Act, 1894)	10, 11, 12, 13, 32, 33, 41, 42, 46, 54, 70, 330, 331, 359, 375, 396, 409, 516, 525, 534, 548, 549, 555, 590, 596, 601, 612, 632, 635, 659, 661
	s. 1	16, 31, 561, 613
	s. 2	591, 613
	(1)	16
	(2)	16
	(3)	17
	s. 3 (1)	16, 659
	(2)	16
	s. 4	18
	(1)	20
	(2)	20
	s. 5	18, 19, 34
	s. 6	17
	s. 7	17, 18, 32
	(2)	17
	s. 8	18
	s. 9	18
	s. 10	18
	(3)	32
	s. 11	18
	s. 13	17
	s. 14	20
	s. 15	21
	(2)	32
	s. 16	21, 32, 33
	s. 17	21, 31
	s. 18	21
	(1)	21
	(2)	21
	(3)	32
	s. 19	21
	s. 20	21
	(4)	32
	s. 21	19, 21
	(1)	22
	(3)	32
	s. 22	21
	s. 23	16, 21
	s. 24 (1)	21
	(2)	22
	s. 25	22
	s. 26	22
	s. 27	22, 23
	s. 28	23
	(4)	33
	s. 29	22
	s. 30	23
	s. 31	23, 24
	s. 32	23, 30
	s. 33	23, 28
	s. 34	23, 24
	s. 35	23, 27, 28, 31
	s. 36	23, 27

		PAGE
57 & 58 Vict. c. 60.	(Merchant Shipping Act, 1894)—	
	s. 37	23, 30
	s. 38	23, 30
	s. 39	23, 30
	s. 40	23, 30
	s. 41	23, 30
	s. 42	23, 30
	s. 43	23, 30
	s. 44	23, 30
	(2)	30
	s. 45	23, 30
	s. 46	23, 30
	s. 47	18
	(8)	32
	s. 48	31
	s. 49	21, 31
	s. 50	21, 31
	s. 51	21, 31
	s. 52	21
	s. 53	20, 21
	s. 54	31
	s. 55 (1)	23
	s. 56	17, 28, 30, 31
	s. 57	15, 17, 23, 30, 31
	s. 58	16, 34
	s. 59	18, 36, 590
	(3)	32
	s. 60	18
	s. 63	31, 651
	s. 64	18, 32
	s. 65	17, 22, 24
	s. 66	32
	s. 67	32
	(2)	33
	s. 68	81
	s. 69	33
	(1)	11
	s. 70	11, 32, 33
	s. 71	11, 22, 33
	s. 72	11, 33, 591, 613
	s. 73	661
	(1)	11
	(2)	11, 32
	(3)	11
	(5)	32
	s. 74	11, 661
	(2)	11, 32
	(3)	11, 32
	s. 75	11, 661
	s. 76	33
	s. 77	19, 630
	(7)	19
	s. 78	19, 630
	s. 79	19, 630
	s. 80	19, 630
	s. 81	19, 630
	s. 82	19
	s. 84	13, 615, 630, 635
	(1)	19
	(2)	20
	s. 85	12, 80, 630
	(4)	80
	s. 87	635
	s. 88	20
	s. 92	502

		PAGE
57 & 58 Vict. c. 60.	(Merchant Shipping Act, 1894)—	
	s. 92 (1)	38
	(2)	38
	s. 93	38, 522
	s. 94	38, 653, 502
	s. 95	38, 502
	s. 96	38, 502
	s. 97	38, 502
	s. 98	38, 502
	s. 99	38, 502
	s. 100	39, 502
	s. 101	39, 502
	s. 102	38, 502
	s. 103	39, 502
	s. 104	502
	s. 105	41, 656
	s. 106	41
	s. 107	41
	s. 108	41
	s. 109	41, 659
	s. 110	44
	s. 111	44
	s. 112	44
	s. 113	51
	(1)	41
	(2)	41
	s. 114	656
	(1)	42, 50
	(2)	42, 50
	(3)	42
	s. 115	42
	(1)	656
	s. 116	42
	s. 117	43
	s. 118	43, 659
	(1)	656
	s. 119	43
	s. 120	42
	s. 121	42, 43
	s. 122	42, 43, 656
	s. 124	41
	s. 125	43
	(4)	43
	s. 126	39
	s. 127	47, 55
	s. 128	55
	s. 129	55
	s. 130	55
	s. 131	47
	s. 132	47, 50
	s. 133	47, 50
	s. 134	48, 52
	(c)	53
	s. 135	48
	(2)	53
	s. 136	48
	s. 137	48
	s. 139	47
	s. 140	42, 51
	s. 141	51
	(3)	51
	(4)	51
	s. 142	51
	s. 143	52
	s. 145	52

		PAGE
57 & 58 Vict. c. 60.	(Merchant Shipping Act, 1894)—	
	s. 145 (1)	656
	s. 146	52
	s. 147	52
	s. 148	52
	s. 149	52
	s. 150	52
	s. 151	52
	s. 152	52
	s. 153	52
	s. 154	52
	s. 155	46
	s. 156	53, 626
	(1)	54, 573
	(2)	54, 573, 574
	s. 157	46, 49, 620
	s. 158	46, 49, 548
	s. 159	50
	s. 160	50
	s. 161	50
	s. 162	52
	s. 163	54, 626
	s. 164	53
	s. 165	53
	s. 166 (1)	53
	(2)	53
	s. 167	53, 68, 620
	s. 168	41, 43, 60
	s. 169	51, 58
	s. 170	58
	s. 171	58
	s. 172	58, 657
	s. 173	58, 657
	s. 175	58
	s. 176	59
	s. 177 (1)	58
	(2)	58
	s. 178	59
	s. 179	59
	s. 180	59
	s. 181	58
	s. 182	57
	s. 183	57
	s. 184	56
	s. 185	56
	s. 186	56
	s. 195	63
	s. 196	48
	s. 197	48
	s. 199	44
	s. 200	45
	s. 201	44
	s. 202	45
	(1)	653
	(4)	45
	s. 203	45
	s. 204	45
	(2)	653
	s. 205	45
	s. 206	44
	s. 207	45
	s. 209	45
	s. 210	46
	s. 211	46
	s. 212	54, 574

		PAGE
57 & 58 Vict. c. 60.	(Merchant Shipping Act, 1894)—	
	s. 213	54
	s. 214	54
	s. 215	12, 54
	s. 216	12, 54
	s. 218	54
	s. 219	13, 54
	s. 220	62, 63, 362
	s. 221	42, 49, 50
	(a)	61
	(b)	61, 62
	s. 222	59
	s. 223	60
	s. 225	61
	s. 227	62
	s. 228	63
	s. 229	63
	s. 230	63, 656
	s. 231	49, 50
	s. 232	50
	s. 233	50
	s. 234	50
	s. 236	61
	s. 237	62
	s. 238	13, 60, 62
	s. 239	82, 372, 659
	(6)	82
	s. 240	82, 372, 659
	s. 241	82, 372
	s. 242	38, 83, 372
	s. 243	38, 61, 83, 372
	s. 244	38, 649
	(1)	653
	(3)	654
	(5)	654
	s. 245	38, 649
	(1)	654
	(2)	654
	(3)	655
	s. 246	649
	(1)	655
	(2) (b)	655
	(d)	655
	(3) (b)	656
	s. 247 (1)	656
	(2)	656
	s. 248 (1)	655
	(2) (a)	655
	(b)	655
	(3)	655
	(4)	655
	s. 249	657
	s. 250	655
	s. 251	63, 651
	(1)	657
	(2)	652, 657
	s. 252	63, 657
	s. 253	63
	(1)	657
	(2)	658
	(3)	657
	s. 254	64
	(1)	658
	(2)	658
	(3)	658

		PAGE
57 & 58 Vict. c. 60.	(Merchant Shipping Act, 1894)—	
	s. 254 (5)	658
	s. 255	64
	(1)	658
	(2)	658
	(3)	658
	s. 256	63
	(1)	658
	s. 257	64
	(1)	659
	(2)	659
	(3)	659
	(4)	659
	s. 258	64, 659
	s. 259	57
	s. 260	38, 61
	s. 261 (c)	38
	s. 262	38, 660
	s. 263	38
	s. 265	13
	s. 266	38
	s 267	331
	s. 268	12, 331
	(1)	331
	(2)	331
	(4)	332
	(5)	332
	(6)	332
	s. 269	332, 338
	s. 270	332, 346
	s. 271	332, 334, 650
	(2)	334
	s. 272	332, 333
	(3)	333
	(4)	333
	s. 273	353
	(1)	333
	(2)	333
	s. 274	333
	s. 275	333, 650
	(2)	333
	(4)	333
	s. 276	333
	s. 277	333
	s. 278 (1)	333
	(2)	334
	s. 279 (1)	334
	(2)	334
	s. 280	334, 353
	s. 281	334, 353
	s. 282	334
	s. 283	334, 353
	s. 284	335, 353
	s. 285	77, 78, 353
	(3)	336
	(4)	336
	(5)	336
	s. 286	336, 353
	s. 287	345, 353
	(1)	330
	(2)	330
	(3)	330
	(4)	330
	s. 288	330
	s. 289	650

		PAGE
57 & 58 Vict. c. 60.	(Merchant Shipping Act, 1894)—	
	s. 289 (1)	335
	(2)	335
	(3)	335
	(4)	336
	s. 290	335, 336
	(1) (a)	77
	(d)	78
	(f)	78
	s. 292	338
	(2)	338
	s. 293	338
	s. 294	80, 338
	(1)	338
	(2)	338
	s. 295 (1)	338
	(2)	338
	(3)	339
	(4)	339
	(5)	339
	(6)	339
	(7)	339
	(8)	339
	s. 296	339
	s. 297	339
	(i.)	339
	(ii.)	339
	(iii.)	339
	s. 298	340
	(1)	340
	(2)	340
	(3)	340
	s. 300 (1)	341
	(2)	341
	(3)	341
	(4)	341
	(5)	341
	s. 301	79
	(1)	346
	(2)	346
	s. 302 (1)	346
	(2)	346
	(3)	346
	s. 303	341
	(1)	341
	(2)	341
	(3)	341
	(4)	341
	(5)	341
	(6)	341
	s. 304	342
	(1)	341
	(2)	342
	(3)	342
	(4)	342
	(5)	342
	s. 306	343
	(1)	342
	(2)	342
	(3)	343
	s. 307	343
	(1)	343
	(2)	343
	(3)	343
	(4)	343
	s. 308	343

		PAGE
57 & 58 Vict. c. 60.	(Merchant Shipping Act, 1894)—	
	s. 309	344
	s. 310	344
	(1)	344
	(2)	344
	(3)	344
	s. 311	345
	(1)	344
	(2)	345
	(3)	345
	s. 312	345
	(1)	345
	(2)	345
	(3)	345
	(4)	345
	(5)	345
	s. 313	345
	s. 314	81
	s. 315	342
	s. 316	82
	s. 318	82
	s. 319	82
	s. 320 (1)	337
	(2)	337
	(3)	337
	(4)	337
	s. 321 (1)	337
	(2)	337
	s. 322	337
	s. 323	337
	s 324	330, 341
	(iv.)	338, 339
	s. 325 (1)	330
	(2)	330
	s. 326 (1)	330
	(2)	330
	s. 327	347
	(1)	347
	(2)	347
	s. 328	347, 349
	s. 329 (1)	347
	(2)	347
	s. 330	347
	s. 331	348
	(1)	348
	(2)	348
	(3)	348
	(4)	348
	s. 332	349
	s. 333 (1)	349
	(2)	349
	s. 334 (1)	349
	(2)	349
	(3)	349
	s. 335	350
	s. 336 (1)	348
	(2)	348
	s. 337	338
	s. 338	340
	s. 339	658
	s. 340	83, 337, 346, 349
	s. 341 (1)	350
	(2)	350
	s. 342 (1)	350
	(2)	350

		PAGE
57 & 58 Vict. c. 60.	(Merchant Shipping Act, 1894)—	
	s. 342 (3)	350
	(4)	350
	(5)	350
	s. 343 (1)	351
	(2)	351
	(3)	350
	s. 344	351
	s. 345	351
	s 346	351
	s. 347	352
	s. 348	352
	(2)	352
	(3)	352
	(4)	352
	s. 349	352
	s. 350	352
	s. 351	352
	s. 352	352
	s. 354	352, 353
	s. 355	335
	(1)	353
	(2)	353
	(3)	353
	s. 356	353
	s. 357	353
	s. 358	353
	s. 359	353
	s. 360	349
	(2)	335
	(3)	335
	s. 361	340
	s. 362	646
	s. 363	332, 335, 336
	s. 364	331, 335
	s. 365	331, 335
	(1)	337, 340, 350, 352
	(a)	344
	(2)	338, 347
	(b)	341, 342
	(3)	340
	s. 366	331, 332
	(3)	335
	s. 367	331
	s. 368	331
	(2) (b)	332
	s. 370	396, 397, 610
	s. 373	17
	s. 374	17
	s. 375	17, 78
	s. 376	60, 62
	s. 377	62
	s. 378	62
	s. 379	62
	s. 380	62
	s. 381	62
	s. 382	62
	s. 383	62
	s. 384	62
	s. 392	41
	s. 394	656
	s. 395	656
	s. 396	656
	s. 397	656
	s. 398	41

PAGE

57 & 58 Vict. c. 60. (Merchant Shipping Act, 1894)—

s. 413 38
(3) 38
s. 414 38
s. 418 12, 336, 534, App. xi., xii
(1) 359, 360, 373, 374, 478
(2) 375
s. 419 13, App. xi., xii
(1) 362, 364, 374, 478, 506
(2) 362
(3) 362
(5) 362
s. 420 (1) 336, 363
(2) 363
(3) 336, 363
(4) 336
(5) 336
(6) 336
(7) 336
(8) 336, 363
s. 421 (1) 478
(2) 478
s. 422 563, 649
(1) 371
(3) 372
s. 423 (1) 372
(2) 372
s. 424 13, 376, App. xi., xii
s. 425 590
(2) 590
s. 426 590
(2) 590
s. 427 78
s. 428 78
s. 430 78
s. 431 78
s. 432 77, 78
s. 433 336
s. 434 562, App. xi., xii
(1) 479
(2) 479
s. 435 (1) 336
(2) 336
s. 437 79
s. 438 79
s. 439 79
s. 440 79
s. 441 79
s. 442 79
s. 443 79
s. 444 79
s. 445 79
s. 446 74, 79, 101
(2) 79
(3) 79
s. 447 101
s. 448 74, 79, 101
s. 449 101, 282
(1) 79
s. 452 80
s. 454 81
s. 456 80
s. 457 (1) 77
(2) 77
s. 458 (1) 40
s. 458 (2) 40
s. 459 81, 652
(1) (a) 650

		PAGE
57 & 58 Vict. c. 60.	(Merchant Shipping Act, 1894)—	
	s. 459 (2)	650
	s. 460	81
	s. 461	46
	s. 462	12, 81
	s. 463	62
	s. 464	591
	s. 465	591
	(1) (a)	591
	(b)	591
	(c)	591
	s. 466	591
	(1)	592
	(2)	592
	(3)	592
	(4)	592
	(10)	593
	s. 467	592
	s. 468	591
	s. 469	649
	s. 470	372
	(1) (a)	592
	s. 471	653
	(1)	649
	(2)	649
	s. 472	40
	s. 475 (1)	594
	(2)	594
	(3)	595
	s. 476 (1)	593
	s. 477	592
	s. 478	591
	(1) (a)	593
	(b)	593
	(c)	593
	(2)	593
	(3)	593
	(4)	593
	(5)	593
	s. 480	591, 662
	(i.)	593
	(ii.)	593
	(iii.)	593
	s. 481	662
	s. 482	662
	s. 483	40, 662
	s. 484	662
	s. 485	662
	s. 486	662
	s. 487	333, 336
	(3)	653
	s. 488	333, 336, 662
	s. 489	333, 336, 662
	s. 490	662
	s. 492	280, 281, 282
	s. 493	280, 282
	(1)	280, 281
	(2)	281
	(3)	281
	(4)	281
	(5)	282
	s. 494	280, 282
	s. 495	280, 287
	s. 496	280
	(1)	287
	(2)	287
	(3)	288
	(4)	288

PAGE

57 & 58 Vict. c. 60. (Merchant Shipping Act, 1894)—
s. 497 280
(1) 282, 283
(2) 283
(3) 283
s 498 280, 283
s. 499 280
s. 500 280, 281, 282
s. 501 280
s. 502 111, 113, 214, 217, 325, 612
s. 503 521, 612
(1) 612, 613, 614
(2) 615
(b) 615
(c) 616, 650
(3) 615
s. 504 616
s. 505 612
s. 506 614
s. 507 613
s. 508 613
s. 509 612
s. 510 548, 559, 578
s. 511 550, 570, 580
s. 512 550, 570
s. 513 550
(2) 550, 618
s. 514 550
s. 515 550
s. 516 (1) 551
(2) 551, 570
s. 517 550, 591
(2) 550
s. 518 548, 551, 556
(a) 551
(b) 551
s. 519 548, 551, 556
(2) 551
(3) 551
s. 520 548, 552
s. 521 548
(1) 552
(2) 552
s. 522 548, 552
s. 523 552
s. 524 553
(2) 552, 553
s. 525 552, 553
(2) (a) 552
(b) 552
s. 526 (1) 553
(2) 553
s. 527 553
s. 528 553
s. 530 554, 555, 642
s. 531 554
(2) 555
s. 532 554
s. 533 554
s. 534 555, 642
s. 535 556
s. 536 (1) 556
(2) 556
s. 537 556
s. 544 561, 575, 580, 587, 618, 619, 623
(2) 561, 576
s. 545 13, 580, 587
s. 546 559, 580, 587

		PAGE
57 & 58 Vict. c. 60.	(Merchant Shipping Act, 1894)—	
	s. 547	553
	s. 548	553
	s. 549	543
	s. 554	580
	s. 555	582
	s. 556	582
	s. 557	569, 570
	s. 558	569
	s. 559	569
	s. 560	569
	s. 561	569
	s. 562	569
	s. 563	569
	s. 564	569
	s. 565	579
	s. 566	549, 649
	s. 567	549, 550, 569, 570, 618
	(1)	549
	(2)	549
	(3)	549
	(4)	549
	s. 568	569
	s. 569	553
	s. 633	530, 611
	s. 634	633
	(1)	628
	(a)	627
	(b)	628
	(c)	628
	s. 635	633, 649
	s. 636	633, 649
	s. 637	633
	s. 638	628, 633
	s. 639	633
	(1)	629
	(2)	629
	s. 640	633, 649
	(1)	629
	s. 641	629, 633
	(3)	629
	s. 642	627, 633
	s. 643	629, 633
	s. 644	633
	s. 645	633
	s. 646	633
	s. 647	630, 633
	s. 648	630, 633
	s. 649	633
	(1) (a)	631
	(b)	631
	(2)	631
	s. 650	633
	(1)	631
	(2)	631
	s. 651	630, 633
	s. 652	628, 633
	(1)	632
	(2)	632
	(3)	632
	(4)	632
	s. 653	628, 632, 633
	(1)	632
	(2)	632
	s. 654	628, 632, 633
	s. 655	628, 631, 633
	s. 656	628, 633
	s. 657	628, 633

		PAGE
57 & 58 Vict. c. 60.	(Merchant Shipping Act, 1894)—	
	s. 658	633
	s. 659	633
	(1)	633
	(2)	633
	(3)	633
	s. 660	633, 649
	s. 661	633, 634
	s. 662	633, 634
	s. 663	633, 634
	s. 664	633
	s 665	633
	s. 666	488, 633
	s. 667	628, 633
	s. 668	628, 633
	s. 669	627, 633
	s. 670	631, 633
	s. 671	631, 633
	(2)	631
	s. 672	631, 633
	s. 673	633
	s. 674	633
	s. 675	632, 633
	s. 676 (g)	553
	(i)	633
	s. 680	32, 334, 362, 372, 607, 609, 631
	s. 681	604, 609, 631
	s. 682	609
	s. 688	546
	s. 690 (3) (c)	660
	s. 692	33, 658
	(3)	81
	s. 693	631
	s. 694	658
	s. 695	32, 34, 349, 658
	s. 699 (1)	55
	s. 713	649, 650, 653
	s. 714	651, 652
	s. 717	649
	s. 719	658
	s. 721	658
	s. 723 (1)	650, 652
	(2)	652
	s. 724	17, 333, 650
	(1)	650
	(2)	650
	(3)	650
	(5)	650
	s. 728	650
	s. 729	550, 591
	(1)	650
	(a)	591
	(b)	591
	(c)	591
	(d)	592
	(e)	592
	(2)	592, 651
	(3)	651
	s. 730	651
	s. 731	628
	s. 732	628, 636
	s. 733	408, 409, 479, 606
	s. 734	13
	s. 735	375
	(1)	13
	s. 736	375
	s. 737	651
	s. 741	16, 375, 408, 525, App. xi., xii.

		PAGE
57 & 58 Vict. c. 60.	(Merchant Shipping Act, 1894)—	
	s. 742	14, 20, 21, 38, 42, 46, 47, 53, 58, 59, 330, 331, 336, 374, 377, 548, 551, 554, 556, 591, 599, 604, 611, 612, 613, 620, 627, 628, 652, 655, 656, 657
	s. 743	331, 377
	s. 744	38
	s. 745	633
	(1) (a)	632
	Sched. I.	17, 22, 24, 30
	Sched. II.	19, 630
	Sched. VII.	653, 654
	Sched. IX.	333
	Sched. XVIII.	80
	Sched. XX.	549, 550
	Sched. XXII.	479
c. clxxxvii.	(Thames Conservancy Act, 1894)	555
58 & 59 Vict. c. 11.	(Lands Clauses (Taxation of Costs) Act, 1895), s. 1 (2)	795
c. 25.	(Mortgagees Legal Costs Act, 1895)	762
	s. 2	762
	s. 3	762
59 & 60 Vict. c. 12.	(Derelict Vessels (Report) Act, 1896)—	
	s. 2	590
	s. 3	590
	s. 4	590
60 & 61 Vict. c. 21.	(Mersey Channels Act, 1897)	535
c. 51.	(Public Works Loans Act, 1897), s. 11 . . .	634
c. 59.	(Merchant Shipping Act, 1897) . . .	10, 11
	s. 1	81
	(1)	652
c. 65.	(Land Transfer Act, 1897) . . .	689, 691, 710
	s. 10	857
	s. 22 (2)	710
61 & 62 Vict. c. 10.	(Finance Act, 1898), s. 16	725
c. 14.	(Merchant Shipping (Liability of Shipowners) Act, 1898)	10, 11, 612
	s. 1	612, 613
c. 44.	(Merchant Shipping (Mercantile Marine Fund) Act, 1898)	10, 11, 59, 612, 632
	s. 1	38, 549, 632
	(1) (a)	632, 633
	(b)	555, 633
	(c)	555, 633, 634
	s. 2	631, 633, 634
	(3)	633
	s. 5 (1)	630
	(2)	630
	s. 7	633
	Sched. II.	629, 630, 660
	Sched. III.	633
62 & 63 Vict. c. 23.	(Anchors and Chain Cables Act, 1899), s. 4 . .	81
c. 44.	(Small Dwellings Acquisition Act, 1899) . .	695, 701
	s. 1 (1)	695, 696
	(2)	696
	(3)	696
	(4)	697
	(5)	697
	s. 2	696
	s. 3 (1)	698
	(2)	697
	(3)	698
	(4)	699
	(5)	699
	s. 4 (1)	697
	(2)	697
	s. 5 (1)	699
	(2)	699
	(3)	699

		PAGE
62 & 63 Vict. c. 44.	(Small Dwellings Acquisition Act, 1899)—	
	s. 5 (4)	700
	(5)	699
	s. 6	700
	(1)	700
	s. 7 (1)	696, 698
	(2)	698
	(3)	698
	s. 8	696
	s. 9 (1)	695
	(2)	695
	(3)	700
	(4)	701
	(5)	701
	(6)	701
	(7)	701
	(8)	702
	(9)	702
	(10)	702
	s. 10	695
	(1)	696
	(2)	695
	(3)	695
63 & 64 Vict. c. 14.	(Colonial Solicitors Act, 1900), s. 1	722
	s. 6	722
c. 32.	(Merchant Shipping (Liability of Shipowners and Others) Act, 1900)	10, 11, 612, 615
	s. 1	614
	s. 2	612, 613, 614, 648
	(3)	616
	s. 3	615
2 Edw. 7, c. 14.	(University of Wales Act, 1902), s. 1	711, 716
4 Edw. 7, c. 11.	(University of Liverpool Act, 1904), s. 1	711, 716
c. 12.	(Leeds University Act, 1904), s. 1	711, 716
5 Edw. 7, c. 10.	(Shipowners' Negligence (Remedies) Act, 1905)	523, 544
	s. 1	81, 544
c. 13.	(Aliens Act, 1905)	331
6 Edw. 7, c. 24.	(Solicitors Act, 1906), s. 1	721
c. 41.	(Marine Insurance Act, 1906)—	
	s. 39	77, 211
	s. 46	83
	s. 48	83
	s. 66 (1)	315
	(2)	317
	(3)	315
	s. 71 (3)	291
	s. 79 (1)	301
	Sched. I.	62, 112
c. 48.	(Merchant Shipping Act, 1906)	10, 11, 612
	s. 1	12, 13
	s. 2	81
	s. 3	80
	s. 4	78
	s. 5	12
	s. 6	12, 78
	s. 7	79
	s. 8	79
	s. 9	78
	s. 10	80
	(5) (c)	79
	(6)	80
	s. 11	80
	s. 12	39
	s. 13	331
	s. 14	332
	s. 16	353
	s. 17	338, 340, 344, 345, 346, 350, 351, 353

		PAGE
6 Edw. 7, c. 48.	(Merchant Shipping Act, 1906)—	
	s. 17 (2)	349
	s. 18	340, 353
	(1)	340
	(2)	340
	(3)	340
	(4)	340
	s. 19	353
	s. 20	344, 353
	(3)	344
	s. 21	332, 334, 353
	s. 22	334
	s. 23	350
	s. 24	352
	s. 25	42, 44
	(3)	44
	(4)	44
	(5)	44
	s. 26	44
	(2)	44
	(3)	44
	s. 27	342
	(1)	44
	(2)	44
	(3)	44
	(4)	44
	(5)	45
	s. 28	49, 50
	(6)	657
	s. 29	51, 58
	s. 30	53, 55
	s. 31	55, 56
	s. 32	56
	s. 33	56
	s. 34	45
	(3)	50
	(4)	50
	s. 35	46
	s. 36	55, 63
	s. 37	48
	s. 38	48
	s. 39	48
	s. 40	57
	s. 41	57
	s. 42	57, 541
	s. 43	57
	s. 44	50
	(5)	61
	s. 45	56
	s. 46	57
	s. 47	57
	s. 48	57
	s. 49	41, 63
	(1)	50
	(b) (i.)	652
	(2)	55, 57
	s. 50	18
	s. 52	19, 28
	(1)	21, 22
	s. 53	31
	(2)	32
	s. 54	19
	(1)	19
	s. 55	19, 615
	s. 57	47
	s. 58 (1)	39
	(2)	40
	s. 59	40

		PAGE
6 Edw. 7, 48.	(Merchant Shipping Act, 1906)—	
	s. 60	48
	s. 61	51
	s. 62	52
	s. 63	52
	s. 64	46
	s. 65 (2)	55
	s. 69	615
	s. 70	612, 613
	s. 71	612
	s. 72	551, 556
	s. 74	38
	(1)	655
	(2)	653
	s. 75	17, 333
	(1)	333, 650
	(3)	333
	(4)	650
	s. 78	340
	s. 80	16, 375, 629
	s. 81	38
	s. 82 (1)	62
	s. 85	340, 344, 345, 346, 349, 612, 613, 655
	Sched. I.	44
	Sched. II.	340, 344, 345, 346, 349, 655
c. 58.	(Workmen's Compensation Act, 1906)	520, 544, 605, 725
	s. 2	524
	s. 6	544
	s. 7	45, 544, 605
	s. 11	544
	s. 13	544
	Sched. I.	544
7 Edw. 7, c. 23.	(Criminal Appeal Act, 1907)—	
	s. 10	732
	s. 15 (5)	732
c. 29.	(Patents and Designs Act, 1907)—	
	s. 29 (6)	806
	s. 35	799
	s. 39 (1)	799
c. 52.	(Merchant Shipping Act, 1907)	10, 11, 19, 516, 528, 596
	s. 1	19, 615
8 Edw. 7, c. 28.	(Agricultural Holdings Act, 1908)	683, 684
	s. 11	692
	s. 23 (viii.)	684
	s. 26	682
	s. 36	680
c. 36.	(Small Holdings and Allotments Act, 1908)	670, 680, 683, 691
	s. 1	673, 674, 687
	s. 2 (1)	670, 672
	s. 3	670, 674
	(1)	672
	(2)	672, 674
	(3)	672, 674
	(4)	672
	s. 4	671, 674
	(1)	674, 677
	(2)	672, 673, 675, 677
	(3)	673, 677
	(4)	677
	(5)	677
	s. 5	674
	(1)	678
	(2)	678
	(3)	678
	s. 6	671, 674
	(1)	674, 678
	(2)	673, 678

		PAGE
8 Edw. 7, c. 36.	(Small Holdings and Allotments Act, 1908)—	
	s. 6 (3)	678
	(4)	678
	s. 7 (1)	673, 674, 687
	(2)	674, 680, 687
	(3)	684
	s. 8	686
	(1)	674
	s. 9	690
	(1)	674, 687
	(2)	687
	(b)	690
	s. 10	687, 690
	s. 11	674, 689, 690
	(1)	687
	(2)	687
	(3)	687
	(4)	687, 688
	(5)	688
	(6)	688
	(7)	688
	s. 12	674, 690
	(1)	688
	(d)	686
	(e)	686
	(f)	686
	(g)	686
	(2)	688, 690
	(3)	689, 690
	(4)	689, 690
	(6)	689
	(7)	689
	(8)	690
	s. 13 (1)	691
	(2)	687, 691
	(3)	691
	s. 14	674
	s. 15	689, 690
	s. 16	692
	(3)	692
	s. 17 (1)	676
	(2)	675
	s. 18	675
	s. 19 (1)	674
	(2)	674
	(3)	674
	s. 20	671
	s. 21	672
	s. 22	671, 673
	s. 23	692
	s. 38	671, 679
	s. 39	671, 680
	(2)	682
	(3)	681
	(4)	686
	(5)	685
	(6)	684
	(7)	680
	(8)	673, 685
	s. 40	671, 679
	(2)	679
	(3)	679
	(4)	680
	(5)	680
	s. 41	671
	(1)	685
	(2)	686
	(3)	685

		PAGE
8 Edw. 7, c. 36.	(Small Holdings and Allotments Act, 1908)—	
	s. 42	671, 679
	s. 43	671, 692
	s. 44	671
	(1)	679, 684
	s. 45	671, 693
	s. 46	671
	(1)	683, 684
	(2)	673
	s. 47	671
	(1)	690
	(2)	680, 684, 686
	(4)	690
	s. 48	671, 682
	s. 49 (1)	675
	(4)	675
	s. 50 (1)	676
	(2)	676
	(3)	676
	(4)	676
	s. 51 (1)	671, 693
	(3)	693
	(4)	693
	(5)	693
	s. 52	671
	(1)	693
	(2)	694
	(3)	694
	(4)	694
	s. 53	671
	s. 54 (1)	694
	s. 55	672
	s. 56	672
	s. 57 (1)	671, 672
	(2)	671
	s. 58 (1)	683, 684, 685, 689
	(2)	673
	s. 59	671, 675
	s. 61	670
	(1)	670, 681, 688
	(2)	678, 686, 692
	(3)	685
	s. 62 (a)	691
	Sched. I.	680, 681, 682, 683
	Sched. II.	680, 683
	Sched. III.	670
c. 38.	(Irish Universities Act, 1908)—	
	s. 2	711
	s. 5	716
	s. 12	716
	s. 20	711
c. 48.	(Post Office Act, 1908)—	
	s. 89	354
	s. 91 (3)	354
	s. 92	355
	Sched. II.	355
c. 68.	(Port of London Act, 1908)	634
c. 69.	(Companies (Consolidation) Act, 1908)	734
	s. 151 (1) (c)	735
	s. 186 (iv.)	735
9 Edw. 7, c. 11.	(Judicature (Rule Committee) Act, 1909), s. 1 (1)	710
c. xlii.	(University of Bristol Act, 1909), s. 9	711
10 Edw. 7, c. 8.	(Finance (1909–10) Act, 1910), s. 18	670
10 Edw. 7 & 1 Geo. 5, c. 34.	(Small Holdings Act, 1910)	670
	s. 1	692
	(2)	671
	s. 3	670

PAGE

1 & 2 Geo. 5, c. 8. (Merchant Shipping (Seamen's Allotment) Act, 1911) 10, 11
s. 1 51, 52
c. 41. (Merchant Shipping (Stevedores and Trimmers) Act, 1911) 10, 11
c. 42. (Merchant Shipping Act, 1911) . . . 10, 11
s. 1 33
s. 2 516
c. 55. (National Insurance Act, 1911) . . 15, 50
c. 57. (Maritime Conventions Act, 1911) . 10, 11, 328, 451, 516, 522, 524, 534
s. 1 517, 520, 528, 537, 541
(1) . 508, 516, 518, 520, 521, 522, 529, 542, 543
(a) 518
(b) 519
(c) 518, 520, 521, 522
(2) 518, 520, 522
s. 2 517, 523
s. 3 517, 523
(1) 520, 524
s. 4 363
(1) 382, 454, 517, 534
(2) 362, 535
s. 5 517, 543, 544, 545
s. 6 (1) 371, 561
(2) 561, 563
s. 8 517, 524, 545, 581, 626
s. 9 (1) 524, 525
(2) 382, 517, 525, 534
(3) 517, 525
(4) 519
s. 10 516
2 & 3 Geo. 5, c. 31. (Pilotage Act, 1913) . 11, 381, 525, 529, 596, 600, 608, 649
s. 1 596
s. 2 596, 597
s. 3 596, 597
s. 4 596, 597
s. 5 596
(4) 608
s. 6 596
s. 7 597
(1) (d) 597
(h) 598
(i) 601, 604
(j) 598
(k) 597
(2) 597
(3) 597
(4) 597
(5) 598
(6) 598
s. 8 599
s. 10 610
s. 11 (1) 610
(2) 607
(3) 660
(4) 611
(5) 611
s. 12 611
s. 13 530, 610
s. 14 598
s. 15 596, 611
(1). 529
(2). 529
s. 16 600
s. 17 599, 600
(1) (a) 600
(d) 605

PAGE

2 & 3 Geo. 5. c. 31. (Pilotage Act, 1913)—
s. 17 (1) (e) 607
(f) 603
(g) 603
(h) 603
(j) 603
(m) 602
(n) 601
(o) 599, 608
(p) 603
s. 18 600
s. 19 530, 601
s. 20 600, 601, 607
s. 21 603
(3) 603
(4) 605
s. 22 (1) 604
(2) 604
(3) 604
s. 23 (1) 601
(2) 602
(3) 602
(5) 602
(6) 602
s. 24 (1) 602
(2) 602
s. 25 601
s. 26 601, 602, 608
s. 27 608
s. 28 (1) 609
(2) 609
(3) 609
(4) 609
(6) 609
(7) 609
(8) 609
(c) 609
s. 29 600, 602
s. 30 (1) 604
(2) 604
(3) 605, 608
(4) 605, 607
(5) 605
s. 31 604, 608
s. 32 605, 609, 611
s. 33 600, 607
s. 34 603
(1) 608
s. 35 530, 612, 615
(1) 605
(3) 605
s. 36 600, 607
s. 37 608
s. 38 605
s. 39 (1) 606
(a) 606
(b) 606
(c) 606
(2) 606
s. 40 605
s. 41 606, 608
s. 42 606, 608
s. 43 606, 608
s. 44 604, 608
s. 45 606, 608
(3) 606
s. 46 607
s. 47 608

		PAGE
2 & 3 Geo. 5, c. 31.	(Pilotage Act, 1913)—	
	s. 48	606
	s. 49	604
	(1)	604
	s. 50	567, 603, 607, 608
	s. 51	603
	s. 52	599
	s. 53	603
	s. 54	600
	s. 55	603
	s. 56	597
	s. 57	597
	s. 58	603
	s. 59	596, 598, 610
	s. 60	596, 606, 609
	s. 61	596
	s. 62	11, 596
	Sched. I.	598
c. xii.	(Mersey Docks and Harbour Board Act, 1912)	554
3 & 4 Geo. 5, c. 27.	(Forgery Act, 1913)	32
c. clxv.	(Pilotage Order (London) Confirmation Act, 1913)	598

AUSTRALIA.

Commonwealth Acts, No. 17 of 1901	(Immigration Restriction Act, 1901)	49
Commonwealth Acts, No. 17 of 1905	(Immigration Restriction Amendment Act, 1905)	49

CANADA.

Revised Statutes of Canada, Ed., 1887, c. 79	(Navigation of Canadian Waters), s. 2	466

QUEENSLAND.

41 Vict. No. 3	(Queensland Navigation Act, 1876)	466

UNITED STATES.

No. 57 of 1893.	(Public Statutes, 1893)	116

TABLE OF CASES.

A.

PAGE

——, *Ex parte* (1833), 2 Dowl. 110 849
——, *Ex parte* (1844), 8 Jur. 848 716
——, *Re* (1826), 4 L. J. (O. S.) (CH.) 207 840
——, *Re* (1831), 2 B. & Ad. 766 850
——, *Re* (1838), 3 Nev. & P. (Q. B.) 389; 1 Will. Woll. & H. 355 . . . 849
——, *Re* (1843), 12 L. J. (Q. B.) 331 851
——, *Re* (1846), 10 Jur. 198 850
——, *Re* (1853), 1 W. R. 150 823
——, *Re*, an Attorney (1853), 2 W. R. 58 850
——, *Re*, ———— (1863), 9 L. T. 299 852
—— *v.* Sexton (1832), 1 Dowl. 180 720
Aaltjee Willemina, The (1866), L. R. 1 A. & E. 107 69
Abbott, *Re* (1854), 18 Beav. 393; 23 L. J. (CH.) 100; 7 L. T. 303; 8 Jur. (N. S.) 1119; 11 W. R. 15 789
———, *Re* (1861), 4 L. T. 576 778, 783, 790
Abchurch Steamship Co. *v.* Stinnes, [1911] S. C. 1010; 48 Sc. L. R. 865; 2 Scots Law Times, 72 200
Abercrombie *v.* Jordan (1881), 8 Q. B. D. 187; 30 W. R. 810, C. A. 856
Aberdeen Glen Line Steamship Co. *v.* Macken, The "Gairloch," [1899] 2 I. R. 1; 32 I. L. T. 33, C. A. 275
Aberdonian, The, [1910] P. 225; 79 L. J. (P.) 89; 102 L. T. 543; 11 Asp. M. L. C. 393 435, 476
Abertawe, The, Letricheux and David *v.* Dunlop & Co. *See* Letricheux and David *v.* Dunlop & Co., The Abertawe.
Aboukir, The (1905), 21 T. L. R. 200 568
Acanthus, The, [1902] P. 17; 71 L. J. (P.) 14; 85 L. T. 696; 11 T. L. R. 160; 9 Asp. M. L. C. 276 539
Acatos *v.* Burns (1878), 3 Ex. D. 282; 47 L. J. (EX.) 566; 26 W. R. 624, C. A. . 101, 197, 226, 227, 228, 229, 230, 231, 245, 247, 248, 250, 251, 252, 253, 254, 305, 306, 315
Accomac, The (1890), 15 P. D. 208; 59 L. J. (P.) 91; 63 L. T. 737; 39 W. R. 133; 6 Asp. M. L. C. 579, C. A. 115, 117, 224, 225, 233
————, [1891] P. 349; 66 L. T. 335; 7 Asp. M. L. C. 153, C. A. . . . 581
Achard *v.* Ring (1874), 31 L. T. 647; 4 Asp. M. L. C. 422 318
Ackerman *v.* Lockhart, *Re* Hawkes. *See* Hawkes, *Re*, Ackerman *v.* Lockhart
Activ, The (1901), 17 T. L. R. 351 541
Acton *v.* Castle Mail Packets Co. (1895), 73 L. T. 158; 8 Asp. M. L. C. 73 . 328
Ada, The, The Sappho (1873), 28 L. T. 825; 2 Asp. M. L. C. 4 . . . 437, 447
Adalia, The, The Elizabeth. *See* Elizabeth, The, The Adalia.
Adam *v.* Morris (J. and D.) (1890), 18 R. (Ct. of Sess.) 153; 28 Sc. L. R. 149 . 224, 226, 228
Adam W. Spies, The (1901), 70 L. J. (P.) 25 569
Adams, *Ex parte* (1875), L. R. 10 Q. B. 227; 44 L. J. (Q. B.) 102; 32 L. T. 454; 23 W. R. 594 714
———, *Ex parte* (1876), 4 Ch. D. 39; 46 L. J. (CH.) 42; 35 L. T. 751; 25 W. R. 54 714
———, *Re*, *Ex parte* Griffin (1886), 14 Ch. D. 37; 49 L. J. (BCY.) 28; 42 L. T. 704; 28 W. R. 714, C. A. 794. 795, 822
——— *v.* Hall (1877), 37 L. T. 70; 3 Asp. M. L. C. 1 90, 140
——— *v.* Royal Mail Steam Packet Co. (1858), 5 C. B. (N. S.) 492; 28 L. J. (C. P.) 33; 7 W. R. 9 191, 200
——— *v.* Sunder (1864), 10 L. T. 49, C. A. 748

PAGE
Adamson, *Re* (1854), 18 Beav. 460 792
——— *v.* Gill (1868), 18 L. T. 278; 16 W. R. 639 84
——— *v.* Newcastle Steamship Freight Insurance Association (1878), 4 Q. B. D. 462; 48 L. J. (Q. B.) 670; 41 L. T. 160; 27 W. R. 818; 4 Asp. M. L. C. 150 201
Admiralty, The, *v.* Aberdeen Steam Trawling and Fishing Co., Ltd., [1910] S. C. 553; 47 Sc. L. R. 509; 1 Scots Law Times, 244 539
Adriatic, The (1875), 33 L. T. 102; 3 Asp. M. L. C. 16 372
Æolus, The (1873), L. R. 4 A. & E. 29; 42 L. J. (ADM.) 14; 28 L. T. 41; 21 W. R. 704; 1 Asp. M. L. C. 516 567
"Africa," The (1854), 1 Ecc. & Ad. 299 566, 572
African Steam Ship Co. *v.* Swanzy and Kennedy (1856), 2 K. & J. 660; 25 L. J. (CH.) 870; 4 W. R. 210 612, 616, 617
Africano, The, [1894] P. 141; 63 L. J. (P.) 125; 70 L. T. 250; 42 W. R. 413; 7 Asp. M. L. C. 427; 6 R. 767 622, 624
Afrika, The (1880), 5 P. D. 192; 49 L. J. (P.) 63; 42 L. T. 403; 4 Asp. M. L. C. 266 54, 573, 574
Agamemnon, The (1883), 48 L. T. 880; 5 Asp. M. L. C. 92 566
Ager *v.* Blacklock & Co. (1887), 56 L. T. 890 796
Agincourt, The (1877), 2 P. D. 239; 47 L. J. (P.) 37 37
Aglaia, The (1888), 13 P. D. 160; 57 L. J. (P.) 106; 59 L. T. 528; 37 W. R. 255; 6 Asp. M. L. C. 337 562, 567
Agnes, The (1913), February 7th, unreported 470
"Agra," The, and The "Elizabeth Jenkins" (1867), L. R. 1 P. C. 501; 4 Moo. P. C. C. (N. S.) 435; 36 L. J. (ADM.) 16; 16 L. T. 755; 16 W. R. 735 . 448, 453, 510
Agra Bank, Ltd. *v.* Barry (1874), L. R. 7 H. L. 135 757
Agricola, The (1843), 2 Wm. Rob. 10 611
Aguadillana, The (1889), 60 L. T. 897; 6 Asp. M. L. C. 390 . 417, 482, 497, 498
Aid, The (1881), 6 P. D. 84; 50 L. J. (P.) 40; 44 L. T. 843; 29 W. R. 614; 4 Asp. M. L. C. 432 502
Aikin's Estate, *Re*, [1894] 1 I. R. 225; 28 I. L. T. 196 819
Aimo, The, The Amelia (1873), 29 L. T. 118; 21 W. R. 707; 2 Asp. M. L. C. 96 451, 452, 536
Aira Force Steamship Co. *v.* Christie & Co. (1893), 9 T. L. R. 104, C. A. . . 136
Aitchison *v.* Lohre (1879), 4 App. Cas. 755; 49 L. J. (Q. B.) 123; 41 L. T. 323; 28 W. R. 1; 4 Asp. M. L. C. 168 324
Aitken *v.* Campbell's Trustees, [1909] S. C. 1217; 46 Sc. L. R. 830; 2 Scots Law Times, 58 749
———, Lilburn & Co. *v.* Ernsthausen & Co., [1894] 1 Q. B. 773; 63 L. J. (Q. B.) 559; 70 L. T. 822; 9 R. 758; 7 Asp. M. L. C. 462, C. A. . 201, 202, 209, 305
Aitkin, *Re* (1820), 4 B. & Ald. 47 837, 838, 840
Ajum Goolam Hossen & Co. *v.* Union Marine Insurance Co., Hajee Cassim Yoosub *v.* Ajum Goolam Hossen & Co., [1901] A. C. 362; 70 L. J. (P. C.) 34; 84 L. T. 366; 17 T. L. R. 376; 9 Asp. M. L. C. 167 218
Akerblom *v.* Price (1881), 7 Q. B. D. 129; 50 L. J. (Q. B.) 629; 44 L. T. 837; 29 W. R. 797; 4 Asp. M. L. C. 441, C. A. . . . 562, 567, 568, 571, 604
Aktieselkab Helios *v.* Ekman & Co., [1897] 2 Q. B. 83; 66 L. J. (Q. B.) 538; 76 L. T. 537; 8 Asp. M. L. C. 244; 2 Com. Cas. 163, C. A. . 140, 265, 266, 267, 268, 269, 272, 273, 494
Aktieselskabet Adalands *v.* Whitaker (Michael), Ltd. (1913), 18 Com. Cas. 229 . . 132, 194
Aktieselskabet Argentina *v.* Von Laer (1903), 20 T. L. R. 9, C. A. . . . 273
Aktieselskabet Hekla *v.* Bryson, Jameson & Co. (1908), 100 L. T. 155; 25 T. L. R. 168; 11 Asp. M. L. C. 186; 14 Com. Cas. 1 279
Aktieselskabet Inglewood *v.* Millar's Karri and Jarrah Forests, Ltd. (1903), 88 L. T. 559; 19 T. L. R. 405; 8 Com. Cas. 196; 9 Asp. M. L. C. 411 . 181, 184
Aktieselskabet "Lina" *v.* Turnbull & Co., [1907] S. C. 507; 44 Sc. L. R. 367; 14 Scots Law Times, 753 105, 109
Aktieselskabet Shakespeare *v.* Ekman & Co. (1902), 18 T. L. R. 605, C. A. . 131
Albano, The, The Schwan. *See* Schwan, The, The Albano.
Albano, S.S. *v.* Allan Line Steamship Co., Ltd., Union Dampfschiffsrhederei Actiengesellschaft *v.* S.S. Parisian, [1907] A. C. 193; 76 L. J. (P. C.) 33; 96 L. T. 335; 23 T. L. R. 344; 10 Asp. M. L. C. 365. . . 437, 447, 450
Albert Crosby (1860), Lush. 44 41
———, The (1870), L. R. 3 A. & E. 37; 18 W. R. 410 69
Albert Edward, The (1875), 44 L. J. (ADM.) 49; 24 W. R. 179 506
Albion (1837), 3 Hag. Adm. 254 582
Albis, The (1895), 73 L. T. 664; 8 Asp. M. L C. 92 430

PAGE
Alcock *v.* Leeuw & Co. (1883), Cab. & El. 98 102
——— *v.* Taylor (1836), 2 Har. & W. 58; 6 Nev. & M. (K. B.) 296 . . 124, 125
Aldrich *v.* Cooper (1803), 8 Ves. 382 71
——— *v.* Simmons (1816), 1 Stark. 214 526
Aldworth *v.* Stewart (1866), 14 L. T. 862; 4 F. & F. 957 329
Alers *v.* Tobin (1902), cited in Abbott on Shipping, 5th ed., p. 245; 14th ed., p. 551 250
Alexander, The (1812), 1 Dods. 278 40, 69, 70, 72, 619
——————— (1842), 1 Wm. Rob. 346 68, 69
Alexander *v.* Malcolmson (1868), 2 I. R. C. L. 621 116
——————— *v.* Simms (1854), 5 De G. M. & G. 57; 23 L. J. (CH.) 721; 2 W. R. 329, C. A. 27, 299
——————— *v.* Vanderzee (1872), L. R. 7 C. P. 530; 20 W. R. 871 . . . 141
Alexandra, The (1866), 14 L. T. 742; 14 W. R. 466 203, 204
Alexiadi *v.* Robinson (1861), 2 F. & F. 679 278, 279, 280
Alfred, The (1850), 3 Wm. Rob. 232 539
———————, Wellfield (Owners) *v.* Adamson and Short. *See* Wellfield (Owners) *v.* Adamson and Short, The Alfred.
Alhambra, The (1881), 6 P. D. 68; 50 L. J. (P.) 36; 43 L. T. 636; 29 W. R. 655; 4 Asp. M. L. C. 410, C. A. . . . 140, 141, 181, 255, 246, 258, 259
Alice, The, and The Princess Alice (1868), L. R. 2 P. C. 245; 38 L. J. (ADM.) 5; 19 L. T. 678; 17 W. R. 209 501
Alina, The (1880), 5 Ex. D. 227; 49 L. J. (P.) 40; 42 L. T. 517; 29 W. R. 94; 4 Asp. M. L. C. 256, C. A. 542
Aline, The (1839), 1 Wm. Rob. 111 622, 623, 625
Allan, The *v.* The Flora (1866), 2 Mar. L. C. 386 366, 448, 488, 493
Allan *v.* Johnstone, The "Archdruid" (1892), 19 R. (Ct. of Sess.) 364; 29 Sc. L. R. 311 155
—— *v.* Sundius (1862), 1 H. & C. 123; 31 L. J. (EX.) 307; 6 L. T. 359; 10 W. R. 648 137
——, Brothers & Co. *v.* James, Brothers & Co. (1897), 3 Com. Cas. 10 . 149, 235
Allaway *v.* Duncan (1867), 16 L. T. 264; 15 W. R. 711 830
Allcard *v.* Skinner (1887), 36 Ch. D. 145; 56 L. J. (CH.) 1052; 57 L. T. 61; 36 W. R. 251, C. A. 748
Allen, *Re* (1887), 34 Ch. D. 433; 56 L. J. (CH.) 487; 56 L. T. 6; 35 W. R. 218, C. A. 761
——, *Re*, Davies *v.* Chatwood (1879), 11 Ch. D. 244; 48 L. J. (CH.) 358; 40 L. T. 358; 27 W. R. 485 731, 782
——— *v.* Aldridge, *Re* Ward. *See* Ward, *Re*, Allen *v.* Aldridge.
——— *v.* Bone (1841), 4 Beav. 493 729, 833
——— *v.* Clark (1863), 7 L. T. 781; 11 W. R. 304 757
——— *v.* Coltart (1883), 11 Q. B. D. 782; 52 L. J. (Q. B.) 686; 48 L. T. 944; 31 W. R. 841; 5 Asp. M. L. C. 104 . 165, 181, 255, 256, 260, 262, 295, 296
——— *v.* Jarvis (1869), 4 Ch. App. 616; 21 L. T. 280; 17 W. R. 943 . 781, 799
——— *v.* Jervoise (1847), 11 I. Eq. R. 583 818
——— *v.* Lloyd, *Re* Lloyd. *See* Lloyd, *Re*, Allen *v.* Lloyd.
——— *v.* Norris, *Re* Norris. *See* Norris, *Re*, Allen *v.* Norris.
——— *v.* Quebec Warehouse Co. (1886), 12 App. Cas. 101; 56 L. J. (P. C.) 6; 56 L. T. 30 490
——— *v.* Yoxall (1844), 1 Car. & Kir. 315 802
Allerton Sailing Ship Co. *v.* Falk (1888), 6 Asp. M. L. C. 287 . . 130, 131, 132, 192, 194
Alliance Bank *v.* Tucker (1867), 17 L. T. 13; 15 W. R. 992 . . . 759, 830
Allingham, *Re* (1886), 32 Ch. D. 36; 55 L. J. (CH.) 800; 54 L. T. 905; 34 W. R. 619, C. A. 783
Allinson *v.* General Council of Medical Education and Registration, [1894] 1 Q. B. 750; 63 L. J. (Q. B.) 534; 70 L. T. 471; 58 J. P. 542; 42 W. R. 289; 9 R. 217, C. A. 850
Allison *v.* Bristol Marine Insurance Co. (1876), 1 App. Cas. 209; 34 L. T. 809; 24 W. R. 1039 303, 313
——— *v.* Clayhills (1907), 97 L. T. 709 749
——— *v.* Herring (1839), 9 Sim. 583 781
——— *v.* Rayner (1827), 7 B. & C. 441 756
——— & Co. and Richards, *Re* (1904), 20 T. L. R. 584, C. A. . . 131, 139, 194
Alma, The (1861), Lush. 378 569
———————, [1903] P. 55; 71 J. (P.) 21; 88 L. T. 64; 51 W. R. 415; 19 T. L. R. 149; 9 Asp. M. L. C. 375 617
Alne Holme, The (1882), 47 L. T. 309; 4 Asp. M. L. C. 593 616

PAGE
Alne Holme, The, [1893] P. 173; 62 L. J. (P.) 51; 68 L. T. 862; 41 W. R. 572; 1 R. 607; 7 Asp. M. L. C. 344 121, 132, 276, 277
Alsager *v.* St. Katherine's Dock Co. (1845), 14 M. & W. 794 284
Alsop *v.* Oxford (Lord) (1833), 1 My. & K. 564; 2 L. J. (CH.) 174 . . . 796
Alston *v.* Herring (1856), 11 Exch. 822; 25 L. J. (EX.) 177 . . . 101, 204
—— *v.* Sims (1855), 24 L. J. (CH.) 553; 1 Jur. (N. S.) 438; 3 W. R. 451; 3 Eq. Rep. 334 842
Altair, The, [1897] P. 105; 66 L. J. (P.) 42; 76 L. T. 263; 45 W. R. 622; 8 Asp. M. L. C. 224 358, 491, 566, 569, 572
Amalia, The (1863), 1 Moo. P. C. C. (N. S.) 471; 32 L. J. (P. M. & A.) 191; Brown. & Lush. 151; 8 L. T. 805; 9 Jur. (N. S.) 1111; 12 W. R. 24; 2 New Rep. 533 12, 612, 616
—— (1864), 34 L. J. (P. M. & A.) 21; 5 New Rep. 164, n.; 13 W. R. 111..612
Amazon, The *v.* The Osprey (1867), Holt (ADM.), 137 434
Amelia, The, The Aimo. *See* Aimo, The, The Amelia.
"American," The, and The "Syria," Union Steamship Co. *v.* "Aracan" (Owners). *See* Union Steamship Co. *v.* "Aracan" (Owners), The "American" and The "Syria."
Amerika, The (1913), 30 T. L. R. 218 541
"Amérique," The (1874), L. R. 6 P. C. 468; 31 L. T. 854; 23 W. R. 488; 2 Asp. M. L. C. 460 576, 581
Ames, *Re*, Ames *v.* Taylor (1883), 25 Ch. D. 72; 32 W. R. 287 . . . 753, 806
Amies *v.* Stevens (1718), 1 Stra. 127 217, 325
Amos *v.* Temperley (1841), 8 M. & W. 798; 11 L. J. (EX.) 183 . . . 295, 296
Amphitrite, The (1832), 2 Hag. Adm. 403 63
Andalina, The (1886), 12 P. D. 1; 56 L. T. 171; 35 W. R. 336; 6 Asp. M. L. C. 62 72, 303, 624, 631
Andalusian, The (1878), 3 P. D. 182; 47 L. J. (P.) 65; 39 L. T. 204; 27 W. R. 172; 4 Asp. M. L. C. 22 14, 17, 613
Anders Knape, The (1879), 4 P. D. 213; 48 L. J. (P.) 53; 40 L. T. 684; 4 Asp. M. L. C. 142 557
Andersen *v.* Crundall & Co. (1898), 14 T. L. R. 256 206, 207
Anderson *v.* Anderson, [1895] 1 Q. B. 749; 64 L. J. (Q. B.) 457; 72 L. T. 313; 43 W. R. 322; 14 R. 367, C. A. 140
—— *v.* Boynton (1849), 13 Q. B. 308; 19 L. J. (Q. B.) 42; 14 Jur. 14; 7 Dow. & L. 25 776
—— *v.* Butler's Wharf Co. (1879), 48 L. J. (CH.) 824 27
—— *v.* Clark (1824), 2 Bing. 20 161, 264
—— *v.* Hillies (1852), 12 C. B. 499; 21 L. J. (C. P.) 150; 16 Jur. 819. 293, 307
—— *v.* May (1800), 2 Bos. & P. 237; 3 Esp. 167 780, 781
—— *v.* Ocean Steamship Co. (1884), 10 App. Cas. 107; 54 L. J. (Q. B.) 192; 52 L. T. 441; 33 W. R. 433; 5 Asp. M. L. C. 401 . 320, 323, 572, 573
—— *v.* Passman (1835), 7 C. & P. 193 840
—— *v.* Pitcher (1800), 2 Bos. & P. 164 83
—— *v.* Radcliffe (1858), E. B. & E. 806; 29 L. J. (Q. B.) 128; 1 L. T. 487; 6 Jur. (N. S.) 578; 8 W. R. 283 811
—— *v.* Rayner, [1903] 1 K. B. 589; 72 L. J. (K. B.) 292; 88 L. T. 313; 51 W. R. 369; 19 T. L. R. 297; 9 Asp. M. L. C. 385, C. A. . 45
—— *v.* "San Roman" (Owners), The "San Roman" (1872), L. R. 3 A. & E. 583; 41 L. J. (ADM.) 72; 26 L. T. 948; affirmed (1873), L. R. 5 P. C. 301; 42 L. J. (ADM.) 46; 28 L. T. 381; 21 W. R. 393; 1 Asp. M. L. C. 603 . 95, 96, 109, 141, 169
——, Anderson & Co. *v.* English and American Shipping Co., Ltd. and Bowring (C. J.) & Co. (1895), 1 Com. Cas. 85 107
Anderston Foundry Co. *v.* Law (1869), 7 Macph. (Ct. of Sess.) 836; 41 Sc. Jur. 449 247
Andrew, *Re* (1861), 7 H. & N. 87; 30 L. J. (EX.) 403 841, 845
—— *v.* Hawley (1857), 26 L. J. (EX.) 323 755
—— *v.* Moorhouse (1814), 5 Taunt. 435 312, 313
Andrews, *Ex parte* (1844), 13 L. J. (CH.) 222 786, 789
——, *Re* (1853), 17 Beav. 510; 23 L. J. (CH.) 129; 17 Jur. 1145; 2 W. R. 46 775, 779, 781
—— *v.* Barnes (1888), 39 Ch. D. 133; 57 L. J. (CH.) 694; 58 L. T. 748; 53 J. P. 4; 36 W. R. 705, C. A. 798
Aneroid, The (1877), 2 P. D. 189; 47 L. J. (P.) 15; 36 L. T. 448; 3 Asp. M. L. C. 418 621
Angel, *Ex parte* (1840), 4 Jur. 656 714

PAGE
Angell, *Re*, Angell *v.* Oodeen (1860), 29 L. J. (C. P.) 227; 6 Jur. (N. S.) 1373 . 836
——— *v.* Tratt (1883), Cab. & El. 118 777
Angerona, The (1814), 1 Dods. 382 126, 247
Angier Brothers *v.* Stewart Brothers (1884), Cab. & El. 357 104
Anglo-African Co. *v.* Lamzed (1866), L. R. 1 C. P. 226; 35 L. J. (C. P.) 145; 13 L. T. 796; 12 Jur. (N. S.) 294; 14 W. R. 477; 1 Har. & Ruth. 216 . 203, 206
Anglo-Algerian Steamship Co., Ltd. *v.* Houlder Line, Ltd., [1908] 1 K. B. 659; 77 L. J. (K. B.) 187; 98 L. T. 440; 24 T. L. R. 235; 13 Com. Cas. 187 . 537, 635, 644
Anglo-American Oil Co., Ltd. *v.* Port of London Authority, [1914] 1 K. B. 14; 83 L. J. (K. B.) 125; 30 T. L. R. 14 636
Anglo-Argentine Live Stock and Produce Agency *v.* Temperley Shipping Co., [1899] 2 Q. B. 403; 68 L. J. (Q. B.) 900; 81 L. T. 296; 48 W. R. 64; 15 T. L. R. 472; 4 Com. Cas. 281; 8 Asp. M. L. C. 595 . . . 318, 321, 324
Anglo-Austrian Printing and Publishing Union, *Re*, [1894] 2 Ch. 622; 63 L. J. (CH.) 632; 71 L. T. 331; 42 W. R. 648; 1 Mans. 361; 8 R. 510 . 801, 804
Anglo-Hellenic Steamship Co., Ltd. *v.* Dreyfus (Louis) & Co. (1913), 108 L. T. 36; 57 Sol. Jo. 246; 29 T. L. R. 197 140, 183, 260
Anglo-Indian, The (1875), 33 L. T. 233; 23 W. R. 882; 3 Asp. M. L. C. 1 . 383, 399, 486
———————, and The Boanerges. *See* Boanerges, The, and The Anglo-Indian.
Anglo-Maltese Hydraulic Dock Co., *Re* (1885), 54 L. J. (CH.) 730; 52 L. T. 841; 33 W. R. 652 815
Angove, *Re* (1882), 26 Sol. Jo. 417 787
Anna, The (1876), 1 P. D. 253; 46 L. J. (P.) 15; 34 L. T. 895, C. A. . . 69
——— (1901), 18 T. L. R. 25 267, 271
Anna and Berta, The (1891), 64 L. T. 332; 7 Asp. M. L. C. 31 831
Anna, The, and The Port Caledonia. *See* Port Caledonia, The, and The Anna.
Anna Helena, The (1883), 49 L. T. 204; 5 Asp. M. L. C. 142 . . 574, 576, 584
Annandale, The (1877), 2 P. D. 218; 47 L. J. (P.) 3; 37 L. T. 139; 26 W. R. 38; 3 Asp. M. L. C. 504, C. A. 33, 82
Annapolis, The, The Golden Light, The H. M. Hayes (1861), Lush. 355; 5 L. T. 37 491, 568
———————, The Johanna Stoll (1861), Lush. 295; 30 L. J. (P.) 201; 4 L. T. 417 12, 376, 530
Anne, The (1860), 5 Ir. Jur. (N. S.) 360 488
Annen *v.* Woodman (1810), 3 Taunt. 299 188
Annie, The (1886), 12 P. D. 50; 56 L. J. (P.) 70; 56 L. T. 500; 35 W. R. 366; 6 Asp. M. L. C. 117 558, 561, 619
———————, [1909] P. 176; 78 L. J. (P.) 81; 100 L. T. 415; 25 T. L. R. 416; 11 Asp. M. L. C. 213 426, 431, 433, 464, 493, 544
——— (1911), *Shipping Gazette*, November 11th; reversed (1912), *Shipping Gazette*, February 2nd, C. A. 451, 474, 475, 476
Annot Lyle, The (1886), 11 P. D. 114; 55 L. J. (P.) 62; 55 L. T. 576; 34 W. R. 647; 6 Asp. M. L. C. 50, C. A. 485, 489, 501, 536
Anon. (case 779) (1699), 12 Mod. Rep. 447 283
——— (1825), 3 L. J. (O. S.) (K. B.) 106 839
——— (1841), 5 Jur. 678 839
———, *Re* (1849), 19 L. J. (EX.) 219 829
——— *v.* Noell (1661), 1 Keb. 100 209
Anselm, The, [1907] P. 151; 76 L. J. (P.) 54; 97 L. T. 16; 23 T. L. R. 378; 10 Asp. M. L. C. 438, C. A. 360, 376, 473, 474, 475, 476, 477
Anselma de Larrinaga, The (1913), 29 T. L. R. 587 540
Antilope, The (1873), L. R. 4 A. & E. 33; 42 L. J. (ADM.) 42; 28 L. T. 74; 21 W. R. 464; 1 Asp. M. L. C. 511 587
Antwerp City, The (1912), *Shipping Gazette*, January 29th 413
Ape, The (1914), 136 L. T. Jo. 378; 30 T. L. R. 386 . . . 413, 531, 611
Apelt, *Re*, *Ex parte* Byrne (1889), 6 Morr. 102 835
Apollinaris Co. *v.* Nord Deutsche Insurance Co., [1904] 1 K. B. 252; 73 L. J. (K. B.) 62; 89 L. T. 670; 52 W. R. 174; 20 T. L. R. 79; 9 Com. Cas. 91; 9 Asp. M. L. C. 526 75
Apollo, The (1824), 1 Hag. Adm. 306 37
"Apollo" (Owners) *v.* Port Talbot Co., The "Apollo," [1891] A. C. 499; 61 L. J. (P.) 25; 65 L. T. 590; 55 J. P. 820; 7 Asp. M. L. C. 115 . 532, 641, 648
Appleby *v.* Pollock (1748), cited in Abbott on Shipping, 5th ed., p. 385; 14th ed., p. 844 157
Appleton *v.* Binks (1804), 5 East, 148; 1 Smith, K. B. 361 830

PAGE
Appleton *v.* Braybrook (Lord) (1817), 6 M. & S. 34; 2 Stark. 6 84
Aquila, The (1798), 1 Ch. Rob. 37 559, 560, 569
Aras, The, [1907] P. 28; 76 L. J. (P.) 37; 96 L. T. 95; 10 Asp. M. L. C. 358 . 423
Araxes, The, and The Black Prince, General Iron Screw Co. *v.* Moss. *See* General Iron Screw Co. *v.* Moss, The Araxes and the Black Prince.
"Archdruid," The, Allan *v.* Johnstone. *See* Allan *v.* Johnstone, The "Archdruid."
Archtor, The (1908), *Shipping Gazette*, March 7th, C. A. 460
Ardan Steamship Co. *v.* Weir (Andrew) & Co., [1905] A. C. 501; 74 L. J. (P. C.) 143; 93 L. T. 559; 21 T. L. R. 723; 11 Com. Cas. 26; 10 Asp. M. L. C. 135 190
"Ardandhu," The, The "Kronprinz" (Owners of Cargo) *v.* The "Kronprinz" (Owners). *See* "Kronprinz," The (Owners of Cargo) *v.* The "Kronprinz" (Owners), The "Ardandhu."
Arden *v.* Arden (1885), 29 Ch. D. 702; 54 L. J. (CH.) 655; 52 L. T. 610; 33 W. R. 593 746
"Arden" Steamship Co., Ltd. *v.* Mathwin & Son, [1912] S. C. 211 . 127, 132, 191, 194
Ardincaple (1834), 3 Hag. Adm. 151 575
Argentina, The (1867), L. R. 1 A. & E. 370; 16 L. T. 743 . . . 147, 159, 160, 163, 167
"Argentino," The, "Gracie" (Owners) *v.* "Argentino" (Owners). *See* "Gracie" (Owners) *v.* "Argentino" (Owners), The "Argentino."
Argo, The (1859), Sw. 462 502, 531
——— (1900), 82 L. T. 602; 9 Asp. M. L. C. 74, C. A. . . . 382, 510, 534
Argonaut, The (1884), unreported 589
Argos, Cargo ex, Gaudet *v.* Brown (1873), L. R. 5 P. C. 134; 42 L. J. (ADM.) 1; 28 L. T. 77; 21 W. R. 420 228, 230, 231, 260, 262, 264, 266, 268, 274, 279, 304
Ariadne, The (1911), 27 T. L. R. 304 422
Arina, The (1887), 12 P. D. 118; 56 L. J. (P.) 57; 57 L. T. 121; 35 W. R. 654; 6 Asp. M. L. C. 141 48, 53
Aristocrat, The, [1908] P. 9; 77 L. J. (P.) 57; 97 L. T. 838; 10 Asp. M. L. C. 567, C. A. 360, 474, 475, 476
Arizona, The (1880), 5 P. D. 123; 49 L. J. (P.) 54; 42 L. T. 505; 28 W. R. 704; 4 Asp. M. L. C. 269, C. A. 592, 595
Arkle *v.* Henzell (1858), 8 E. & B. 828; 27 L. J. (M. C.) 110; 4 Jur. (N. S.) 306 20
"Arklow," The, Emery *v.* Cichero. *See* Emery *v.* Cichero, The "Arklow."
Armadillo, The (1841), 1 Wm. Rob. 251 72
Armitage *v.* Parsons, [1908] 2 K. B. 410; 77 L. J. (K. B.) 850; 99 L. T. 329; 24 T. L. R. 685; 52 Sol. Jo. 515, C. A. 800
Armstrong, *Re* (1886), 30 Sol. Jo. 181 819
——— *v.* Allan Brothers & Co. (1892), 8 T. L. R. 613 . 143, 147, 152, 199
——— (George) & Sons, *Re*, [1896] 1 Ch. 536; 65 L. J. (CH.) 258; 74 L. T. 134; 44 W. R. 281 732, 833
Arne, The, [1904] P. 154; 73 L. J. (P.) 34; 90 L. T. 517; 20 T. L. R. 221; 9 Asp. M. L. C. 565. 279
Arno, The (1895), 72 L. T. 621; 8 Asp. M. L. C. 5, C. A. . . . 236, 306, 589
Arnold *v.* Cowie, The "Glenduror" (1871), L. R. 3 P. C. 589; 24 L. T. 499; 1 Asp. M. L. C. 31 581
——— *v.* Poole Corporation (1842), 5 Scott (N. R.), 741; 12 L. J. (C. P.) 97; 7 Jur. 653; 2 Dowl. (N. S.) 574; 4 Man. & G. 860 732
Arnot *v.* Biscoe (1748), 1 Ves. Sen. 95 754
"Arratoon Apcar," The, Ocean Steamship Co., "Hebe" (Owners) *v.* Apcar & Co., "Arratoon Apcar" (Owners). *See* Ocean Steamship Co., "Hebe" (Owners) *v.* Apcar & Co., "Arratoon Apcar" (Owners), The "Arratoon Apcar."
Arrospe *v.* Barr (1881), 8 R. (Ct. of Sess.) 602; 18 Sc. L. R. 411 . . . 151
Arrow Shipping Co. *v.* Tyne Improvement Commissioners, The Crystal, [1894] A. C. 508; 63 L. J. (P.) 146; 71 L. T. 346; 6 R. 258; 7 Asp. M. L. C. 513 534, 555, 642
Arrowsmith, *Ex parte* (1807), 14 Ves. 209 736, 834
Arroyo, The (1900), 16 T. L. R. 255 175
Artaza *v.* Smallpiece (1793), 1 Esp. 23 295
Arthur, The (1862), 6 L. T. 556 570
Arthur *v.* Barton (1840), 6 M. & W. 138; 9 L. J. (EX.) 187 . . . 67, 69
——— & Co., *Ex parte*, *Re* Hilliard. *See* Hilliard, *Re*, *Ex parte* Arthur & Co.

PAGE
Arthur Gordon, The, and The Independence (1861), Lush. 270 . 434, 442, 444, 485
Articled Clerk, *Re* an (1871), 25 L. T. 161 715
Arundell *v.* Bell (1883), 52 L. J. (CH.) 537; 49 L. T. 345; 31 W. R. 477, C. A. . 843
Asfar & Co. *v.* Blundell, [1896] 1 Q. B. 123; 65 L. J. (Q. B.) 138; 73 L. T. 648; 44 W. R. 130; 15 R. 481; 8 Asp. M. L. C. 106, C. A. 306
Ashburton (Lord) *v.* Pape, [1913] 2 Ch. 469; 82 L. J. (CH.) 527; 109 L. T. 381; 57 Sol. Jo. 644; *sub nom.* Lord Ashburton *v.* Nocton, 29 T. L. R. 623, C. A. 735, 740
Ashcroft *v.* Crow Orchard Colliery Co. (1874), L. R. 9 Q. B. 540; 43 L. J. (Q. B.) 194; 31 L. T. 266; 22 W. R. 825; 2 Asp. M. L. C. 397 . 183, 200, 260
Ashton, The, [1905] P. 21; 74 L. J. (P.) 28; 92 L. T. 811; 53 W. R. 639; 21 T. L. R. 126; 10 Asp. M. L. C. 88 . . . 426, 441, 454, 466, 467, 481
Ashworth *v.* English Card Clothing Co., Ltd. (No. 1), [1904] 1 Ch. 702; 73 L. J. (CH.) 274; 90 L. T. 262; 52 W. R. 507; 21 R. P. C. 353 . . 802, 805
Asiatic Petroleum Co., Ltd. *v.* Lennard's Carrying Co., Ltd., [1914] 1 K. B. 419; 109 L. T. 433; 29 T. L. R. 739; 18 Com. Cas. 328, C. A. . . . 111, 217
Aspinall *v.* Stamp (1824), 3 B. & C. 108; 4 Dow. & Ry. (K. B.) 716 . . . 821
Asquith *v.* Asquith, [1885] W. N. 31 846
Assaye, The, [1905] P. 289; 74 L. J. (P.) 145; 94 L. T. 102; 54 W. R. 203; 21 T. L. R. 677; 10 Asp. M. L. C. 183 466
Assets Development Co., Ltd. *v.* Close, Brothers & Co., [1900] 2 Ch. 717; 69 L. J. (CH.) 715; 83 L. T. 162; 48 W. R. 699 768
Assicurazioni Generali *v.* Bessie Morris Steamship Co., [1892] 2 Q. B. 652; 61 L. J. (Q. B.) 754; 67 L. T. 218; 41 W. R. 83; 7 Asp. M. L. C. 217; 4 R. 33, C. A. 108, 221, 222, 223, 235, 236
Aste, Son and Kercheval *v.* Stumore, Weston & Co. (1884), Cab. & El. 319 . 279, 280
Astrakhan, The (1909), *Shipping Gazette*, November 4th 13
————, [1910] P. 172; 79 L. J. (P.) 78; 102 L. T. 539; 26 T. L. R. 329; 11 Asp. M. L. C. 390 537
Athol, The (1842), 1 Wm. Rob. 374 533
Atkins *v.* Delmege (1847), 12 I. Eq. R. 1 750
Atkinson *v.* Abbott (1855), 3 Drew. 251; 25 L. T. (O. S.) 314 . . 729, 741, 833
———— *v.* Cotesworth (1825), 3 B. & C. 647; 3 L. J. (O. S.) (K. B.) 104; 5 Dow. & Ry. (K. B.) 552; 1 C. & P. 339 296, 297
———— *v.* Mackreth (1866), L. R. 2 Eq. 570; 35 L. J. (CH.) 624; 14 L. T. 722; 14 W. R. 883 759
———— *v.* Newcastle Waterworks Co. (1877), 2 Ex. D. 441; 46 L. J. (Q. B.) 775; 36 L. T. 761; 25 W. R. 794, C. A. 45
———— *v.* Powell, *Re* York. *See* York, *Re*, Atkinson *v.* Powell.
———— *v.* Ritchie (1809), 10 East, 530 198
———— *v.* Stephens (1852), 7 Exch. 567; 21 L. J. (EX.) 329 250
———— *v.* Woodall (1862), 1 H. & C. 170; 31 L. J. (P. M. & A.) 174; 6 L. T. 361; 8 Jur. (N. S.) 720; 10 W. R. 671 579, 582
———— and Hewitt *v.* Great Western Insurance Co. (1872), 27 L. T. 103; 1 Asp. M. L. C. 382 112
———— and Pilgrim, *Re* (1858), 26 Beav. 151 792
Atlantic Mutual Insurance Co. *v.* Huth (1880), 16 Ch. D. 474; 44 L. T. 67; 29 W. R. 387; 4 Asp. M. L. C. 369, C. A. . 226, 227, 228, 229, 230, 248, 250, 251, 252
Atlas, The (1862), Lush. 518 563, 564, 577
Attila, The (1879), 5 Quebec Law Reports, 340 419, 493
Attorney, an, *Re* (1855), 3 W. R. 515. 838
————, *Re* (1856), 4 W. R. 617 829, 839
————, *Re*, Burnett *v.* Proois (1870), 22 L. T. 543 830
————, *Re*, Walker *v.* Pearce (1862), 7 L. T. 285 838, 840
A.-G. *v.* Birmingham etc. Drainage Board (1908), 52 Sol. Jo. 855 . . . 804
—— *v.* Brecon Corporation (1878), 10 Ch. D. 204; 48 L. J. (CH.) 153; 40 L. T. 52; 27 W. R. 332 732
—— *v.* Carrington (Lord) (1843), 6 Beav. 454; 12 L. J. (CH.) 453 . . . 803
—— *v.* Edwards, [1891] 1 Ch. 194; 63 L. T. 639 768
—— *v.* Emerson (1889), 24 Q. B. D. 56; 59 L. J. (Q. B.) 192; 62 L. T. 21; 38 W. R. 102, C. A. 832
—— *v.* Fargrove Steam Navigation Co., Ltd. (1908), 24 T. L. R. 430, C. A. . 56
—— *v.* Nethercote (1841), 11 Sim. 529; 10 L. J. (CH.) 162 810
—— *v.* Norstedt (1816), 3 Price, 97 622
—— *v.* Vigors (1838), 7 L. J. (CH.) 214; 2 Jur. 508 804

PAGE
A.-G. for the Colony of Hong Kong *v.* Kwok-a-Sing (1873), L. R. 5 P. C. 179; 42 L. J. (P. C.) 64; 29 L. T. 114; 21 W. R. 825; 12 Cox, C. C. 565 . . 113
Attorneys and Solicitors Act, 1870, *Re* (1875), 1 Ch. D. 573 772
Attwood *v.* Case (1875), 1 Q. B. D. 134; 45 L. J. (M. C.) 20; 33 L. T. 507; 24 W. R. 94 54
Atwood *v.* Sellar (1880), 5 Q. B. D. 286; 49 L. J. (Q. B.) 515; 42 L. T. 644; 28 W. R. 604; 4 Asp. M. L. C. 283, C. A. . . 140, 321, 322
——— *v.* ——— & Co. (1879), 4 Q. B. D. 342 221, 235
Aubert *v.* Gray (1862), 3 B. & S. 163; 32 L. J. (Q. B.) 50; 7 L. T. 469; 9 Jur. (N. S.) 714; 11 W. R. 27 109
Aubin *v.* Holt (1855), 2 K. & J. 66; 25 L. J. (CH.) 36; 4 W. R. 112 . . . 843
Aubrey *v.* Aspinall (1822), Jac. 441 833
Aubusson, *Re, Ex parte* Solomon (1821), 1 Gl. & J. 25 815, 820
Audley *v.* Duff (1800), 2 Bos. & P. 111 83
Audley Hall Cotton Spinning Co., *Re* (1868), L. R. 6 Eq. 245; 37 L. J. (CH.) 904 819
August, The, [1891] P. 328; 60 L. J. (P.) 57; 66 L. T. 32; 7 Asp. M. L. C. 110 141, 242, 248, 329
August Korff, The, [1903] P. 166; 72 L. J. (P.) 53; 89 L. T. 194; 9 Asp. M. L. C. 428 564, 565
Augusta, The (1813), 1 Dods. 283 71
Auguste Legembre, The, [1902] P. 123; 71 L. J. (P.) 53; 86 L. T. 358; 87 L. T. 750; 50 W. R. 622; 18 T. L. R. 373; 9 Asp. M. L. C. 279 . . 558, 570
Aurora, The, The Robert Ingham (1861), Lush. 327 364, 381
Austen *v.* Boys (1858), 2 De G. & J. 626; 27 L. J. (CH.) 714; 4 Jur. (N. S.) 719; 6 W. R. 792 843
Austin, *Re, Ex parte* Yalden (1876), 4 Ch. D. 129; 46 L. J. (BCY.) 59; 35 L. T. 720; 25 W. R. 134, C. A. 818
——— *v.* Lovett, Ship Calvin. *See* Calvin, Ship, Austin *v.* Lovett.
——— *v.* Olsen (1868), L. R. 3 Q. B. 208; 9 B. & S. 46; 37 L. J. (M. C.) 34; 17 L. T. 537; 16 W. R. 426 61
Austin Friars, The (1894), 71 L. T. 27 186
Austin Friars Steam Shipping Co. *v.* Strack, Same *v.* Strack, [1905] 2 K. B. 315; 74 L. J. (K. B.) 683; 93 L. T. 169; 53 W. R. 661; 21 T. L. R. 556; 10 Asp. M. L. C. 70 47, 49, 52, 60
Australasian Insurance Co. *v.* Jackson (1881), 33 L. T. 286; 3 Asp. M. L. C. 26 . 112
Australasian Steam Navigation Co. *v.* Morse (1872), L. R. 4 P. C. 222; 8 Moo. P. C. C. (N. S.) 482; 27 L. T. 357; 20 W. R. 728; 1 Asp. M. L. C. 407 . 76, 77, 226, 227, 229, 230, 231, 245, 248, 250, 251, 252, 253, 254
Australia, The (1859), Sw. 480; 13 Moo. P. C. C. 132; 7 W. R. 718 . 75, 76
————, and The Englishman. *See* Englishman, The, and The Australia.
Australian Steam Navigation Co. *v.* Smith & Sons (1889), 14 App. Cas. 318; 61 L. T. 134 466
Ava, The, and The Rona. *See* Rona, The, and The Ava.
Avery *v.* Bowden, Reid *v.* Hoskins. *See* Reid *v.* Hoskins, Avery *v.* Bowden.
——— *v.* Wood, [1891] 3 Ch. 115; 65 L. T. 122; 39 W. R. 577, C. A. . . 807
Avon and Thomas Joliffe, The, [1891] P. 7; 63 L. T. 712; 39 W. R. 176; 6 Asp. M. L. C. 605 524
Avon Steamship Co. *v.* Leask & Co. (1890), 18 R. (Ct. of Sess.) 280; 28 Sc. L. R. 226 125, 265
Aylesford (Earl) *v.* Poulett (Earl), [1891] 1 Ch. 248; 60 L. J. (CH.) 204; 64 L. T. 336; 39 W. R. 241, C. A. 763
Aylwin, *Re* (1904), 20 T. L. R. 252 831
——— *v.* Aylwin, [1902] P. 203; 71 L. J. (P.) 130; 87 L. T. 142 . . . 757

B.

BABER *v.* Harris (1839), 7 Dowl. 589 840
Baerselman *v.* Bailey, [1895] 2 Q. B. 301; 64 L. J. (Q. B.) 707; 72 L. T. 677; 43 W. R. 593; 14 R. 481; 8 Asp. M. L. C. 4, C. A. . . 117, 204, 205, 206
Bagley, *Re*, [1911] 1 K. B. 317; 80 L. J. (K. B.) 168; 103 L. T. 470; 55 Sol. Jo. 48; 18 Mans. 1, C. A. 857
——— *v.* Maple & Co., Ltd. (1911), 27 T. L. R. 284 738, 743

PAGE
Bagnall *v.* Carlton (1877), 6 Ch. D. 371; 47 L. J. (CH.) 30; 37 L. T. 481; 26 W. R. 243, C. A. 837
Bagot Pneumatic Tyre Co. *v.* Clipper Pneumatic Tyre Co., [1902] 1 Ch. 146; 71 L. J. (CH.) 158; 85 L. T. 652; 50 W. R. 177; 18 T. L. R. 161; 19 R. P. C. 69; 9 Mans. 56, C. A. 734
Bagshawe, *Re*, *Ex parte* Huddersfield and Manchester Rail. and Canal Co. (1848), 2 De G. & Sm. 205; 12 Jur. 510 786
Bahia, The (1864), Brown. & Lush. 292; 11 Jur. (N. S.) 90; 12 L. T. 145 . 74, 225, 234, 235, 236, 237, 307
Baikie *v.* Chandless (1811), 3 Camp. 17 755
Baile *v.* Baile (1872), L. R. 13 Eq. 497; 41 L. J. (CH.) 300; 26 L. T. 283; 20 W. R. 534 824, 826
Bailey, *Re* (1865), 34 Beav. 392 780
———, *Re*, Bailey *v.* Bailey, [1909] W. N. 110; 53 Sol. Jo. 522 . . . 803
——— *v.* Birchall (1865), 2 Hem. & M. 371; 11 Jur. (N. S.) 57; 5 New Rep. 237 . 826
——— *v.* Daniell (1834), Hayes & Jo. 586 831
——— and Hope, *Ex parte*, *Re* Bernard. *See* Bernard, *Re*, *Ex parte* Bailey and Hope.
Baines *v.* Wormsley (1878), 47 L. J. (CH.) 844; 39 L. T. 85; 27 W. R. 36 . 806
Bake *v.* French, [1907] 1 Ch. 428; 76 L. J. (CH.) 299; 96 L. T. 496 . 794, 806, 822
—— *v.* ——— (No. 2), [1907] 2 Ch. 215; 76 L. J. (CH.) 605 . . . 771, 772
Baker, *Ex parte*, *Re* Knox. *See* Knox, *Re*, *Ex parte* Baker.
———, *Ex parte*, *Re* Stogdon. *See* Stogdon, *Re*, *Ex parte* Baker.
———, *Re* (1863), 32 Beav. 526; 8 L. T. 566; 11 W. R. 792; 2 New Rep. 151 . 783
———, *Re* (1907), 52 Sol. Jo. 173 845
———, *Re*, [1912] 2 Ch. 405; 81 L. J. (CH.) 805; 106 L. T. 1012 . . . 761
——— *v.* Buckle (1822), 7 Moore (C. P.), 349 25
——— *v.* Loader (1872), L. R. 16 Eq. 49; 42 L. J. (CH.) 113; 21 W. R. 167 . 754
——— *v.* Mills (1834), 2 Dowl. 382 808
——— *v.* "Theodore H. Rand" (Owners), The "Theodore H. Rand" (1887), 12 App. Cas. 247; 56 L. J. (P.) 65; 56 L. T. 343; 35 W. R. 781; 6 Asp. M. L. C. 122 366, 428, 432, 456
———, Lees & Co., *Re*, [1903] 1 K. B. 189; 72 L. J. (K. B.) 136; 87 L. T. 662; 51 W. R. 246; 19 T. L. R. 113, C. A. 781
Bakewell *v.* Cornish (1884), *Times*, November 24th 835
Baku Standard, S.S. (Master and Owners) *v.* Angele (Master and Owners), [1901] A. C. 549; 70 L. J. (P. C.) 98; 84 L. T. 788; 17 T. L. R. 584; 9 Asp. M. L. C. 197 547, 579
Balch *v.* Symes (1823), Turn. & R. 87 817, 820, 841
Balian & Sons *v.* Joly, Victoria & Co. (1890), 6 T. L. R. 345, C. A. . 94, 95, 290
Ball, *Re* (1873), L. R. 8 C. P. 104; 42 L. J. (C. P.) 104 837
Ballantine & Co. *v.* Paton and Hendry, [1912] S. C. 246; 49 Sc. L. R. 183 . 267
Balley *v.* De Arroyave (1838), 7 Ad. & El. 919; 7 L. J. (Q. B.) 91; 3 Nev. & P. (K. B.) 114 185, 263
Balme *v.* Paver (1821), Jac. 305 783, 784
Baltic, The, The C. S. Butler. *See* C. S. Butler, The, The Baltic.
Bamfield *v.* Goole and Sheffield Transport Co., [1910] 2 K. B. 94; 79 L. J. (K. B.) 1070; 103 L. T. 201, C. A. 101, 197
Bamford *v.* Shuttleworth (1840), 11 Ad. & El. 926 746
Banda and Kirwee Booty (1866), L. R. 1 A. & E. 109; 35 L. J. (ADM.) 17; 14 L. T. 293; 12 Jur. (N. S.) 819 565
Bangor Castle, The (1896), 74 L. T. 768; 8 Asp. M. L. C. 156 . . . 29, 623
Bank of Hindustan, China and Japan, *Re*, *Ex parte* Smith (1867), 3 Ch. App. 125; 37 L. J. (CH.) 185; 17 L. T. 339; 16 W. R. 170 821
Banks *v.* Gibson (1865), 34 Beav. 566; 34 L. J. (CH.) 591; 13 W. R. 1012 . . 843
Banner, *Ex parte*, *Re* Tappenbeck. *See* Tappenbeck, *Re*, *Ex parte* Banner.
——— *v.* Berridge (1881), 18 Ch. D. 254; 50 L. J. (CH.) 630; 44 L. T. 680; 29 W. R. 844; 4 Asp. M. L. C. 420 28
Bannister *v.* Breslauer (1867), L. R. 2 C. P. 497; 36 L. J. (C. P.) 195; 16 L. T. 418; 15 W. R. 840 133, 134
——— *v.* ——— (1875), L. R. 10 Q. B. 553 135
Banshee, The (1887), 6 Asp. M. L. C. 221, C. A. 427, 446, 462, 463
Barber, *Re*, *Ex parte* Manchester and Leeds Rail. Co. (1845), 14 M. & W. 720; 15 L. J. (EX.) 9; 9 Jur. 976; 3 Dow. & L. 244 784
———, *Re*, Burgess *v.* Vinnicome (1886), 34 Ch. D. 77; 56 L. J. (CH.) 216; 55 L. T. 882; 35 W. R. 326 752

PAGE

Barber *v.* Meyerstein (1870), L. R. 4 H. L. 317; 39 L. J. (C. P.) 187; 22 L. T. 808; 18 W. R. 1041 . . 146, 147, 151, 158, 159, 164, 166, 167, 168, 265, 279, 287
——— *v.* Stone (1881), 50 L. J. (Q. B.) 297 735, 736
Barclay *v.* Cuculla y Gana (1784), 3 Doug. (K. B.) 389 . . . 195, 325, 326
——— & Co., Ltd. *v.* Poole, [1907] 2 Ch. 284; 76 L. J. (CH.) 488 . . 17, 28, 29
Barcore, The, [1896] P. 294; 65 L. J. (P.) 97; 75 L. T. 168; 8 Asp. M. L. C. 189 108, 157, 226, 308, 325
Barefoot, The (1850), 14 Jur. 841 580, 585
Barfield, *Re* (1871), 24 L. T. 248; 19 W. R. 466 840
Baring *v.* Corrie (1818), 2 B. & Ald. 137 746
Bark Irma, The (1873), 2 Asp. M. L. C. 155 73
Barker, *Re* (1834), 6 Sim. 476 781
——— *v.* Braham (1773), 2 Wm. Bl. 866 837
——— *v.* Fleetwood Improvement Commissioners (1890), 62 L. T. 831; 54 J. P. 711. 756
——— *v.* Hemming (1880), 5 Q. B. D. 609; 43 L. T. 678, C. A. . 795, 806, 822
——— *v.* Highley (1863), 15 C. B. (N. S.) 27; 32 L. J. (C. P.) 270; 9 L. T. 228; 10 Jur. (N. S.) 391; 11 W. R. 968 30
——— *v.* Hodgson (1814), 3 M. & S. 267 191, 205
——— *v.* M'Andrew (1865), 18 C. B. (N. S.) 759; 34 L. J. (C. P.) 191; 12 L. T. 459; 11 Jur. (N. S.) 637; 13 W. R. 779 . . . 93, 94, 178
——— *v.* St. Quintin (1844), 12 M. & W. 441; 13 L. J. (EX.) 144; 1 Dow. & L. 542 820
——— *v.* Windle (1856), 6 E. & B. 675; 25 L. J. (Q. B.) 349; 2 Jur. (N. S.) 1069; 4 W. R. 603 92, 102, 192
Barking, The (1912), *Shipping Gazette*, April 29th 518
Barnard, *Re*, *Ex parte* Wetherell (1852), 2 De G. M. & G. 359; 17 Jur. 53, C. A. 785
——— *v.* Hunter (1856), 2 Jur. (N. S.) 1213; 5 W. R. 92 749
——— *v.* Scoles (1889), 37 W. R. 668 834
Barne, *Re*, Lee *v.* Barne (1890), 62 L. T. 922 798
Barnes *v.* Durham (1869), L. R. 1 P. & D. 728; 38 L. J. (P. & M.) 46; 20 L. T. 545 815
Barnetson *v.* Petersen Brothers (1902), 5 F. (Ct. of Sess.) 86; 40 Sc. L. R. 56; 10 Scots Law Times, 345 138
Barnett, *Re*, *Ex parte* Reynolds (1885), 15 Q. B. D. 169; 54 L. J (Q. B.) 354; 53 L. T. 448; 33 W. R. 715; 2 Morr 147, C. A. . . . 724
Barnhill's Estate, *Re* (1893), 29 L. R. Ir. 396 . . 798
Baron *v.* Martell (1827), 9 Dow. & Ry. (K. B.) 390 . . 839
Baron Aberdare, The, The Gertrude. *See* Gertrude, The, The Baron Aberdare.
Barque Quilpué, Ltd. *v.* Brown, [1904] 2 K. B. 264; 73 L. J. (K. B.) 596; 90 L. T. 765; 9 Com. Cas. 264; 9 Asp. M. L. C. 596, C. A. 278
Barraclough *v.* Brown, [1897] A. C. 615; 66 L. J. (Q. B.) 672; 76 L. T. 797 . 642
Barret *v.* Dutton (1815), 4 Camp. 333 119, 126, 200, 219
Barrie *v.* Peruvian Corporation (1896), 2 Com. Cas. 50 118, 129
Barron *v.* Stewart, The "Panama" (1870), L. R. 3 P. C. 199; 39 L. J. (ADM.) 37; 23 L. T. 12; 18 W. R. 1011; 6 Moo. P. C. C. (N. S.) 484 71
Barrow, *Re* (1853), 17 Beav. 547; 18 Jur. 181; 2 W. R. 109 . . 783, 788, 789
——— *v.* Coles (1811), 3 Camp. 92 157, 161, 163
——— *v.* Williams & Co. (1890), 7 T. L. R. 37 115, 232
Barry *v.* Butlin (1838), 2 Moo. P. C. C. 480 752
Bartlett *v.* Higgins, [1901] 2 K. B. 230; 70 L. J. (K. B.) 621; 84 L. T. 509; 49 W. R. 449, C. A. 769, 800, 806
Barton, *Ex parte*, *Re* Finch and Shepheard. *See* Finch and Shepheard, *Re*, *Ex parte* Barton.
——— *v.* Wolliford (1687), Comb. 56 113
Barwell *v.* Brooks (1844), 7 Beav. 345 790
——— *v.* ———, *Re* Cattlin. *See* Cattlin, *Re*, Barwell *v.* Brooks.
Barwick *v.* Burnyeat, Brown & Co. (1877), 36 L. T. 250; 25 W. R. 395; 3 Asp. M. L. C. 376 133, 149
Bassett, *Re*, *Ex parte* Lewis, [1896] 1 Q. B. 219; 65 L. J. (Q. B.) 144; 73 L. T. 736; 44 W. R. 240 794, 806, 822
Bassett Hound, The (1894), 71 L. T. 12; 6 R. 764; 7 Asp. M. L. C. 467, C. A. . 402, 507
Bastifell *v.* Lloyd (1862), 1 H. & C. 388; 31 L. J. (EX.) 413; 10 W. R. 721 . 127 256, 257, 259, 260, 261

PAGE
Batavier, The (1845), 2 Wm. Rob. 407 488, 516
——— (1853), 1 Ecc. & Ad. 169 562
——— (1854), 1 Ecc. & Ad. 378; affirmed, *sub nom.* Netherlands Steam Boat Co. *v.* Styles, The Batavier (1854), 9 Moo. P. C. C. 286 . 463, 485, 487
Bateman, *Ex parte* (1845), 6 Q. B. D. 853 711
———, *Re* (1833), 2 Dowl. 161 830
Bates *v.* Gordon Hotels, Ltd., [1913] 1 K. B. 631; 82 L. J. (K. B.) 441; 108 L. T. 510; 57 Sol. Jo. 303; 29 T. L. R. 298 804
——— *v.* Sturges (1832), 7 Bing. 158; 2 Moo. & S. 172 836
——— *v.* Todd (1831), 1 Mood. & R. 106 144, 145, 156
Batley *v.* Kynock (1875), L. R. 20 Eq. 632; 44 L. J. (CH.) 565; 33 L. T. 45 . 802
Battams and Hutchinson, *Re*, [1897] 1 Ch. 699; 66 L. J. (CH.) 394; 76 L. T. 385; 45 W. R. 458 781, 792
Batten *v.* Wedgwood Coal and Iron Co. (1884), 28 Ch. D. 317; 54 L. J. (CH.) 686; 52 L. T. 212; 33 W. R. 303 . 794, 819
——— *v.* ——— (1886), 31 Ch. D. 346; 55 L. J. (CH.) 396; 54 L. T. 245; 34 W. R. 288 754, 835, 836
Battersea, The (1912), *Shipping Gazette*, February 14th 477, 497
Batthyany *v.* Bouch (1881), 50 L. J. (Q. B.) 421; 44 L. T. 177; 29 W. R. 665; 4 Asp. M. L. C. 380 22
Baumvoll Manufactur von Scheibler & Co. *v.* Gilchrest & Co., [1892] 1 Q. B. 253; 61 L. J. (Q. B.) 121; 66 L. T. 66; 7 Asp. M. L. C. 130, C. A.; affirmed, *sub nom.* Baumwoll Manufactur von Carl Scheibler *v.* Furness, [1893] A. C. 8; 62 L. J. (Q. B.) 201; 68 L. T. 1; 7 Asp. M. L. C. 263; 1 R. 59 . . 34, 85, 86, 142, 170, 174, 527
Bawtree *v.* Watson (1838), 2 Keen, 713; 7 L. J. (CH.) 183 822
Baxter *v.* Chapman (1873), 29 L. T. 642; 2 Asp. M. L. C. 170 162
Baxter's Leather Co. *v.* Royal Mail Steam Packet Co., [1908] 2 K. B. 626; 77 L. J. (K. B.) 988; 99 L. T. 286; 24 T. L. R. 537, C. A. 157, 290
Bayley, *Ex parte*, *Re* Harper. *See* Harper, *Re*, *Ex parte* Bayley.
———, *Re* (1854), 18 Beav. 415; 2 W. R. 404 788
——— *v.* Buckland (1847), 1 Exch. 1; 5 Dow. & L. 115 742, 833
Baylis, *Ex parte*, *Re* Thompson. *See* Thompson, *Re*, *Ex parte* Baylis.
———, *Re*, [1896] 2 Ch. 107; 65 L. J. (CH.) 612; 74 L. T. 506; 44 W. R. 533, C. A. 771, 774, 779, 786, 787, 788
———, *Re*, [1907] 2 Ch. 54; 76 L. J. (CH.) 358; 96 L. T. 812 763
Bayly's Estate, *Re*, *Ex parte* Humphrey (1860), 12 I. Ch. R. 315; 6 Ir. Jur. (N. S.) 25 820
Beal *v.* Marchais, The "Bougainville" and The "James C. Stevenson" (1873), L. R. 5 P. C. 316; 28 L. T. 822; 2 Asp. M. L. C. 1 . . 383, 385, 389, 428, 429, 443, 444, 458
Beale, *Re* (1849), 11 Beav. 600 772
——— *v.* Thompson (1803), 3 Bos. & P. 405 49, 51, 567
Beall *v.* Smith (1873), 9 Ch. App. 85; 43 L. J. (CH.) 245 833
Beamish's Trusts, *Re* (1871), 19 W. R. 740 803
Bean *v.* Wade (1885), Cab. & El. 519 757
Bearn, The, [1906] P. 48; 75 L. J. (P.) 9; 94 L. T. 265; 22 T. L. R. 165; 10 Asp. M. L. C. 208, C. A. 532, 601, 642, 647
Beatson *v.* Schank (1803), 3 East, 233 105, 106, 131
Beattie *v.* Ebury (Lord) (1873), 43 L. J. (CH.) 80; 29 L. T. 419; 22 W. R. 68 796
Beaumont *v.* Senior, [1903] 1 K. B. 282; 72 L. J. (K. B.) 141; 88 L. T. 234 . 801
Bebb *v.* Law Society, [1913] W. N. 209; 109 L. T. 36; 57 Sol. Jo. 664; 29 T. L. R. 634; affirmed, [1913] W. N. 355; 58 Sol. Jo. 153; 30 T. L. R. 179, C. A. 710, 828
Becke, *Re* (1854), 18 Beav. 462 839
——— *v.* Cattell (1841), 3 Man. & G. 480; 11 L. J. (C. P.) 49; 4 Scott (N. R.), 246 739, 848
——— *v.* Penn (1835), 7 C. & P. 397 740
——— and Flower, *Re* (1844), 5 Beav. 406 784, 791
Beckford *v.* Clerke (1666), 1 Keb. 830 110
Beddoe, *Re*, Downes *v.* Cottam, [1893] 1 Ch. 547; 62 L. J. (CH.) 233; 68 L. T. 595; 41 W. R. 177; 2 R. 223, C. A. 798
Bede Steamship Co. *v.* River Wear Commissioners, [1907] 1 K. B. 310; 76 L. J. (K. B.) 434; 96 L. T. 370; 10 Asp. M. L. C. 370, C. A. . . . 647
Bedson, *Re* (1846), 9 Beav. 5; 15 L. J. (CH.) 153 776
Beeswing, The (1885), 5 Asp. M. L. C. 484, C. A. 86

PAGE
Behn *v.* Burness (1863), 3 B. & S. 751; 32 L. J. (Q. B.) 204; 8 L. T. 207; 9 Jur. (N. S.) 620; 11 W. R. 496 91, 142, 143, 144, 179, 192
Belaney *v.* Ffrench (1873), 8 Ch. App. 918; 43 L. J. (CH.) 312; 29 L. T. 706; 22 W. R. 177 818
Belcher *v.* Capper (1842), 4 Man. & G. 502; 5 Scott (N. R.), 257; 11 L. J. (C. P.) 274 85
Beldon *v.* Campbell (1851), 6 Exch. 886; 20 L. J. (EX.) 342 572
Belfast Harbour Commissioners *v.* Lawther (1865), 17 I. Ch. R. 54 . . . 299
——— *v.* ———, The Edward Cardwell (1865), 12 L. T. 677 287
Belfast Riots Commission Case (1886), 21 L. J. N. C. 556 725
Belfort, The (1884), 9 P. D. 215; 53 L. J. (P.) 88; 51 L. T. 271; 33 W. R. 171; 5 Asp. M. L. C. 291 88
Belgic, The (1875), 2 P. D. 57, n.; 35 L. T. 929; 3 Asp. M. L. C. 348. 529, 532, 640, 648
Bell *v.* Aitkin (1868), L. R. 3 C. P. 320; 37 L. J. (C. P.) 168; 18 L. T. 363; 16 W. R. 704 803
—— *v.* Bank of London (1858), 3 H. & N. 730; 28 L. J. (EX.) 116 . . . 24
—— *v.* Blyth (1868), 4 Ch. App. 136; 38 L. J. (CH.) 178; 19 L. T. 662; 17 W. R. 194 30
—— *v.* Girdlestone, [1913] 2 K. B. 255; 82 L. J. (K. B.) 696; 108 L. T. 648 . 812
—— *v.* Kymer (1814), 5 Taunt. 477 296
—— *v.* Puller (1810), 2 Taunt. 285 207, 208, 311
—— *v.* Taylor (1836), 8 Sim. 216 816
Bellairs *v.* Tucker (1884), 13 Q. B. D. 562 837
Bellamy & Co. *v.* Lunn & Co. (1897), 8 Asp. M. L. C. 348 51
——— and Metropolitan Board of Works, *Re* (1883), 24 Ch. D. 387; 52 L. J. (CH.) 870; 48 L. T. 801; 47 J. P. 550; 31 W. R. 900, C. A. . . . 744
Bellanoch, The, [1907] P. 170; 76 L. J. (P.) 83, C. A.; affirmed, *sub nom.* Canning (Owners) *v.* Bellanoch (Owners), [1907] A. C. 269; 76 L. J. (P.) 160; 97 L. T. 315 387, 406, 427, 428, 436, 446, 473, 474, 475, 476
Bellcairn, The (1886), 54 L. T. 544; 5 Asp. M. L. C. 582 35
Bellerophon, H.M.S. (1875), 44 L. J. (ADM.) 7; 33 L. T. 412; 3 Asp. M. L. C. 58 489, 494, 533
Bellew *v.* Russel (1809), 1 Ball & B. 96 748
Benares, The (1850), 7 Notes of Cases, Supplement l. 622
——— (1883), 9 P. D. 16; 53 L. J. (P.) 2; 49 L. T. 702; 32 W. R. 268; 5 Asp. M. L. C. 171, C. A. 368, 370, 428, 459
Benlarig, The (1888), 14 P. D. 3; 58 L. J. (P.) 24; 60 L. T. 238; 6 Asp. M. L. C. 360 564
Benmohr, The (1904), 52 W. R. 686 530
Bennett, *Re* (1845), 8 Beav. 467; 14 L. J. (CH.) 403 786, 789
——— *v.* Baxter (1840), 10 Sim. 417; 9 L. J. (CH.) 137; 4 Jur. 50 . . 737
——— *v.* Bennett, *Re* Fish. *See* Fish, *Re*, Bennett *v.* Bennett.
——— *v.* Peninsular and Oriental Steam Boat Co. (1848), 6 C. B. 775 . . 196
——— and Young *v.* Bacon (John), Ltd. (1897), 2 Com. Cas. 102, C. A. . . 145
Bennett S.S. Co. *v.* Hull Mutual Protection Society, Ltd., [1913] 3 K. B. 372; 82 L. J. (K. B.) 1003; 109 L. T. 213; 58 Sol. Jo. 14; 29 T. L. R. 645; 18 Com. Cas. 274 360
Bennetts & Co. *v.* Brown, [1908] 1 K. B. 490; 77 L. J. (K. B.) 515; 98 L. T. 281; 24 T. L. R. 199; 52 Sol. Jo. 160; 13 Com. Cas. 110 . . 123, 141, 274, 277
Benson *v.* Blunt (1841), 1 Q. B. 870; 10 L. J. (Q. B.) 333; 1 Gal. & Dav. 449 . 121, 124, 200, 272
——— *v.* Chapman (1849), 8 C. B. 950; 13 Jur. 969; 2 H. L. Cas. 696 . 74, 221, 223, 235, 296, 303
——— *v.* Duncan (1849), 3 Exch. 644; 18 L. J. (EX.) 169; 14 Jur. 218 . 109, 110, 223, 224, 236, 246, 247, 249, 250
——— *v.* Heathorn (1842), 1 Y. & C. Ch. Cas. 326 136
——— & Co. *v.* Schneider (1817), 7 Taunt. 273 102, 140
Bentinck, *Re*, Bentinck *v.* Bentinck (1893), 37 Sol. Jo. 233 739
Bentley, *Re*, *Ex parte* Bentley (1833), 2 Deac. & Ch. 578; 2 L. J. (BCY.) 39 . 830, 832
Benton *v.* Ellis, Lever & Co. (1885), 1 T. L. R. 499 804
Bentsen *v.* Taylor, Sons & Co. (No. 2), [1893] 2 Q. B. 274; 63 L. J. (Q. B.) 15; 69 L. T. 487; 42 W. R. 8; 4 R. 510; 7 Asp. M. L. C. 385, C. A. . 91, 144, 180, 192, 193
Benwell Tower, The (1895), 72 L. T. 664; 8 Asp. M. L. C. 13 . 24, 25, 27, 28, 29, 299, 302, 303

PAGE
Benyon *v.* Cresswell (1848), 12 Q. B. 899; 18 L. J. (Q. B.) 1; 12 Jur. 1086 . 22
Berdan *v.* Greenwood (1878), 3 Ex. D. 251; 47 L. J. (Q. B.) 628; 39 L. T. 223; 26 W. R. 902, C. A. 825
Berkeley *v.* Watling (1837), 7 Ad. & El. 29; 6 L. J. (K. B.) 195; 2 Nev. & P. (K. B.) 178 144, 145
Bernal *v.* Pim (1835), 1 Gale, 17 284
Bernard, *Re*, *Ex parte* Bailey and Hope (1851), 14 Beav. 18 819
——— *v.* Hyne, The Saracen (1847), 6 Moo. P. C. C. 56; 2 Wm. Rob. 451; 4 Notes of Cases, 498. 622, 627
Bernard Hall, The (1902), 71 L. J. (P.) 72; 86 L. T. 658; 9 Asp. M. L. C. 300 . 412, 415, 420
Bernina, The (1886), 12 P. D. 36; 56 L. J. (P.) 38; 56 L. T. 450; 35 W. R. 214; 6 Asp. M. L. C. 112 238, 239, 240, 613
——— (1886), 55 L. T. 781; 6 Asp. M. L. C. 65 539
——— (2) (1887), 12 P. D. 58; 56 L. J. (P.) 17; 56 L. T. 258; 35 W. R. 314; 6 Asp. M. L. C. 75, C. A. . . . 507, 508, 509, 513, 514
———, Mills *v.* Armstrong. *See* Mills *v.* Armstrong, The Bernina.
Berresford *v.* Montgomerie (1864), 17 C. B. (N. S.) 379 282
Berrie *v.* Howitt (1869), L. R. 9 Eq. 1; 39 L. J. (CH.) 119; 21 L. T. 414 . . 826
Berrington *v.* Phillips (1836), 1 M. & W. 48; 5 L. J. (EX.) 127; 4 Dowl. 758; 1 Tyr. & Gr. 322 810
Bertie, The (1886), 55 L. T. 520; 6 Asp. M. L. C. 26 619, 629
Berwick (Lord), *Re*, Berwick (Lord) *v.* Lane (1900), 81 L. T. 722; varied, 81 L. T. 797, C. A. 737, 838
Beryl, The (1884), 9 P. D. 137; 53 L. J. (P.) 75; 51 L. T. 554; 33 W. R. 191; 5 Asp. M. L. C. 321, C. A. . 366, 426, 428, 446, 454, 455, 456, 457, 460, 502, 506
Bessey *v.* Evans (1815), 4 Camp. 131 120, 271, 274
Best *v.* Saunders (1828), Mood. & M. 208; 7 L. J. (O. S.) (K. B.) 50; 3 Man. & Ry. (K. B.) 4 311
"Beta," The (1869), L. R. 2 P. C. 447 544
Beta, The, The Peter Graham (1884), 9 P. D. 134; 51 L. T. 154; 33 W. R. 190; 5 Asp. M. L. C. 276, C. A. 416, 419, 563
Bethania, The (1910), November 1st (unreported), C. A. 486
Bethell *v.* Clark (1888), 20 Q. B. D. 615; 57 L. J. (Q. B.) 302; 59 L. T. 808; 36 W. R. 611; 6 Asp. M. L. C. 346, C. A. 160
Bethlehem and Bridewell Hospitals, *Re* (1885), 30 Ch. D. 541; 54 L. J. (CH.) 1143; 53 L. T. 558; 34 W. R. 148 724
Betsey (1813), 1 Dods. 289 623
———, The (1843), 2 Wm. Rob. 167 572
Betsey Caines (1826), 2 Hag. Adm. 28 84, 540
Betts *v.* Cleaver (1872), 7 Ch. App. 513; 41 L. J. (CH.) 663; 27 L. T. 85; 20 W. R. 732 801
Bettyes *v.* Maynard (1883), 49 L. T. 389; 31 W. R. 461, C. A. 754
Beucker *v.* Aberdeen Steam Trawling and Fishing Co., Ltd., [1910] S. C. 655; 47 Sc. L. R. 513; 1 Scots Law Times, 235 451, 539
Beulah, The (1842), 1 Wm. Rob. 477 573, 583
Bevan and Whitting, *Re* (1864), 33 Beav. 439 841
Bevan's Case, *Re* Holmes' Estate, Woodward *v.* Humpage. *See* Holmes' Estate, *Re*, Woodward *v* Humpage, Bevan's Case.
Bevins *v.* Hulme (1846), 15 M. & W. 88 756
Bewley *v.* Seymour (1850), 14 Jur. 213 741
Beynon *v.* Godden (1878), 3 Ex. D. 263; 48 L. J. (Q. B.) 80; 39 L. T. 82; 26 W. R. 672; 4 Asp. M. L. C. 10, C. A. 25, 300
Beyts and Craig, *Re*, *Ex parte* Cooper (1894), 38 Sol. Jo. 327 771
Bibby *v.* Boissevain, The "Egyptian" (1863), 1 Moo. P. C. C. (N. S.) 373; 8 L. T. 776; 9 Jur. (N. S.) 1159 489
Biccard *v.* Shepherd (1861) 14 Moo. P. C. C. 471; 5 L. T. 504; 10 W. R. 136 . 214, 216
Biddle *v.* Dowse (1827), 6 B. & C. 255; 5 L. J. (O. S.) (K. B.) 128; 9 Dow. & Ry. (K. B.) 404 731
Biddulph *v.* Bingham (1874), 30 L. T. 30; 2 Asp. M. L. C. 225 . . . 151, 152
Bien, The, [1911] P. 40; 80 L. J. (P.) 59; 104 L. T. 42; 27 T. L. R. 9; 11 Asp. M. L. C. 558 506, 648
Biggs *v.* Bree (1881), 51 L. J. (CH.) 64; 45 L. T. 648; 30 W. R. 132; affirmed (1882) 51 L. J. (CH.) 263; 46 L. T. 8; 30 W. R. 278, C. A. 745, 759
——— *v.* Head (1887), Sau. & Sc. 835 735
——— *v.* Hoddinott, Hoddinott *v.* Biggs, [1898] 2 Ch. 307; 67 L. J. (CH.) 540; 79 L. T. 201; 47 W. R. 84; 14 T. L. R. 504, C. A. 751
Bignold, *Re* (1845), 9 Beav. 269 783, 790, 792

PAGE
Bilbao, The (1860), Lush. 149; 3 L. T. 338 . . . 502, 532, 546, 640, 648
Billing *v.* Coppock (1847), 1 Exch. 14; 16 L. J. (EX.) 265; 5 Dow. & L. 126 . 781
Binns *v.* Hey (1843), 1 Dow. & L. 661; 13 L. J. (Q. B.) 28; 7 Jur. 1154 . 786, 790
Birch *v.* Depeyster (1816), 4 Camp. 385 140
——— *v.* Podmore, cited (1829) 1 Jur. (N. S.) 123; cited, *sub nom.* Bovill *v.* Podmore, 7 De G. M. & G. 27 827
——— *v.* Williams (1876), 24 W. R. 700 834
Birchall, *Re*, Wilson *v.* Birchall (1881), 44 L. T. 243; 29 W. R. 461 . . . 752
——— *v.* Pugin (1875), L. R. 10 C. P. 397; 44 L. J. (C. P.) 278; 32 L. T. 495; 23 W. R. 923 824, 825
Bircham & Co., *Re* (1895), 11 T. L. R. 547, C. A. 766
Bird *v.* Gibb, The "De Bay" (1883), 8 App. Cas. 559; 52 L. J. (P. C.) 57; 49 414; 5 Asp. M. L. C. 156 579, 581
——— *v.* Harris, [1880] W. N. 166; reversed, [1881] W. N. 5, C. A. . . 729, 741
Birkenhead, The (1848), 3 Wm. Rob. 75 458, 533
Birkley *v.* Presgrave (1801), 1 East, 220 315, 319, 320, 323
Birley *v.* Gladstone (1814), 3 M. & S. 205 135, 171, 285
Birnam, The (1907), 76 L. J. (P.) 28; 96 L. T. 792; 10 Asp. M. L. C. 462 . . 583
Birnam Wood, The, [1907] P. 1; 76 L. J. (P.) 1; 96 L. T. 140; 23 T. L. R. 3; 10 Asp. M. L. C. 325, C. A. 625, 826, 827
Birt, *Re*, Birt *v.* Burt (1883), 22 Ch. D. 604; 52 L. J. (CH.) 397; 48 L. T. 67; 31 W. R. 334 821
Bischoff and Coxe, *Re*, *Ex parte* Hemming (1856), 28 L. T. (O. S.) 144 . . 787, 788
Bishop, *Re*, *Ex parte* Langley, *Ex parte* Smith (1879), 13 Ch. D. 110; 49 L. J. (BCY.) 1; 43 L. T. 181; 28 W. R. 174, C. A. 844
——— *v.* Ware (1813), 3 Camp. 360 269, 285
——— *v.* Willis (1749), 5 Beav. 83, n. 829
Biss, *Re*, Biss *v.* Biss, [1903] 2 Ch. 40; 72 L. J. (CH.) 473; 88 L. T. 403; 51 W. R. 504, C. A. 804
Bissell *v.* Bradford and District Tramways Co. (1893), 9 T. L. R. 337 . . . 820
Bitinia, The, [1912] P. 186; 82 L. J. (P.) 5; 107 L. T. 208; 28 T. L. R. 497 . 377, 406, 478, 482
Bittern, The (1908), *Shipping Gazette*, April 2nd 413
Bittleston, *Ex parte*, Norton *v.* Cooper, *Re* Manby and Hawksford. *See* Norton *v.* Cooper, *Re* Manby and Hawksford, *Ex parte* Bittleston.
Black *v.* Braybrooke (Lord) (1817), 6 M. & S. 39 84
——— *v.* Creighton (1828), 2 Mol. 552 833
——— *v.* Rose (1864), 2 Moo. P. C. C. (N. S.) 277; 11 L. T. 31; 10 Jur. (N. S.) 1009; 12 W. R. 1123 283, 284, 304, 305
——— *v.* Williams, [1895] 1 Ch. 408; 64 L. J. (CH.) 137; 43 W. R. 346; 2 Mans. 86; 13 R. 224 17, 28, 29
Black Prince, The (1862), Lush. 568 540
——————— and The Araxes, General Iron Screw Co. *v.* Moss. *See* General Iron Screw Co. *v.* Moss, The Araxes and The Black Prince.
Blackburn *v.* Liverpool, Brazil and River Plate Steam Navigation Co., [1902] 1 K. B. 290; 71 L. J. (K. B.) 177; 85 L. T. 783; 50 W. R. 272; 18 T. L. R. 121; 7 Com. Cas. 10; 9 Asp. M. L. C. 263 116, 225
Blackcock, The, and The Morgengry. *See* Morgengry, The, and The Blackcock.
Blackmore, *Re* (1851), 13 Beav. 154; 15 Jur. 784 779, 783
Blackmur *v.* Blackmur (1876), 3 Ch. D. 633; 45 L. J. (CH.) 710; 24 W. R. 900 859
Blaikie *v.* Stembridge (1859), 6 C. B. (N. S.) 894; 29 L. J. (C. P.) 212; 2 L. T. 570; 6 Jur. (N. S.) 825; 8 W. R. 239 65, 203, 526
Blair *v.* Bromley (1847), 2 Ph. 354; 16 L. J. (CH.) 495; 11 Jur. 617 . . . 760
——— *v.* Cordner (1887), 19 Q. B. D. 516; 56 L. J. (Q. B.) 642; 36 W. R. 109, as reported [1887] W. N. 162 809
——— and Girling, *Re*, [1906] 2 K. B. 131; 72 L. J. (K. B.) 624; 94 L. T. 873; 54 W. R. 549; 22 T. L. R. 547, C. A. 775
Blake, *Re* (1860), 3 E. & E. 34; 30 L. J. (Q. B.) 32; 2 L. T. 429; 6 Jur. (N. S.) 1242 851
——— *v.* Belfast Discount Co. (1880), 5 L. R. Ir. 410, C. A 159
——— *v.* Hummell (1884), 51 L. T. 430; Cab. & El. 345; 1 T. L. R. 22 . 777, 778, 813
——— and Croydon Rural Sanitary Authority, *Re* (1886), 2 T. L. R. 336 . . 782
Blakesley and Beswick, *Re* (1863), 32 Beav. 379 778
Blakey *v.* Dixon (1880), 2 Bos. & P. 321 303
——— *v.* Latham (1889), 41 Ch. D. 518; 60 L. T. 624; 37 W. R. 569 . . 822
Blaikie *v.* Stembridge. *See* Blakie *v.* Stembridge.
Blanchard, *Re*, *Re* Le Doulcet's Mortgage (1861), 7 Jur. (N. S.) 505 . . . 829

PAGE
Blanche, The (1887), 58 L. T. 592; 6 Asp. M. L. C. 272 25
Blanchet *v.* Powell's Llantivit Collieries Co. (1874), L. R. 9 Exch. 74; 43 L. J. (EX.) 50; 30 L. T. 28; 22 W. R. 490; 2 Asp. M. L. C. 224 . . 103, 155, 310
Blanck *v.* Solly (1817), 8 Taunt. 89 307
Blandy *v.* De Burgh (1848), 6 C. B. 623; 18 L. J. (C. P.) 2; 12 Jur. 1005; 5 Ry. & Can. Cas. 361; 6 Dow. & L. 412 778
Blasco *v.* Fletcher (1863), 14 C. B. (N. S.) 147; 32 L. J. (C. P.) 284; 9 L. T. 169; 9 Jur. (N. S.) 1105; 11 W. R. 997 227, 235, 236, 237, 307
Blazer, The (1911), Admiralty Court, February 6th (unreported) 26
Blech *v.* Balleras (1860), 3 E. & E. 203; 29 L. J. (Q. B.) 261; 2 L. T. 599; 6 Jur. (N. S.) 1243 200
Blenden-Hall, The (1814), 1 Dods. 414 576, 585
Blenheim, The (1846), 2 Wm. Rob. 421 484
"Blenheim," The (1854), 1 Ecc. & Ad. 285 369, 432, 433, 538
Blenheim, The (1885), 10 P. D. 167; 54 L. J. (P.) 81; 53 L. T. 916; 34 W. R. 154; 5 Asp. M. L. C. 522 228, 235, 237, 284
Blessing, The (1878), 3 P. D. 35; 38 L. T. 259; 26 W. R. 404; 3 Asp. M. L. C. 561 40
Blight *v.* Page (1801), 3 Bos. & P. 295, n. 191, 192
Bloomfield's Estate, *Re* (1878), 3 L. R. Ir. 82 810
"Blow Boat," The, [1912] P. 217; 82 L. J. (P.) 24 14, 375
Blower *v.* Great Western Rail. Co. (1872), L. R. 7 C. P. 655; 41 L. J. (C. P.) 268; 26 L. T. 883; 20 W. R. 776 217
Bluck *v.* Lovering & Co. (1886), 35 W. R. 232 818
Blue Bell, The, [1895] P. 242; 64 L. J. (P.) 71; 72 L. T. 540; 11 R. 790; 7 Asp. M. L. C. 601 406, 467, 482, 498
Blumberg *v.* Life Interests and Reversionary Securities Corporation, [1898] 1 Ch. 27; 67 L. J. (CH.) 118; 77 L. T. 506, C. A. 745
Blunden *v.* Desart (1842), 2 Dr. & War. 405; 2 Con. & Law. 111; 5 I. Eq. R. 221 817, 818, 841
Blunt *v.* Heslop (1838), 8 Ad. & El. 577; 7 L. J. (Q. B.) 216; 2 Dowl. 982; 3 Nev. & P. (Q. B.) 553 774
Blyth *v.* Birmingham Water Works Co. (1856), 11 Exch. 781; 25 L. J. (EX.) 213; 2 Jur. (N. S.) 333; 4 W. R. 294 518
—— *v.* Fladgate, Morgan *v.* Blyth, Smith *v.* Blyth, [1891] 1 Ch. 337; 60 L. J. (CH.) 66; 63 L. T. 546; 39 W. R. 422 729, 760
—— and Fanshawe, *Re* (1882), 10 Q. B. D. 207; 52 L. J. (Q. B.) 186; 47 L. T. 610; 31 W. R. 283, C. A. 769, 798
Boake *v.* Stevenson, [1895] 1 Ch. 358; 64 L. J. (CH.) 261; 71 L. T. 722; 43 W. R. 189; 13 R. 171 792
Boanerges, The, and The Anglo-Indian (1865), 2 Mar. L. C. 239 . . . 371, 472
Board of Trade, *Ex parte*, *Re* Pryor. *See* Pryor, *Re*, *Ex parte* Board of Trade.
—— *v.* Anglo-American Oil Co., Ltd., [1911] 2 K. B. 225; 80 L. J. (K. B.) 835; 104 L. T. 497; 27 T. L. R. 344; 16 Com. Cas. 151 45, 56
—— *v.* Baxter, [1907] A. C. 373; 76 L. J. (P.) 147; 97 L. T. 526; 23 T. L. R. 729 47
—— *v.* Glenpark (Sailing Ship), [1904] 1 K. B. 682; 73 L. J. (K. B.) 315; 90 L. T. 360; 52 W. R. 646; 20 T. L. R. 321; 9 Com. Cas. 193; 9 Asp. M. L. C. 550, C. A. . . . 46, 57
—— *v.* Leith Local Marine Board (1896), 24 R. (Ct. of Sess.) 177; 34 Sc. L. R. 139; 4 Scots Law Times, 167 649
—— (Secretary) *v.* Sundholm (1879), 41 L. T. 469; 4 Asp. M. L. C. 196 45
Boddington's (1832), 2 Hag. Adm. 422 71
Boden *v.* Hensby, [1892] 1 Ch. 101; 61 L. J. (CH.) 174; 65 L. T. 744; 40 W. R. 205 818
Bodlewell, The, [1907] P. 286; 76 L. J. (P.) 61; 96 L. T. 854; 23 T. L. R. 356 537
Boiler ex Elephant (1891), 64 L. T. 543 559, 575
Bold Buccleugh, The (1853), Pritchard's Admiralty Digest, 3rd ed., p. 221 . 486
——, Harmer *v.* Bell. *See* Harmer *v.* Bell, The Bold Buccleugh.
Bolden *v.* Nicholay (1857), 3 Jur. (N. S.) 884 730
Bolina, The (1844), 3 Notes of Cases, 208 500
Bolivia Republic *v.* Indemnity Mutual Marine Assurance Co., Ltd., [1909] 1 K. B. 785; 78 L. J. (K. B.) 596; 100 L. T. 503; 25 T. L. R. 254; 53 Sol. Jo. 266; 14 Com. Cas. 156; 11 Asp. M. L. C. 218, C. A. . . . 113

PAGE
Bolton, *Re* (1846) 9 Beav. 272; 10 Jur. 22 833
Bomarsund, The (1860), Lush. 77 562
Bona, The, [1895] P. 125; 64 L. J. (P.) 62; 71 L. T. 870; 43 W. R. 290; 11 R. 707; 7 Asp. M. L. C. 557, C. A. 319
"Bonaparte," The, Wilkinson *v.* Wilson. *See* Wilkinson *v.* Wilson, The "Bonaparte."
Bond, Conolly & Co. *v.* Federal Steam Navigation Co. (1906), 22 T. L. R. 685, C. A. 204
Bondrett *v.* Hentigg (1816), Holt (N. P.), 149 110
Bones *v.* Punter (1819), 2 B. & Ald. 777; 1 Chit. 564 833
Bonita, The (1861), Lush. 252 76
Bonner, *Re* (1833), 4 B. & Ad. 811; 1 Nev. & M. (K. B.) 555 839
Bonnie Kate, The (1887), 57 L. T. 203; 6 Asp. M. L. C. 149 36
Bonser *v.* Bradshaw (1863), 4 Giff. 260 826
Boone *v.* Eyre (1777), 1 Hy. Bl. 273, n. 93
Boord, *Re*, Toghill *v.* Grant (1840), 2 Beav. 261 781, 847
Booth, *Re*, *Ex parte* Wake (1833), 3 Deac. & Ch. 246 848
Born, *Re*, Curnock *v.* Born, [1900] 2 Ch. 433; 69 L. J. (CH.) 669; 83 L. T. 51; 49 W. R. 23 823, 827
Bornmann *v.* Tooke (1808), 1 Camp. 377 93, 179
Borough Commercial and Building Society, *Re*, [1894] 1 Ch. 289; 63 L. J. (CH.) 365; 70 L. T. 51; 42 W. R. 161; 7 R. 75, C. A. 844
Borrowman *v.* Drayton (1877), 2 Ex. D. 15; 46 L. J. (Q. B.) 273; 35 L. T. 727; 25 W. R. 194; 3 Asp. M. L. C. 303, C. A. 102
——— *v.* Wilson (1891), 7 T. L. R. 416 265, 279
Borussia, The (1856), Sw. 94 484, 532
Boson *v.* Sandford (1689), 3 Lev. 258; Carth. 58 65, 297
Boswell *v.* Coaks (1887), 36 Ch. D. 444; 58 L. T. 97; 36 W. R. 209, C. A. 769, 796, 801, 805
——— *v.* ——— (1888), 57 L. J. (CH.) 101; 57 L. T. 742; 36 W. R. 65, C. A. . 810
Bothnia, The (1860), Lush. 52 488
Bott's Case (1889), 24 L. J. N. C. 28 724
Bottomley *v.* Forbes (1838), 5 Bing. (N. C.) 121; 6 Scott, 866; 8 L. J. (C. P.) 85 140, 310
Boucau, The, [1909] P. 163; 78 L. J. (P.) 87; 100 L. T. 617; 25 T. L. R. 265; 11 Asp. M. L. C. 240 536, 644
Boucher *v.* Clyde Shipping Co., [1904] 2 I. R. 129 517
——— *v.* Lawson (1734), Lee *temp.* Hard. 85 65, 325
"Bougainville," The, and The "James C. Stevenson," Beal *v.* Marchais. *See* Beal *v.* Marchais, The "Bougainville" and The "James C. Stevenson."
Boughton, *Re*, Boughton *v.* Boughton (1883), 23 Ch. D. 169; 48 L. T. 413; 31 W. R. 517 818
Boughton-Leigh *v.* Boughton-Leigh, *Re* Jackson, *Re* Cottrell. *See* Jackson, *Re*, *Re* Cottrell, Boughton-Leigh *v.* Boughton-Leigh.
Bouillon et Cie. *v.* Lupton (1863), 15 C. B. (N. S.) 113; 33 L. J. (C. P.) 37; 8 L. T. 575; 10 Jur. (N. S.) 422; 11 W. R. 966 213
Bourdillon *v.* Roche (1858), 27 L. J. (CH.) 681; 6 W. R. 618 759
"Bourgogne," La, Compagnie Générale Transatlantique *v.* Law (Thomas) & Co. *See* Compagnie Générale Transatlantique *v.* Law (Thomas) & Co., La "Bourgogne."
Bourke *v.* Davis (1889), 44 Ch. D. 110; 62 L. T. 34; 38 W. R. 167 . . . 859
Bourne *v.* Gatliff (1844), 11 Cl. & Fin. 45; 8 Scott (N. R.), 604; 7 Man. & G. 850 265
Bouron, *Re*, *Ex parte* Brandon (1886), 54 L. T. 128 793
Bovill, *Ex parte*, *Re* Evans. *See* Evans, *Re*, *Ex parte* Bovill.
Bowcher *v.* Noidstrom (1809), 1 Taunt. 568 526
Bowen, *Re* (1872), 41 L. J. (CH.) 327; 20 W. R. 395 781
——— *v.* Fox (1829), 10 B. & C. 41; 8 L. J. (O. S.) (M. C.) 68; 5 Man. & Ry. (K. B.) 5; 4 C. & P. 452 40
Bowes, *Re*, Strathmore (Earl) *v.* Vane, [1900] 2 Ch. 251; 69 L. J. (CH.) 544; 82 L. T. 673; 48 W. R. 604 768, 769
——— *v.* Shand (1877), 2 App. Cas. 455; 46 L. J. (Q. B.) 561; 36 L. T. 857; 25 W. R. 730 767
Bowker *v.* Austin, *Re* Lawrance. *See* Lawrance, *Re*, Bowker *v.* Austin.
Boyce *v.* Bayliffe (1807), 1 Camp. 58 329
——— *v.* Douglas (1807), 1 Camp. 60 329
Boycott, *Re* (1885), 29 Ch. D. 571; 55 L. J. (CH.) 835; 52 L. T. 482; 34 W. R. 26, C. A. 786, 789

PAGE
Boyd *v.* Mangles (1849), 3 Exch. 387; 18 L. J. (EX.) 273 . . . 301, 302
Boyle, *Re*, *Ex parte* Turner (1854), 5 De G. M. & G. 540; 24 L. J. (CH.) 71; 2 W. R. 617, C. A. 787, 789
Boyne, The, and The Cadiz. *See* Cadiz, The, and The Boyne.
Boynton, The (1898), 14 T. L. R. 173; *Shipping Gazette*, January 21st 426, 427, 456
Boyson *v.* Wilson (1816), 1 Stark. 236 157
Bozon *v.* Bolland (1839), 4 My. & Cr. 354; 9 L. J. (CH.) 123; 3 Jur. 884; 4 Jur. 763 815, 816, 820
Brabant, *Re* (1879), 23 Sol. Jo. 779 780
Bracey, *Re* (1845), 8 Beav. 266; 14 L. J. (CH.) 299; 9 Jur. 417 . . 791, 792
———, *Re* (1845), 8 Beav. 338 790
Bradford, *Re* (1883), 15 Q. B. D. 635; 53 L. J. (Q. B.) 65; 50 L. T. 170; 32 W. R. 238, C. A. 833
——— *v.* Williams (1872), L. R. 7 Exch. 259; 41 L. J. (EX.) 164; 26 L. T. 641; 20 W. R. 782 143, 196, 209
Bradford and District Tramways Co., *Ex parte*, [1893] 3 Ch. 463; 62 L. J. (CH.) 668; 69 L. T. 131; 3 R. 640 734
Bradley *v.* Dunipace (1861), 1 H. & C. 521; 32 L. J. (EX.) 22 . . . 155, 270
——— *v.* Goddard (1863), 3 F. & F. 638 124, 200, 263, 272
——— *v.* Greenwich Board of Works (1878), 3 Q. B. D. 384; 47 L. J. (M. C.) 111; 38 L. T. 849; 26 W. R. 693 674
Bradshaw, *Re*, Bradshaw *v.* Bradshaw, [1902] 1 Ch. 436; 7 L. J. (CH.) 230; 86 L. T. 253 798, 799, 800
Brady, *Re* (1867), 15 W. R. 632 788, 789
Braemont Steamship Co. *v.* Weir & Co. (1910), 15 Com. Cas. 101; 102 L. T. 73; 26 T. L. R. 248; 11 Asp. M. L. C. 345 118, 129, 191
Bramble, *Ex parte*, *Re* Toleman and England. *See* Toleman and England, *Re*, *Ex parte* Bramble.
Brampton and Longtown Rail. Co., *Re*, Shaw's Claim (1875), 10 Ch. App. 177; 44 L. J. (CH.) 670; 33 L. T. 5; 23 W. R. 813 733
Branckelow Steamship Co. *v.* Lamport and Holt, [1897] 1 Q. B. 570; 66 L. J. (Q. B.) 382 123
———————, Ltd. *v.* Lamport and Holt, [1907] 1 K. B. 787, n. . 122
Brandon, *Ex parte*, *Re* Bouron. *See* Bouron, *Re*, *Ex parte* Brandon.
——— *v.* Smith (1853), 1 W. R. 130 830
Brandt *v.* Bowlby (1831), 2 B. & Ad. 932; 1 L. J. (K. B.) 14 161
Branston (1826), 2 Hag. Adm. 3, n. 568
Brass *v.* Maitland (1856), 6 E. & B. 470; 26 L. J. (Q. B.) 49; 2 Jur. (N. S.) 710; 4 W. R. 647 101, 197
Bravo, The (1913), 108 L. T. 430; 29 T. L. R. 122; 12 Asp. M. L. C. 311 . 518
Bray *v.* Hine (1818), 6 Price, 203 845
Bray Electric Tramway, *Re* (1889), 23 L. R. Ir. 116 801
Brazier *v.* Bryant (1834), 2 Dowl. 600 829
——— *v.* Camp (1894), 63 L. J. (Q. B.) 257; 9 R. 852, C. A. 734
Breadalbane, The (1881), 7 P. D. 186; 46 L. T. 204; 4 Asp. M. L. C. 505 . 382, 402, 432, 462
Bremen, The (1906), 94 L. T. 380; 10 Asp. M. L. C. 229, n. 579
Bremner (Sarah), *Ex parte* (1866), L. R. 1 P. & D. 254 817
——— *v.* Burrell & Son (1877), 4 R. (Ct. of Sess.) 934 260
Brenan *v.* Preston (1854), 2 W. R. 138 136
Brenda Steamship Co. *v.* Green, [1900] 1 Q. B. 518; 69 L. J. (Q. B.) 445; 82 L. T. 66; 48 W. R. 321; 16 T. L. R. 226; 5 Com. Cas. 195; 9 Asp. M. L. C. 55, C. A. 118, 141, 266, 267, 269
Brereton *v.* Chapman (1831), 7 Bing. 559; 5 Moo. & P. 526 . . 183, 260, 261
Breslauer *v.* Barwick (1876), 36 L. T. 52; 3 Asp. M. L. C. 353 90
Brett, *Ex parte*, *Re* Howe. *See* Howe, *Re*, *Ex parte* Brett.
Brett *v.* East India and London Shipping Co. (1862), 2 Hem. & M. 404; 10 L. T. 187; 12 W. R. 596; 3 New Rep. 688 137
Bridewell Hospital and Metropolitan Board of Works, *Re* (1887), 57 L. T. 155 . 761
Bridge *v.* Grand Junction Rail. Co. (1838), 3 M. & W. 244 513
Bridges *v.* Garrett (1870), L. R. 5 C. P. 451; 39 L. J. (C. P.) 251; 22 L. T. 448; 18 W. R. 815 745
Bridgwater, The (1877), 37 L. T. 366; 3 Asp. M. L. C. 506 626
Brigella, The, [1893] P. 189; 62 L. J. (P.) 81; 69 L. T. 834; 1 R. 616; 7 Asp. M. L. C. 337 315, 324
Briggs, *Ex parte* (1843), 1 Dow. & L. 94 713
——— *v.* Wilkinson (1827), 7 B. & C. 30; 5 L. J. (O. S.) (K. B.) 349; 9 Dow. & Ry. (K. B.) 871 25

PAGE
Briggs & Co. *v.* Gaylord (1894), 97 L. T. Jo. 389 802
Bright *v.* Cowper (1611), 1 Brownl. 21 305
——— *v.* Peninsular and Oriental Steam Navigation Co. (1897), 2 Com. Cas. 106 . 329
Bright's Trustee *v.* Sellar, [1904] 1 Ch. 369; 73 L. J. (CH.) 245; 90 L. T. 155; 20 T. L. R. 210 802
Brightman *v.* Miller (1908), *Shipping Gazette*, June 9th 177
Brinio, The (1891), 90 L. T. Jo. 249 612
Brinsden *v.* Williams, [1894] 3 Ch. 185; 63 L. J. (CH.) 713; 71 L. T. 177; 42 W. R. 700; 8 R. 574 760
Briscoe, *Ex parte*, *Re* Pugh. *See* Pugh, *Re*, *Ex parte* Briscoe.
——— *v.* Brisco, [1892] 3 Ch. 543; 61 L. J. (CH.) 665; 67 L. T. 116; 40 W. R. 62 826
——— & Co. *v.* Powell & Co. (1905), 22 T. L. R. 128 . . 112, 116, 117, 142
Bristol and West of England Bank *v.* Midland Rail. Co., [1891] 2 Q. B. 653; 61 L. J. (Q. B.) 115; 65 L. T. 234; 40 W. R. 148; 7 Asp. M. L. C. 69, C. A. . 147, 162, 165, 166
Bristol City, The, [1902] P. 10; 71 L. J. (P.) 5; 85 L. T. 694; 50 W. R. 383; 18 T. L. R. 101 602
Bristowe *v.* Warner (1847), 10 I. Eq. R. 246 811
Britain, The (1839), 1 Wm. Rob. 40 572, 573
Britannia, The, [1905] P. 98; 74 L. J. (P.) 46; 92 L. T. 634; 21 T. L. R. 110; 10 Asp. M. L. C. 65 421, 422
British and Mexican Shipping Co., Ltd. *v.* Lockett Brothers & Co., Ltd., [1911] 1 K. B. 264; 80 L. J. (K. B.) 462; 103 L. T. 868; 16 Com. Cas. 75, C. A. . 120, 123, 277
British and South American Steamship Co., Ltd. *v.* Anglo-Argentine Live Stock and Produce Agency, Ltd. (1902), 18 T. L. R. 382 104, 308
British Columbia Saw-Mill Co. *v.* Nettleship (1868), L. R. 3 C. P. 499; 37 L. J. (C. P.) 235; 18 L. T. 291; 16 W. R. 1046 145, 151, 199, 202, 290
British Commerce, The (1884), 9 P. D. 128; 53 L. J. (P.) 72; 51 L. T. 604; 33 W. R. 200; 5 Asp. M. L. C. 335 539, 547
British Mutual Investment Co. *v.* Cobbold (1875), L. R. 19 Eq. 627; 44 L. J. (CH.) 332; 32 L. T. 251; 23 W. R. 487 757
British Oil and Cake Mills, Ltd. *v.* Port of London Authority, [1914] 1 K. B. 5; 83 L. J. (K. B.) 120; 30 T. L. R. 16 636
British Shipowners' Co. *v.* Grimond (1876), 3 R. (Ct. of Sess.) 968; 13 Sc. L. R. 623...266
British Standard, The (1912), *Shipping Gazette*, February 7th . . . 593, 595
British Westinghouse Co., Ltd. *v.* Underground Railways Co. of London, Ltd., [1912] A. C. 673; 81 L. J. (K. B.) 1132; 107 L. T. 325 211
Broad *v.* Thomas (1830), 7 Bing. 99; 9 L. J. (O. S.) (C. P.) 32; 4 Moo. & P. 732; 4 C. & P. 338 137
——— and Broad, *Re* (1885), 15 Q. B. D. 420; 54 L. J. (Q. B.) 573; 52 L. T. 888; 1 T. L. R. 653, C. A. 798, 800, 804
Broadhead *v.* Yule (1871), 9 Macph. (Ct. of Sess.) 921; 43 Sc. Jur. 509 . . 298
Brockman, *Re*, [1909] 2 Ch. 170; 78 L. J. (CH.) 460; 100 L. T. 821; 25 T. L. R. 595; 53 Sol. Jo. 577, C. A. 785, 790, 792, 793, 813, 814
Brodie *v.* Howard (1855), 17 C. B. 109; 25 L. J. (C. P.) 57; 1 Jur. (N. S.) 1209..34, 35
Bromsgrove, The, [1912] P. 182; 82 L. J. (P.) 2; 106 L. T. 815 . 418, 482, 498
Brond *v.* Broomhall, [1906] 1 K. B. 571; 75 L. J. (K. B.) 548 . . . 24, 30
Brook, The (1913), *Shipping Gazette*, February 7th 482
Brook, *Re*, Pilcher *v.* Arden (1877), 7 Ch. D. 318; 47 L. J. (CH.) 479; 38 L. T. 111; 26 W. R. 273, C. A. 818, 826
Brooke *v.* Mostyn (Lord) (1864), 2 De G. J. & Sm. 373; 33 Beav. 457; 34 L. J. (CH.) 65; 11 L. T. 392; 10 Jur. (N. S.) 1114; 13 W. R. 1115, C. A. . . 751
Brooklyn City, The (1885), Pritchard's Admiralty Digest, 3rd ed., p. 2371 . 466
Broomfield, The (1905), 94 L. T. 109; 10 Asp. M. L. C. 194 . . . 378, 436
Broomfield *v.* Southern Insurance Co. (1870), L. R. 5 Exch. 192; 39 L. J. (EX.) 186; 22 L. T. 371; 18 W. R. 810 72
Broomhead, *Re* (1847), 5 Dow. & L. 52; 16 L. J. (Q. B.) 355 . . . 816, 841
Brouard *v.* Dumaresque (1841), 3 Moo. P. C. C. 457 27
Broughton *v.* Broughton (1855), 5 De G. M. & G. 160; 25 L. J. (CH.) 250; 1 Jur. (N. S.) 965; 3 W. R. 603 752
Brouncker *v.* Scott (1811), 4 Taunt. 1 297
Brown, *Ex parte*, *Re* Evans. *See* Evans, *Re*, *Ex parte* Brown.
———, *Ex parte*, *Re* Suffield and Watts. *See* Suffield and Watts, *Re*, *Ex parte* Brown.
———, *Re* (1867), L. R. 4 Eq. 464; 36 L. J. (CH.) 842; 16 L. T. 729; 15 W. R. 1030 784, 792, 796, 798, 799

PAGE

Brown *v.* Ackroyd (1856), 5 E. & B. 819; 25 L. J. (Q. B.) 193; 2 Jur. (N. S.) 283; 4 W. R. 229 731
——— *v.* Board of Trade (1890), 28 Sc. L. R. 401; 18 R. (Ct. of Sess.) 291 . 592
——— *v.* Burdett (1887), 37 Ch. D. 207; 58 L. T. 571; 36 W. R. 225, C. A. . 833
——— *v.* ——— (1888), 40 Ch. D. 244; 60 L. T. 520; 37 W. R. 533, C. A. . 798, 799
——— *v.* Edgington (1841), 2 Man. & G. 279; 10 L. J. (C. P.) 66; 2 Scott (N. R.), 496; 1 Drinkwater, 106 327
——— *v.* Farebrother (1888), 58 L. J. (CH.) 3; 59 L. T. 822 745
——— *v.* Great Western Rail. Co. (1887), 3 T. L. R. 582 794
——— *v.* Hodgson (1809), 2 Camp. 36; 4 Taunt. 189 264
——— *v.* Houston, [1901] 2 K. B. 855; 70 L. J. (K. B.) 902; 85 L. T. 160; 17 T. L. R. 683, C. A. 802
——— *v.* Johnson (1842), 10 M. & W. 331; 11 L. J. (EX.) 373; Car. & M. 440 178, 182, 183, 260
——— *v.* Mallett (1848), 5 C. B. 599; 17 L. J. (C. P.) 227; 12 Jur. 204 . 384, 534, 555
——— *v.* North (1852), 8 Exch. 1; 22 L. J. (EX.) 49 300, 309
——— *v.* Powell Duffryn Steam Coal Co. (1875), L. R. 10 C. P. 562; 44 L. J. (C. P.) 289; 32 L. T. 621; 23 W. R. 549; 2 Asp. M. L. C. 578 . 145, 155
——— *v.* Pring (1750), 1 Ves. Sen. 407 811
——— *v.* Stapyleton (1827), 4 Bing. 119; 5 L. J. (O. S.) (C. P.) 121; 12 Moore (C. P.), 334 322, 559
——— *v.* Tanner (1868), 3 Ch. App. 597; 37 L. J. (CH.) 923; 18 L. T. 624; 16 W. R. 882 27, 300, 302, 304
——— *v.* Thornton (1837), 6 Ad. & El. 185; 1 Nev. & P. (K. B.) 339 . . . 84
——— *v.* Tibbits (1862), 11 C. B. (N. S.) 855; 31 L. J. (Q. B.) 206; 6 L. T. 385; 10 W. R. 465 776, 788
——— *v.* Tolley (1874), 31 L. T. 485 753
——— *v.* Trotman (1879), 12 Ch. D. 880; 48 L. J. (CH.) 862; 28 W. R. 164 . 827
——— *v.* Turner, Brightman & Co., [1912] A. C. 12; 81 L. J. (K. B.) 387; 105 L. T. 562; 12 Asp. M. L. C. 79; 17 Com. Cas. 171; 49 Sc. L. R. 679 . . 105, 118, 129, 131, 195, 273
———, Shipley & Co. *v.* Kough (1885), 29 Ch. D. 848; 54 L. J. (CH.) 1024; 53 L. T. 878; 34 W. R. 2; 5 Asp. M. L. C. 433, C. A. 162
Browne, *Re, Ex parte* Jefferies (1851), 15 Beav. 61; affirmed (1852), 1 De G. M. & G. 322; 21 L. J. (CH.) 442, C. A. 788, 789
——— *v.* Barber, [1913] 2 K. B. 553; 108 L. T. 774, C. A. 720
——— *v.* Black, [1912] 1 K. B. 316; 81 L. J. (K. B.) 458; 105 L. T. 982; 56 Sol. Jo. 144; 28 T. L. R. 119, C. A. 774
——— *v.* Butter, Thorndike *v.* Hunt. *See* Thorndike *v.* Hunt, Browne *v.* Butter.
——— *v.* Byrne (1854), 3 E. & B. 703; 23 L. J. (Q. B.) 313; 18 Jur. 700; 2 W. R. 471; 2 C. L. R. 1599 140, 308
——— *v.* McClintock (1873), L. R. 6 H. L. 456 748
Brownlie *v.* Campbell (1880), 5 App. Cas. 925 751
Bruce *v.* Nicolopulo (1855), 11 Exch. 129; 24 L. J. (EX.) 321; 3 W. R. 483; 3 C. L. R. 775 93, 109, 129, 131, 178, 195
Brumbridge *v.* Massey (1858), 28 L. J. (EX.) 59 757
Brunel, The, [1900] P. 24; 69 L. J. (P.) 8; 81 L. T. 500; 48 W. R. 243; 16 T. L. R. 35; 9 Asp. M. L. C. 10, C. A. 16, 659
Brunner *v.* Webster (1900), 16 T. L. R. 217; 5 Com. Cas. 167 . . . 109, 258
Brunsdon *v.* Allard (1859), 2 E. & E. 19; 28 L. J. (Q. B.) 306; 5 Jur. (N. S.) 596; 7 W. R. 581 823
Brunton *v.* Electrical Engineering Corporation, [1892] 1 Ch. 434; 61 L. J. (CH.) 256; 65 L. T. 745 817
Bruxellesville, The (1907), *Shipping Gazette*, November 23rd; [1908] P. 312; 77 L. J. (P.) 156; 98 L. T. 251; 24 T. L. R. 223 450, 538
Bryan *v.* Twigg (1834), 3 L. J. (CH.) 114 739, 755
Bryant, *Ex parte* (1815), 1 Madd. 49; 2 Rose, 227 821, 823
———, *Re* (1884), 50 L. T. 450 838
Bryce *v.* Canadian Pacific Rail. Co. (1908), 13 British Columbia Reports, 446 . 466
Bryden *v.* Niebuhr (1884), Cab. & El. 241 133, 149, 169, 182
Brydges *v.* Branfill (1841), 12 Sim. 369; 11 L. J. (CH.) 249; 6 Jur. 310 . 759, 835
Buchanan & Co. *v.* Faber (1899), 4 Com. Cas. 223 215, 218
Buckhurst, The (1881), 6 P. D. 152; 51 L. J. (P.) 10; 46 L. T. 108; 30 W. R. 232; 4 Asp. M. L. C. 84 381, 387, 404, 405
Buckle *v.* Knoop (1867), L. R. 2 Exch. 125; 36 L. J. (EX.) 223; 16 L. T. 571; 15 W. R. 999 140, 309

PAGE
Bucknall *v.* Boydell (1839), 7 Scott, 171 796
——— Brothers *v.* Murray (1900), 5 Com. Cas. 312 99
——— *v.* Tatem & Co. (1900), 83 L. T. 121; 9 Asp. M. L. C. 127, C. A. 98, 180
Buckwell and Berkeley, *Re*, [1902] 2 Ch. 596; 71 L. J. (CH.) 713; 87 L. T. 215; 51 W. R. 21, C. A. 775
Budgett *v.* Budgett, [1895] 1 Ch. 202; 64 L. J. (CH.) 209; 71 L. T. 632; 43 W. R. 167; 13 R. 1 793
——— & Co. *v.* Binnington & Co., [1891] 1 Q. B. 35; 60 L. J. (Q. B.) 1; 39 W. R. 131; 6 Asp. M. L. C. 592, C. A. . 120, 121, 125, 195, 265, 267, 271, 272, 274
Bulkley *v.* Wilford (1834), 2 Cl. & Fin. 102 754
Bull, *Ex parte*, *Re* Ditchman. *See* Ditchman, *Re*, *Ex parte* Bull.
—— *v.* Robison (1854), 10 Exch. 342; 24 L. J. (EX.) 165; 2 W. R. 623; 2 C. L. R. 1276 291
Buller *v.* Fisher (1799), 3 Esp. 67 111
Bulley *v.* Bulley (1878), 8 Ch. D. 479; 47 L. J. (CH.) 841; 38 L. T. 401; 26 W. R. 638, C. A. 826
Bulman and Dickson *v.* Fenwick & Co., [1894] 1 Q. B. 179; 63 L. J. (Q. B.) 123; 69 L. T. 651; 42 W. R. 326; 9 R. 227; 7 Asp. M. L. C. 388, C. A. . 130, 131, 132, 184, 195, 255, 261, 273
Bulmer (1823), 1 Hag. Adm. 163 61
Buls *v.* Teutonic (Owners) (1913), *Times*, July 12th 48
Bunn *v.* Guy (1803), 4 East, 190; 1 Smith, K. B. 1 842, 843
Burchell *v.* Wilde, [1900] 1 Ch. 551; 69 L. J. (CH.) 314; 82 L. T. 576; 48 W. R. 491; 16 T. L. R. 257, C. A. 843
Burd *v.* Burd (1889), 40 Ch. D. 628; 58 L. J. (CH.) 170; 60 L. T. 228; 37 W. R. 428 766
Burdick *v.* Garrick (1870), 5 Ch. App. 233; 39 L. J. (CH.) 369; 18 W. R. 387 . 811
——— *v.* Sewell (1884), 13 Q. B. D. 159; 53 L. J. (Q. B.) 399; 51 L. T. 453; 32 W. R. 740, C. A.; affirmed, *sub nom.* Sewell *v.* Burdick (1884), 10 App. Cas. 74 . . 146
Burdon, *Ex parte*, *Re* Lawrence, Crowdy and Bowlby. *See* Lawrence, Crowdy and Bowlby, *Re*, *Ex parte* Burdon.
Burge *v.* Brutton (1843), 2 Hare, 373; 12 L. J. (CH.) 368; 7 Jur. 988 . 752, 844
Burges *v.* Wickham (1863), 3 B. & S. 669; 33 L. J. (Q. B.) 17; 8 L. T. 47; 11 W. R. 992 211, 216, 217, 219, 327
Burgess *v.* Vinnicome, *Re* Barber. *See* Barber, *Re*, Burgess *v.* Vinnicome.
Burgis *v.* Constantine, [1908] 2 K. B. 484; 77 L. J. (K. B.) 1045; 99 L. T. 490; 24 T. L. R. 682; 13 Com. Cas. 299, C. A. 17, 24, 30
Burgon *v.* Sharpe (1810), 2 Camp. 529 64, 65, 88, 174
Burgos *v.* Nascimento, [1908] W. N. 237; 53 Sol. Jo. 60 159
Burlington, The (1895), 72 L. T. 890; 8 Asp. M. L. C. 38, C. A. . . . 647
Burmester *v.* Hodgson (1810), 2 Camp. 488 275, 277
Burn *v.* Herlofson and Siemensen, The Faust (1887), 56 L. T. 722; 6 Asp. M. L. C. 126, C. A. 27, 301
—— and Berridge, *Re* (1908), 99 L. T. 606 808
Burness & Sons *v.* Persian Gulf Steamship Co., The Bushire (1885), 52 L. T. 740; 5 Asp. M. L. C. 416 522
Burnett *v.* Bouch (1840), 9 C. & P. 620 137
——— *v.* Proois, *Re* an Attorney. *See* Attorney, an, *Re*, Burnett *v.* Proois.
Burnock, The, [1914] W. N. 52; 30 T. L. R. 274 584
Burns, The, [1907] P. 137; 76 L. J. (P.) 41; 96 L. T. 684; 71 J. P. 193; 23 T. L. R. 323; 5 L. G. R. 676, C. A. 545
Burns *v.* Chapman (1858), 5 C. B. (N. S.) 481; 28 L. J. (C. P.) 6; 5 Jur. (N. S.) 19; 7 W. R. 89 53
——— *v.* Nowell (1880), 5 Q. B. D. 444; 49 L. J. (Q. B.) 468; 43 L. T. 342; 44 J. P. 828; 29 W. R. 39, C. A. 33
——— *v.* Poulsom (1873), L. R. 8 C. P. 563; 42 L. J. (C. P.) 302; 29 L. T. 329; 22 W. R. 20 206
Burrell *v.* Jones (1819), 3 B. & Ald. 47 830, 832
——— & Sons *v.* Green (F.) & Co., [1914] 1 K. B. 293 105
Burridge *v.* Bellew (1875), 32 L. T. 807 730
Burroughs, Wellcome & Co.'s Trade Marks, *Re* (1904), 22 R. P. C. 164 . 769, 797, 800, 801
Burton, *Re*, *Ex parte* Scallan, *Ex parte* Jones (1827), 1 Mol. 63 754
——— *v.* English (1883), 12 Q. B. D. 218; 53 L. J. (Q. B.) 133; 49 L. T. 768; 32 W. R. 655; 5 Asp. M. L. C. 187, C. A. 75, 139, 205, 315, 316, 318, 326

PAGE

Burton *v.* Pinkerton (1867), L. R. 2 Exch. 340; 36 L. J. (EX.) 137; 16 L. T. 419; 15 W. R. 1139 60
——— and Blinkhorn, *Re*, [1903] 2 K. B. 300; 72 L. J. (K. B.) 752; 89 L. T. 549; 51 W. R. 668 849
Bush, *Re* (1844), 8 Beav. 66; 14 L. J. (CH.) 6 777, 778
——— *v.* Martin (1863), 2 H. & C. 311; 33 L. J. (EX.) 17; 8 L. T. 509; 9 Jur. (N. S.) 851; 11 W. R. 1078 775, 781
——— and Prideaux, *Re*, *Ex parte* Prideaux (1838), 3 My. & Cr. 327; 7 L. J. (CH.) 202; 2 Jur. 366 711
Bushire, The, Burness & Sons *v.* Persian Gulf Steamship Co. *See* Burness & Sons *v.* Persian Gulf Steamship Co., The Bushire.
Busk *v.* Fearon (1803), 4 East, 319 241, 244
Bute (Marquis) *v.* Walker, *Ex parte* Hoyle, Shipley *v.* Hoyle, *Re* Dickinson. *See* Dickinson, *Re*, Bute (Marquis) *v.* Walker, *Ex parte* Hoyle, Shipley *v.* Hoyle.
Butler, *Re* (1866), 1 Ch. App. 607 838
——— (or Black) *v.* Fife Coal Co., [1912] A. C. 149; 81 L. J. (P. C.) 97; 106 L. T. 161; 28 T. L. R. 150; [1912] S. C. (House of Lords) 33; 49 Sc. L. R. 228 45
——— *v.* Knight (1867), L. R. 2 Exch. 109; 36 L. J. (EX.) 66; 15 L. T. 621; 15 W. R. 407 744
——— *v.* Wildman (1820), 3 B. & Ald. 398 317
Butt *v.* Wright, *Re* Maddock. *See* Maddock, *Re*, Butt *v.* Wright.
Butterfield *v.* Forrester (1809), 11 East, 60 512, 513
Butterworth, *Re*, *Ex parte* Russell (1882), 19 Ch. D. 588; 51 L. J. (CH.) 521; 46 L. T. 113; 30 W. R. 584, C. A. 757
——— *v.* Butterworth and Queenan (1913), 57 Sol. Jo. 266 723
Button *v.* Thompson (1869), L. R. 4 C. P. 330; 38 L. J. (C. P.) 225; 20 L. T. 568; 17 W. R. 1069 49, 51, 61
Byfoged Christensen, The, The William Frederick. *See* William Frederick, The, The Byfoged Christensen.
Byrch, *Re*, Holland *v.* Gwynne (1844), 8 Beav. 124 791, 792
Byrne, *Ex parte*, *Re* Apelt. *See* Apelt, *Re*, *Ex parte* Byrne.
——— *v.* Pattinson (1797), cited in Abbott on Shipping, 5th ed., p. 336; 14th ed., p. 745 305
——— *v.* Schiller (1871), L. R. 6 Exch. 319; 40 L. J. (EX.) 177; 25 L. T. 211; 19 W. R. 1114; 1 Asp. M. L. C. 111 107, 312, 313
Byron, The (1905), *Shipping Gazette*, February 9th 423
———, Port Jackson Steamboat Co. *v.* Llewellyn (1879), 2 New South Wales Law Reports, Admiralty Cases, 1 370, 378, 436, 443
Byron *v.* Metropolitan Saloon Omnibus Co. (1859), 4 Drew. 546 822
Bywell Castle, The (1879), 4 P. D. 219; 41 L. T. 747; 28 W. R. 293; 4 Asp. M. L. C. 207, C. A. 366, 438, 439, 459, 468, 504

C.

C., *Re* (1907), 53 Sol. Jo. 616 791
Cachapool, The (1881), 7 P. D. 217; 46 L. T. 171; 4 Asp. M. L. C. 502 . 481, 484
Cadeby, The, [1909] P. 257; 78 L. J. (P.) 85; 101 L. T. 48; 25 T. L. R. 630 . 500
Cadiz, The, and The Boyne (1876), 35 L. T. 602; 3 Asp. M. L. C. 332 . . 557
Caffarini *v.* Walker (1876), 10 I. R. C. L. 250 262
Caffin *v.* Aldridge, [1895] 2 Q. B. 648; 65 L. J. (Q. B.) 85; 73 L. T. 426; 44 W. R. 129; 8 Asp. M. L. C. 233, C. A. 96, 101, 102, 103
Cahn *v.* Pockett's Bristol Channel Steam Packet Co., [1899] 1 Q. B. 643; 68 L. J. (Q. B.) 515; 80 L. T. 269; 47 W. R. 422; 15 T. L. R. 247; 4 Com. Cas. 168; 8 Asp. M. L. C. 516, C. A. 161
Cain *v.* Adams (1836), 5 L. J. (K. B.) 252 820
Cairn Line of Steamships, Ltd. *v.* Trinity House Corporation, [1908] 1 K. B. 528; 77 L. J. (K. B.) 363; 98 L. T. 86; 24 T. L. R. 212; 13 Com. Cas. 175; 10 Asp. M. L. C. 602, C. A. 80
Cairnbahn, The (1912), 29 T. L. R. 60; affirmed, [1914] P. 25; 48 L. J. 687; 30 T. L. R. 82, C. A. 518, 519, 522, 524, 529
——— (No. 2), [1913] W. N. 165; 29 T. L. R. 559; *Shipping Gazette*, May 11th; affirmed (1913), 30 T. L. R. 309, C. A. 524
Cairo, The (1874), L. R. 4 A. & E. 184; 43 L. J. (ADM.) 33; 30 L. T. 535; 22 W. R. 742; 2 Asp. M. L. C. 257 558, 561

PAGE

"Cairo," The, Watson and Parker *v.* Gregory. *See* Watson and Parker *v.* Gregory, The "Cairo."
"Calabar," The, Moss *v.* African Steamship Co. *See* Moss *v.* African Steamship Co., The "Calabar."
Calcutta (Owners) *v.* Emma (Owners), The Calcutta (1869), 21 L. T. 768; 3 Mar. L. C. 336 370, 488, 536
Calcutta Steamship Co., Ltd. *v.* Weir (Andrew) & Co., [1910] 1 K. B. 759; 79 L. J. (K. B.) 401; 102 L. T. 428; 26 T. L. R. 237; 15 Com. Cas. 172; 11 Asp. M. L. C. 395 . 149, 164, 165, 169, 170, 171, 172, 174, 188, 205, 225
Calderon, The (1913), *Times*, March 26th 536
Caldwell *v.* Ball (1786), 1 Term Rep. 205 157, 158, 265
Calgarth, The (1906), *Shipping Gazette*, November 3rd . . . 475, 476, 477
Caliph, The, [1912] P. 213; 107 L. T. 274; 28 T. L. R. 597 524
Calla, The (1859), Sw. 465 390
Calland, *Ex parte* (1818), 2 B. & Ald. 315, n. 720
Callis, *Re* (1901), 49 W. R. 316, n. 787, 790
Callow *v.* Young (1886), 55 L. T. 543 738, 743
——— *v.* ——— (1887), 56 L. J. (CH.) 690; 56 L. T. 147 828
Calvert, *Ex parte, Re* Messenger. *See* Messenger, *Re, Ex parte* Calvert.
Calvin, Ship, Austin *v.* Lovett (1905), 35 Supreme Court of Canada Reports, 616 . . 466
Calypso (1828), 2 Hag. Adm. 209 558
——— (1834), 3 Hag. Adm. 162 243
Calyx, The (1910), 27 T. L. R. 166 562
Cambria, The (1848), Pritchard's Admiralty Digest, 3rd ed., Vol. II., p. 1822 . 585
Cambrian, The (1897), 8 Asp. M. L. C. 263 564
Cambric, The, [1912] W. N. 272; 29 T. L. R. 69 517, 524, 626
Cambridge (1829), 2 Hag. Adm. 243 60
———, The (1903), cited in The Hero [1911] P. 146, C. A. . 449, 450, 514, 515
Camellia, The (1883), 9 P. D. 27; 53 L. J. (P.) 12; 50 L. T. 126; 32 W. R. 495; 5 Asp. M. L. C. 197 563, 564
Camilla, The (1858), Sw. 312; 6 W. R. 840 40
Cammell *v.* Sewell (1860), 5 H. & N. 728; 29 L. J. (EX.) 350; 2 L. T. 799; 6 Jur. (N. S.) 918; 8 W. R. 639 77, 248, 251
Campania, The, [1901] P. 289; 70 L. J. (P.) 101; 84 L. T. 673; 17 T. L. R. 509; 9 Asp. M. L. C. 177, C. A. 411, 415, 416, 417, 418
Campbell, *Ex parte, Re* Cathcart. *See* Cathcart, *Re, Ex parte* Campbell.
———, *Re* (1853), 3 De G. M. & G. 585; 22 L. J. (CH.) 865; 17 Jur. 1171; 1 W. R. 204, C. A. 840
——— *v.* Bordieu, Gordon *v.* Morley. *See* Gordon *v.* Morley, Campbell *v.* Bordieu.
——— *v.* Thompson (1816), 1 Stark. 490 249
Campbell's Trusts, *Re* (1871), 19 W. R. 427 810
Campion *v.* Colvin (1836), 3 Bing. (N. C.) 17; 5 L. J. (C. P.) 317; 3 Scott, 338; 2 Hodg. 116 286
Camps *v.* Marshall (1873), 8 Ch. App. 462 742
Canada, The (1897), 13 T. L. R. 238 88, 155, 174, 287, 298
Canada Shipping Co. *v.* British Shipowners' Mutual Protection Association (1889), 23 Q. B. D. 342; 58 L. J. (Q. B.) 462; 61 L. T. 312; 38 W. R. 87; 6 Asp. M. L. C. 422, C. A. 117
Candler *v.* Candler (1821), Madd. & G. 141; Jac. 225 842, 843
Cane *v.* Allen (Lord) (1814), 2 Dow, 289 749, 750
Cannan *v.* Meaburn (1823), 1 Bing. 243; 8 Moore (C. P.), 127; 1 L. J. (O. S.) (C. P.) 84 76, 223, 247, 251, 252
Cannings, Ltd., and Middlesex County Council, *Re*, [1907] 1 K. B. 51; 76 L. J. (K. B.) 44; 95 L. T. 766; 71 J. P. 46; 23 T. L. R. 43; 5 L. G. R. 442, C. A. 795
Cannon, Son and Morten, *Re, Re* Coolgardie Goldfields, Ltd. *See* Coolgardie Goldfields, Ltd., *Re, Re* Cannon, Son and Morten.
Canova, The (1866), L. R. 1 A. & E. 54; 12 Jur. (N. S.) 528 . . 562, 568, 571
Cap Blanco, The, [1913] P. 130; 29 T. L. R. 557 . . . 136, 141, 542, 546
Cape Packet, The (1848), 3 Wm. Rob. 122. 577
Capella, Cargo ex (1867), L. R. 1 A. & E. 356; 16 L. T. 800 . . . 563, 566
———, The, [1892] P. 70; 66 L. T. 388; 7 Asp. M. L. C. 158 . . 577, 580, 585
Capes *v.* Hutton (1826), 2 Russ. 357 712
Capital Fire Insurance Association, *Re* (1883), 24 Ch. D. 408; 53 L. J. (CH.) 71; 49 L. T. 697; 32 W. R. 260, C. A. 815, 818, 819
Capper *v.* Forster (1837), 3 Bing. (N. C.) 938; 6 L. J. (C. P.) 332; 3 Scott, 129; 3 Hodg. 177 100, 308

PAGE
Capper *v.* Wallace (1880), 5 Q. B. D. 163; 49 L. J. (Q. B.) 350; 42 L. T. 130; 28 W. R. 424; 4 Asp. M. L. C. 223 88, 255, 258
Carali *v.* Xenos (1862), 2 F. & F. 740 200, 234, 235, 275
Card *v.* Hope (1824), 2 B. & C. 661; 2 L. J. (O. S.) (K. B.) 96; 4 Dow. & Ry. (K. B.) 164 35
Carden *v.* General Cemetery Co. (1839), 5 Bing. (N. C.) 253; 8 L. J. (C. P.) 163; 7 Scott, 97; 7 Dowl. 275 733
Cardiff, The, [1909] P. 183; 78 L. J. (P.) 110; 25 T. L. R. 387 530
Cardiff Boarding Masters' Association *v.* Cory & Sons (1893), 9 T. L. R. 388 . 51
Cardiff Steamship Co. *v.* Jameson (1903), 88 L. T. 87; 19 T. L. R. 159; 9 Asp. M. L. C. 367 263, 268, 269
Cardross (Lord), *Re* (1839), 5 M. & W. 545; 9 L. J. (EX.) 36; 7 Dowl. 861 . . 841
Carew, *Re* (1844), 8 Beav. 150; 14 L. J. (CH.) 100 783, 791
Carisbrook, The (1890), 15 P. D. 98; 59 L. J. (P.) 37; 62 L. T. 843; 38 W. R. 543; 6 Asp. M. L. C. 507 127
Carisbrook Steamship Co. *v.* London and Provincial Marine and General Insurance Co., [1902] 2 K. B. 681; 71 L. J. (K. B.) 978; 87 L. T. 418; 50 W. R. 691; 18 T. L. R. 783; 7 Com. Cas. 235; 6 Asp. M. L. C. 332, C. A. 322
Carlisle, The, [1906] P. 301; 75 L. J. (P.) 97; 95 L. T. 552; 22 T. L. R. 709; 10 Asp. M. L. C. 287 595
Carlisle's (Earl) Executrix *v.* Northumberland County Council (1911), 75 J. P. 539 681
Carlotta, The, [1899] P. 223; 68 L. J. (P.) 87; 80 L. T. 664; 47 W. R. 702; 15 T. L. R. 362; 8 Asp. M. L. C. 554 376, 377, 388, 438, 478, 482
Carlton Steamship Co. *v.* Castle Mail Packets Co., [1897] 2 Q. B. 485; 66 L. J. (Q. B.) 819; 77 L. T. 332; 46 W. R. 68, C. A.; affirmed, [1898] A. C. 486; 67 L. J. (Q. B.) 795; 78 L. T. 661; 47 W. R. 65; 14 T. L. R. 469; 8 Asp. M. L. C. 402 102, 181, 184, 185, 256, 275
Carmichael *v.* Brodie, The "Sir Ralph Abercrombie" (1867), L. R. 1 P. C. 454; 4 Moo. P. C. C. (N. S.) 374 578
——— *v.* Liverpool Sailing Ship Owners' Mutual Indemnity Association (1887), 19 Q. B. D. 242; 56 L. J. (Q. B.) 428; 57 L. T. 550; 35 W. R. 793; 6 Asp. M. L. C. 184, C. A. 117
Carnegie, *Re* (1907), 52 Sol. Jo. 14 811
——— *v.* Conner (1889), 24 Q. B. D. 45; 59 L. J. (Q. B.) 122; 61 L. T. 691; 6 Asp. M. L. C. 447 91, 103
Caroe *v.* Bayliss (1908), 72 J. P. 525; 25 T. L. R. 22 60
Carolina, The (1875), 34 L. T. 399; 3 Asp. M. L. C. 141 46
Caroline, The (1861), Lush. 334 566
Carolus (1837), 3 Hag. Adm. 343, n. 505
Carr *v.* Fracis Times & Co., [1902] A. C. 176; 71 L. J. (K. B.) 361; 50 W. R. 257 376
—— *v.* Jackson (1852), 7 Exch. 382 90
—— *v.* Wallachian Petroleum Co., Ltd. (1867), L. R. 2 C. P. 468; 36 L. J. (C. P.) 236; 16 L. T. 460; 15 W. R. 874 107, 311, 312
Carrett *v.* Smallpage (1808), 9 East, 330 837
Carrier Dove, The (1863), Brown. & Lush. 113; 2 Moo. P. C. C. (N. S.) 243 . 484
"Carron," The (1853), 1 Ecc. & Ad. 91 410, 500, 501
Carron Park, The (1890), 15 P. D. 203; 59 L. J. (P.) 74; 63 L. T. 356; 39 W. R. 191; 6 Asp. M. L. C. 543 117, 202, 316
Carrow *v.* Ferrior, *Re* Ferrior, Dunn *v.* Ferrior. *See* Ferrior, *Re*, Carrow *v.* Ferrior, Dunn *v.* Ferrior.
Carruthers *v.* Hodgson (1896), 100 L. T. Jo. 395. 758
——— *v.* Newen, *Re* Newen. *See* Newen, *Re*, Carruthers *v.* Newen.
Carse *v.* North British Steam Packet Co. (1895), 22 R. (Ct. of Sess.) 475; 32 Sc. L. R. 418; 2 Scots Law Times, 577 . . . 374, 375, 392, 397, 512, 515, 516
Carson *v.* Pickersgill & Sons (1885), 14 Q. B. D. 859; 54 L. J. (Q. B.) 484; 52 L. T. 950; 49 J. P. 612; 33 W. R. 589, C. A. 769, 800
Carter, *Re*, Carter *v.* Carter (1885), 55 L. J. (CH.) 230; 53 L. T. 630; 34 W. R. 57 816, 820
——— *v.* Apfel (1912), 57 Sol. Jo. 97 796, 801
——— *v.* Carter (1863), 8 L. T. 692; 2 New Rep. 512 810
Carthew, *Re*, *Re* Paull (1884), 27 Ch. D. 485; 54 L. J. (CH.) 134; 51 L. T. 435; 32 W. R. 940, C. A. 809
Cartley, *Ex parte* (1842), 2 Dowl. (N. S.) 945; 12 L. J. (Q. B.) 98; 7 Jur 767 . 716

PAGE
Cartwright, *Re* (1873), L. R. 16 Eq. 469; 42 L. J. (CH.) 735; 28 L. T. 891; 21 W. R. 891 785
Carven, *Re* (1845), 8 Beav. 436; 14 L. J. (CH.) 372 778, 791
Cary *v.* White (1710), 1 Eq. Cas. Abr. 722 69
Case *v.* Davidson (1816), 5 M. & S. 79 299, 301
Casher *v.* Holmes (1831), 2 B. & Ad. 592; 9 L. J. (O. S.) (K. B.) 280 . . . 636
Cass *v.* Spurr, Spurr *v.* Cass. *See* Spurr *v.* Cass, Cass *v.* Spurr.
Castel and Latta *v.* Trechman (1884), Cab. & El. 276 . . 180, 236, 258, 259, 305, 314
Castilia (1822), 1 Hag. Adm. 59 60, 61
Castle, *Re* (1887), 36 Ch. D. 194; 56 L. J. (CH.) 753; 57 L. T. 76; 35 W. R. 621 . 796
"Castlegate," The, Morgan *v.* Castlegate Steamship Co. *See* Morgan *v.* Castlegate Steamship Co., The "Castlegate."
Castlegate Steamship Co. *v.* Dempsey, [1892] 1 Q. B. 854; 61 L. J. (Q. B.) 620; 66 L. T. 742; 40 W. R. 533; 7 Asp. M. L. C. 186, C. A. . 121, 272, 274, 275, 276, 278
Castleventry, The (1904), *Shipping Gazette*, April 16th 413, 414
Castrique *v.* Behrens (1863), 3 E. & E. 709; 30 L. J. (Q. B.) 163; 4 L. T. 52; 7 Jur. (N. S.) 1024 29
Cathay, The (1899), 9 Asp. M. L. C. 35 420, 437, 455
——— (1900), 69 L. J. (P.) 89; 82 L. T. 823; 16 T. L. R. 381; 9 Asp. M. L. C. 100 615
Cathcart, The (1867), L. R. 1 A. & E. 314; 16 L. T. 211 15, 24, 25
Cathcart, *Ex parte*, *Re* Stuart. *See* Stuart, *Re*, *Ex parte* Cathcart.
———, *Re*, [1893] W. N. 107, C. A. 804
———, *Re*, *Ex parte* Campbell (1870), 5 Ch. App. 703; 23 L. T. 289; 18 W. R. 1056 362
Catherine, The (1847), 3 Wm. Rob. 1 73, 625
——— (1848), 6 Notes of Cases, Suppl. xliii.; 12 Jur. 682 . . . 557
——— (formerly The Croxdale) (1851), 15 Jur. 231 . . . 71, 73
——— (1857), Sw. 263; 5 W. R. 819 72
Catherine Chalmers, The (1874), 32 L. T. 847; 2 Asp. M. L. C. 598 . 110, 204, 205, 207
Catley *v.* Winteringham (1792), Peake, 202 [150] 140, 265
Catlin, *Re* (1854), 18 Beav. 508 796, 801, 804
Catlow *v.* Catlow (1877), 2 C. P. D. 362; 25 W. R. 866 825, 827
Cato, The (1866), 35 L. J. (ADM.) 116 572
Cato *v.* Irving (1852), 5 De G. & Sm. 210; 21 L. J. (CH.) 675; 16 Jur. 161 . 27, 29
Cattell *v.* Simons (1843), 6 Beav. 304 822
Cattlin, *Re*, Barwell *v.* Brooks (1844), 8 Beav. 121 792
Caudery, *Re*, London Joint Stock Bank *v.* Wightman (1910), 54 Sol. Jo. 444 . 816
Caughey *v.* Gordon & Co. (1878), 3 C. P. D. 419; 27 W. R. 50 . . . 169, 311
Cavendish *v.* Strutt, [1904] 1 Ch. 524; 73 L. J. (CH.) 247; 90 L. T. 500; 52 W. R. 333; 20 T. L. R. 99 768, 800, 805
Cawdor, The (1898), 8 Asp. M. L. C. 475 37
Cawley and Whatley, *Re* (1870), 18 W. R. 1125 790
Cawthron *v.* Trickett (1864), 15 C. B. (N. S.) 754; 33 L. J. (C. P.) 182; 9 L. T. 609; 12 W. R. 311 127
Cayo-Bonito, The, [1904] P. 310; 73 L. J. (P.) 93; 91 L. T. 102; 20 T. L. R. 576; 9 Asp. M. L. C. 603 557, 570
Cayzer *v.* Carron Co. (1884), 9 App. Cas. 873; 54 L. J. (P.) 18; 52 L. T. 361; 33 W. R. 281; 5 Asp. M. L. C. 371 . . . 382, 505, 507, 508, 509, 511, 513, 515, 519
Cecilie, The (1879), 4 P. D. 210; 40 L. T. 200; 4 Asp. M. L. C. 78 . . 70, 71, 73
Cella, The (1888), 13 P. D. 82; 57 L. J. (P.) 55; 59 L. T. 125; 36 W. R. 540; 6 Asp. M. L. C. 293, C. A. 580, 621, 626
Celtic King, The, [1894] P. 175; 63 L. J. (P.) 37; 70 L. T. 562; 7 Asp. M. L. C. 440; 6 R. 754 21, 25, 26
Ceres, The (1857), Sw. 250 455, 459, 489
"Ceto," The, "Lebanon" (Owners) *v.* "Ceto" (Owners). *See* "Lebanon" (Owners) *v.* "Ceto" (Owners), The "Ceto."
Chadwick *v.* City of Dublin Steam Packet Co. (1856), 6 E. & B. 771; 3 Jur. (N. S.) 207 431, 488
Chalié *v.* Gwynne (1846), 9 Beav. 319 739
Chalinder and Herington, *Re*, [1907] 1 Ch. 58; 76 L. J. (CH.) 71; 96 L. T. 196; 23 T. L. R. 71 753
Challenge and Duc d'Aumale, The, [1905] P. 198; 74 L. J. (P.) 55; 93 L. T. 390; 10 Asp. M. L. C. 105, C. A. 422, 459, 492

PAGE
Chamberlain *v.* Conway (1888), 53 J. P. 214 646
——— *v.* Stoneham (1889), 24 Q. B. D. 113; 59 L. J. (Q. B.) 95; 61 L. T. 560; 38 W. R. 107 802
Chambers, *Re*, (1865), 34 Beav. 177; 34 L. J. (CH.) 292; 11 L. T. 726; 11 Jur. (N. S.) 230; 13 W. R. 375; 5 New Rep. 298 779
——— *v.* Mason (1858), 5 C. B. (N. S.) 59; 28 L. J. (C. P.) 10; 5 Jur. (N. S.) 148 744
Champ *v.* Stokes (1861), 6 H. & N. 683; 30 L. J. (EX.) 242; 4 L. T. 334; 7 Jur. (N. S.) 607 778
Champernown *v.* Scott (1821), Madd. & G. 93 815
Champion, The (1863), Brown. & Lush. 69 580, 585
Champney *v.* Burland (1879), 19 W. R. 913 816
Champneys *v.* Peck (1816), 1 Stark. 404 778
Chandler, *Re* (1856), 22 Beav. 253; 25 L. J. (CH.) 396; 2 Jur. (N. S.) 366 . . 850
——— *v.* Blogg, [1898] 1 Q. B. 32; 67 L. J. (Q. B.) 336; 77 L. T. 524; 14 T. L. R. 66; 8 Asp. M. L. C. 349; 3 Com. Cas. 18 . . . 360
——— *v.* Grieves (1792), 2 Hy. Bl. 606, n.; 6 Term Rep. 325, n. . . . 49
Change, The (1857), Sw. 240; 5 W. R. 547 70
Chanonry, The (1873), 42 L. J. (ADM.) 58; 28 L. T. 284; 1 Asp. M. L. C. 569 . 383, 399, 462
Chapman, *Re* (1882), 10 Q. B. D. 54; 52 L. J. (Q. B.) 75; 47 L. T. 426, C. A. . 804
———, *Re* (1903), 20 T. L. R. 3, C. A. 787
——— *v.* Chapman (1870), L. R. 9 Eq. 276; 22 L. T. 145; 18 W. R. 533 . 755, 758
——— *v.* Haw (1808), 1 Taunt. 341 823
Chappel *v.* Comfort (1861), 10 C. B. (N. S.) 802 . . . 107, 148, 154, 172, 173, 176, 285, 286
Chappell *v.* Bray (1860), 6 H. & N. 145; 30 L. J. (EX.) 24; 3 L. T. 278; 9 W. R. 17 35
——— *v.* Griffith (1885), 2 T. L. R. 58 843
Chapple, *Re*, Newton *v.* Chapman (1884), 27 Ch. D. 584; 51 L. T. 748; 33 W. R. 336 753, 806
Charles, The (1872), L. R. 3 A. & E. 536; 26 L. T. 594; 21 W. R. 13; 1 Asp. M. L. C. 296 583
Charles Amelia, The (1868), L. R. 2 A. & E. 330; 38 L. J. (ADM.) 17; 19 L. T. 429; 17 W. R. 624 545, 627
Charles Jackson, The (1885), 52 L. T. 631; 5 Asp. M. L. C. 399 35
Charleton *v.* Cotesworth (1825), Russ. & M. 175 311
Charlotta (1831), 2 Hag. Adm. 361 570, 585
Charlotte, The (1848), 3 Wm. Rob. 68 562, 564, 573, 575
Charlotte Wylie, The (1846), 2 Wm. Rob. 495 569, 580, 588
Charlton, The (1895), 73 L. T. 49; 11 R. 825; 8 Asp. M. L. C. 29, C. A. . . 530
Charlton *v.* Charlton (1882), 31 W. R. 237 795
——— *v.* ——— (1883), 52 L. J. (CH.) 971; 49 L. T. 267; 32 W. R. 90 . 826
——— *v.* Fox, Fox *v.* Charlton. *See* Fox *v.* Charlton, Charlton *v.* Fox.
Charlwood, *Re*, *Ex parte* Masters, [1894] 1 Q. B. 643; 63 L. J. (Q. B.) 344; 70 L. T. 383; 10 R. 132; 1 Mans. 42, C. A. 771
Chartered Bank of India, Australia and China *v.* British India Steam Navigation Co., Ltd., [1909] A. C. 369; 78 L. J. (P. C.) 111; 100 L. T. 661; 25 T. L. R. 480; 53 Sol. Jo. 446; 14 Com. Cas. 189 . . 265, 266
——— *v.* Henderson (1874), L. R. 5 P. C. 501; 30 L. T. 578 163
Chartered Mercantile Bank of India *v.* Netherlands India Steam Navigation Co. (1883), 10 Q. B. D. 521; 52 L. J. (Q. B.) 220; 48 L. T. 546; 47 J. P. 260; 31 W. R. 445; 5 Asp. M. L. C. 65, C. A. 15, 111, 114, 116, 141, 148, 224, 511, 522
Chasca, The (1875), L. R. 4 A. & E. 446; 44 L. J. (ADM.) 17; 32 L. T. 838; 2 Asp. M. L. C. 600 111, 112, 224, 233
Chasteauneuf *v.* Capeyron (1882), 7 App. Cas. 127; 51 L. J. (P. C.) 37; 46 L. T. 65; 4 Asp. M. L. C. 489 15, 22, 30
Chater *v.* Maclean, *Re* Lawrence, Crowdy and Bowlby. *See* Lawrence, Crowdy and Bowlby, *Re*, Chater *v.* Maclean.
Chatterton, *Ex parte*, *Re* Van Laun, *Ex parte* Pattullo. *See* Van Laun, *Re*, *Ex parte* Pattullo, *Ex parte* Chatterton.
Cheerful, The (1885), 11 P. D. 3; 55 L. J. (P.) 5; 54 L. T. 56; 34 W. R. 307; 5 Asp. M. L. C. 525 547, 564

PAGE
Cheese *v.* Keen, [1908] 1 Ch. 245; 77 L. J. (CH.) 163; 98 L. T. 316; 24 T. L. R. 138 762, 812
Cheeseman, *Ex parte, Re* Welfitt. *See* Welfitt, *Re, Ex parte* Cheeseman.
———, *Re*, [1891] 2 Ch. 289; 60 L. J. (CH.) 714; 64 L. T. 602; 39 W. R. 497, C. A. 786, 788
Cheesman *v.* May, May *v.* Biggenden. *See* May *v.* Biggenden, Cheesman *v.* May.
Cheslyn *v.* Dalby (1836), 2 Y. & C. (EX.) 170 811
"Chetah," The (1868), L. R. 2 P. C. 205; 38 L. J. (ADM.) 1; 5 Moo. P. C. C. (N. S.) 278; 19 L. T. 621; 17 W. R. 233 581
Chick *v.* Nicholls (1877), 26 W. R. 231 821
Chieftain, The (1863), Brown. & Lush. 104; 32 L. J. (P. M. & A.) 106; 8 L. T. 120; 9 Jur. (N. S.) 388; 11 W. R. 537 26, 622
Chiesman & Co. *v.* Modena (Owners), The Modena (1911), 16 Com. Cas. 292 . 115, 176, 204
Chilcote, *Re* (1839), 1 Beav. 421 782, 785
Child, *Re, Ex parte* Nyholm (1873), 43 L. J. (BCY.) 21; 29 L. T. 634; 22 W. R. 174; 2 Asp. M. L. C. 165, C. A. 135, 199, 283, 285, 312
Chilian, The (1881), 4 Asp. M. L. C. 473 369, 412
Chilton *v.* Cooke (1879), *Times*, July 2nd, C. A. 759
Chimæra, The (1852), cited 8 P. D. 131; 4 Jur. (N. S.) 172 622
China Merchants' Steam Navigation Co. *v.* Bignold, The "Hochung," The "Lapwing" (1882), 7 App. Cas. 512; 51 L. J. (P.) 92; 47 L. T. 485; 31 W. R. 303; 5 Asp. M. L. C. 39 382, 534
China Navigation Co., Ltd. *v.* Asiatic Petroleum Co., Ltd. and Taku Tug and Lighterage Co., Ltd., [1910] A. C. 204; 101 L. T. 547; 11 Asp. M. L. C. 245; 47 Sc. L. R. 587; *sub nom.* The "Tientsin," 79 L. J. (P. C.) 65 . . 460, 477
Chinkiang, The, [1908] A. C. 251; 77 L. J. (P. C.) 72; 24 T. L. R. 460 . . 418
Chinnery *v.* Blackburne (1784), 1 Hy. Bl. 117, n. 300
Chioggia, The, [1898] P. 1; 67 L. J. (P.) 174; 77 L. T. 472; 14 T. L. R. 27; 46 W. R. 253; 8 Asp. M. L. C. 352 246
Chittagong, The, Kostroma (Owners) *v.* Chittagong (Owners), [1901] A. C. 597; 70 L. J. (P. C.) 121; 85 L. T. 430; 9 Asp. M. L. C. 252 . . . 437, 498
Chitty, *Re* (1833), 2 Dowl. 421 829, 841
Chivers *v.* Fenn (1681), 2 Show. 161 730
Cholditch *v.* Jones, [1896] 1 Ch. 42; 65 L. J. (CH.) 83; 73 L. T. 528; 59 J. P. 793; 44 W. R. 124 762, 764, 766
Cholmondeley (Earl) *v.* Clinton (Lord) (1815), 19 Ves. 261 735, 850
Chowne, *Re* (1884), 52 L. T. 75, C. A. 784, 788, 789
Christian *v.* Field (1842), 2 Hare, 177; 11 L. J. (CH.) 97; 5 Jur. 1130 . . 819
Christiana, The (1849), 7 Notes of Cases, 2 490
———, Hammond *v.* Rogers. *See* Hammond *v.* Rogers, The Christiana.
Christiansborg, The (1885), 10 P. D. 141; 54 L. J. (P.) 84; 53 L. T. 612; 5 Asp. M. L. C. 491, C. A. 627
Christie *v.* Lewis (1821), 2 Brod. & Bing. 410; 5 Moore (C. P.), 211 . 86, 286, 298
——— *v.* Trott (1854), 2 W. R. 15 190, 289
Christina, The (1848), 3 Wm. Rob. 27 358, 491
Christoffersen *v.* Hansen (1872), L. R. 7 Q. B. 509; 41 L. J. (Q. B.) 217; 26 L. T. 547; 20 W. R. 626; 1 Asp. M. L. C. 305 89, 133, 144, 200
Christy *v.* Row (1808), 1 Taunt. 300 230, 293, 294, 306, 307, 314, 315, 589
Chusan, The (1885), 53 L. T. 60; 5 Asp. M. L. C. 476 378, 382
Circe, The, [1906] P. 1; 74 L. J. (P.) 106; 93 L. T. 640; 22 T. L. R. 525; 10 Asp. M. L. C. 149 517, 520
Cito, The (1881), 7 P. D. 5; 51 L. J. (P.) 1; 30 W. R. 836; 4 Asp. M. L. C. 468, C. A. 236, 239, 305, 306, 307, 314, 589
"City of Antwerp," The, and The "Friedrich," Inman *v.* Reck. *See* Inman *v.* Reck, The "City of Antwerp" and The "Friedrich."
City of Berlin, The, [1908] P. 110; 77 L. J. (P.) 76; 98 L. T. 298, C. A. . 429, 460, 501
City of Brooklyn, The (1876), 1 P. D. 276; 34 L. T. 932; 24 W. R. 1056, C. A. . 400, 418, 486, 487
City of Buenos Ayres, The (1871), 25 L. T. 672; 1 Asp. M. L. C. 169 . . . 540
City of Calcutta, The (1898), 79 L. T. 517; 8 Asp. M. L. C. 442, C. A. . 570, 572
City of Cambridge, The (1874), L. R. 4 A. & E. 161; L. R. 5 P. C. 451; 43 L. J. (ADM.) 11; 30 L. T. 439; 22 W. R. 578; affirmed, *sub nom.* Wood *v.* Smith, The "City of Cambridge," L. R. 5 P. C. 451; 43 L. J. (ADM.) 11; 30 L. T. 439; 22 W. R. 578; 3 Asp. M. L. C. 739 490, 531, 532

PAGE
City of Carlisle, The (1864), Brown. & Lush. 363; 11 L. T. 33 . . . 389, 433
City of Chester, The (1884), 9 P. D. 182; 53 L. J. (P.) 90; 51 L. T. 485; 33 W. R. 104; 5 Asp. M. L. C. 311, C. A. . . 563, 575, 576, 577, 578, 579
City of Delhi, The (1887), 58 L. T. 531; 6 Asp. M. L. C. 269 482
City of Dublin Steam Packet Co. *v.* Thompson (1866), L. R. 1 C. P. 355; 35 L. J. (C. P.) 198; 15 L. T. 112; 1 Horn & H. 369; 12 Jur. (N. S.) 726; 14 W. R. 376 19
City of Lincoln (1889), 15 P. D. 15; 59 L. J. (P.) 1; 62 L. T. 49; 38 W. R. 345; 6 Asp. M. L. C. 475, C. A. 505, 538
"City of Lincoln" (Masters and Owners) *v.* Smith, [1904] A. C. 250; 73 L. J. (P. C.) 45; 91 L. T. 206; 9 Asp. M. L. C. 586 116, 213
City of Liverpool, The (1912), 29 T. L. R. 139 481
City of London, The (1857), Sw. 245; 11 Moo. P. C. C. 307; 5 W. R. 678 . 377, 381, 409, 500
City of Lucknow, The (1884), 51 L. T. 907; 5 Asp. M. L. C. 340 . . . 802
City of Newcastle, The (1894), 71 L. T. 848; 7 Asp. M. L. C. 546 . . . 558
City of Peking, The (1888), 14 App. Cas. 40; 58 L. J. (P. C.) 64; 61 L. T. 136; 6 Asp. M. L. C. 396. 484, 496, 501, 536
——— (1890), 15 App. Cas. 438; 59 L. J. (P. C.) 88; 63 L. T. 722; 39 W. R. 177; 6 Asp. M. L. C. 572 540
City of Seattle, The (1903), 9 Canadian Exchequer Reports, 146 . . . 405
Civil Service Co-operative Society *v.* General Steam Navigation Co., [1903] 2 K. B. 756; 72 L. J. (K. B.) 933; 89 L. T. 429; 52 W. R. 181; 20 T. L. R. 10, C. A. 312
Clacevich *v.* Hutcheson & Co. (1887), 15 R. (Ct. of Sess.) 11; 25 Sc. L. R. 11 . 128, 271
Clan Cumming, The, [1907] P. 311; 97 L. T. 14, C. A. . . . 441, 470, 481
Clan Macdonald, The (1883), 8 P. D. 178; 52 L. J. (P.) 89; 49 L. T. 408; 32 W. R. 154; 5 Asp. M. L. C. 148 266, 281, 282
Clan Steam Trawling Co. *v.* Aberdeen Steam Trawling and Fishing Co., [1908] S. C. 651; 45 Sc. L. R. 462; 15 Scots Law Times, 897 563
Clara, The (1855), Sw. 1 622
——— (1880), 12 Otto, 200 488
Clare *v.* Joseph, [1907] 2 K. B. 369; 76 L. J. (K. B.) 724; 96 L. T. 770; 23 T. L. R. 398, C. A. 770, 771
Clarence, The (1850), 3 Wm. Rob. 283 537, 540
——— (1853), 1 Ecc. & Ad. 206 360, 501
Clarisse, The (1856), Sw. 129 581, 584, 585
Clark, *Re* (1851), 1 De G. M. & G. 43; 21 L. J. (CH.) 20; 15 Jur. 1047, C. A. . 755, 756, 798
——, *Re, Ex parte* Newland (1876), 4 Ch. D. 515; 35 L. T. 916; 25 W. R. 275 817, 821
—— *v.* Field, [1885] W. N. 108 731
—— *v.* Girdwood (1877), 7 Ch. D. 9; 47 L. J. (CH.) 116; 37 L. T. 614; 26 W. R. 90, C. A. 758, 833
—— *v.* Hoskins (1867), 15 W. R. 1161 754
—— *v.* Rivers (Lord) (1867), L. R. 5 Eq. 91; 37 L. J. (CH.) 70; 17 L. T. 166; 16 W. R. 123 836
Clarke, *Ex parte* (1819), 2 B. & Ald. 314 720
—— *v.* Couchman (1885), 20 L. J. N. C. 318 755, 758
—— *v.* Donovan (1794), 5 Term Rep. 694 781
—— *v.* Dunraven (Earl), The "Satanita," [1897] A. C. 59; 66 L. J. (P.) 1; 75 L. T. 537; 8 Asp. M. L. C. 190 612, 661
—— *v.* Richards (1835), 1 Y. & C. (EX.) 351; 4 L. J. (EX. EQ.) 49 . . . 842
—— *v.* Tyne Improvement Commissioners (1868), L. R. 3 C. P. 230; 37 L. J. (C. P.) 110; 17 L. T. 509 796
Clarke's Settlement Fund, *Re*, [1911] W. N. 39; 55 Sol. Jo. 293 . . 795, 820
Clayton (John), Ltd., *Re* (1905), 92 L. T. 223 825
Cleadon, The, Stevens *v.* Gourley. *See* Stevens *v.* Gourley, The Cleadon.
Cleary *v.* McAndrew, Galam (Cargo ex) (1864), 2 Moo. P. C. C. (N. S.) 216; Brown. & Lush. 167; 33 L. J. (P. M. & A.) 97; 9 L. T. 550; 10 Jur. (N. S.) 477; 12 W. R. 495; 3 New Rep. 254 236, 237, 246, 284, 307, 589, 622
Cleather *v.* Twisden (1884), 28 Ch. D. 340; 54 L. J. (CH.) 408; 52 L. T. 330; 33 W. R. 435, C. A. 759, 760
Cleland, *Ex parte, Re* Davies. *See* Davies, *Re, Ex parte* Cleland.
Clemens Horst (E.) Co. *v.* Norfolk and North American Steam Shipping Co. (1906), 22 T. L. R. 403; 11 Com. Cas. 141 . . . 149, 263, 264, 307

PAGE
Clements, *Re*, Costa Rica Republic *v.* Erlanger (1877), 46 L. J. (CH.) 375; 36 L. T. 332, C. A. 828
Cleopatra, The (1856), Sw. 135 428, 434
Clery *v.* Barry (1887), 21 L. R. Ir. 152, C. A. 757
"Clieveden," The, S.S. "Diana" *v.* S.S. "Clieveden." *See* "Diana," S.S. *v.* S.S. "Clieveden," The "Clieveden."
Clifford *v.* Hunter (1827), Mood. & M. 103; 3 C. & P. 16 213
Clifton, *Ex parte* (1836), 5 Dowl. 218; 2 Har. & W. 296 830
Climpson *v.* Coles (1889), 23 Q. B. D. 465; 58 L. J. (Q. B.) 346; 61 L. T. 116; 38 W. R. 110 751
Clink *v.* Hickie, Borman & Co. (No. 2) (1899), 4 Com. Cas. 292; 15 T. L. R. 408, C. A. 123
—— *v.* Radford & Co., [1891] 1 Q. B. 625; 60 L. J. (Q. B.) 388; 64 L. T. 491; 39 W. R. 355; 7 Asp. M. L. C. 10, C. A. . . . 126, 133, 134, 135, 285
Clipsham *v.* Vertue (1843), 5 Q. B. 265; 13 L. J. (Q. B.) 2; 8 Jur. 32; Dav. & Mer. 343 93, 97, 178, 192
Close *v.* Phipps (1844), 7 Man. & G. 586; 8 Scott (N. R.), 381 751
Closmadeuc *v.* Carrel (1856), 18 C. B. 36; 25 L. J. (C. P.) 216; 2 Jur. (N. S.) 474; 4 W. R. 547 87
Clough, *Ex parte*, *Re* West, King and Adams. *See* West, King and Adams, *Re*, *Ex parte* Clough.
Clover *v.* Adams (1881), 6 Q. B. D. 622 826, 827
Clutha, The (1876), 45 L. J. (P.) 108; 35 L. T. 36; 3 Asp. M. L. C. 225 . . 616
Clutha Boat 147, The, [1909] P. 36; 78 L. J. (P.) 41; 100 L. T. 198; 11 Asp. M. L. C. 199 406, 468, 481, 482, 498, 510
Clutterbuck *v.* Coffin (1842), 3 Man. & G. 842; 11 L. J. (C. P.) 65; 6 Jur. 131; 1 Dowl. 479; 4 Scott (N. R.), 509; Car. & M. 273 51
Clutton *v.* Pardon (1823), Turn. & R. 301 841
Clydach, The (1884), 51 L. T. 668; 5 Asp. M. L. C. 336 466, 469
Clyde, The (1856), Sw. 23 537, 538
Clyde Navigation Co. *v.* Barclay (1876), 1 App. Cas. 790; 36 L. T. 379; 3 Asp. M. L. C. 390 486, 502, 530
Clyde Navigation Trustees *v.* Laird (1883), 8 App. Cas. 658 636
Clydesdale Shipowners Co., Ltd. *v.* Gallagher, [1907] 2 I. R. 578, C. A.; affirmed, [1908] 2 I. R. 482 276
Clymene, The, [1897] P. 295; 66 L. J. (P.) 152; 76 L. T. 811; 46 W. R. 109 57, 331, 610
C. M. Palmer, The, The Larnax (1873), 29 L. T. 120; 21 W. R. 702; 2 Asp. M. L. C. 94 381, 403, 484, 504
Coaks *v.* Boswell (1886), 11 App. Cas. 232; 55 L. J. (CH.) 761; 55 L. T. 32 . 750, 751
Coates, *Ex parte*, *Re* Wooding. *See* Wooding, *Re*, *Ex parte* Coates.
Cobb *v.* Becke (1845), 6 Q. B. 930; 14 L. J. (Q. B.) 108; 9 Jur. 439 . . . 845
Cobban *v.* Downe (1803), 5 Esp. 41 151, 198, 202
Cobbett *v.* Wood, [1908] 1 K. B. 590; 77 L. J. (K. B.) 406; 98 L. T. 45; 24 T. L. R. 233; reversed, [1908] 2 K. B. 420; 77 L. J. (K. B.) 878; 99 L. T. 482; 24 T. L. R. 615; 52 Sol. Jo. 517, C. A. 776, 777
Cobeldick, *Ex parte* (1883), 12 Q. B. D. 149; 49 L. T. 741; 32 W. R. 239, C. A. 840, 841
Cobequid Marine Insurance Co. *v.* Barteaux (1875), L. R. 6 P. C. 319; 32 L. T. 510; 23 W. R. 892; 2 Asp. M. L. C. 536 75
Cobridge Steamship Co., Ltd. *v.* Bucknall Steamship Lines, Ltd. (1909), 14 Com. Cas. 141 136, 263, 276
Coburn *v.* Colledge, [1897] 1 Q. B. 702; 66 L. J. (Q. B.) 462; 76 L. T. 608; 45 W. R. 488, C. A. 812
Cochran *v.* Retberg (1800), 3 Esp. 121 122, 277
Cochrane *v.* Gilkison (1854), 16 Dunl. (Ct. of Sess.) 548; 26 Sc. Jur. 251 . 74, 242
Cock *v.* Taylor (1811), 13 East, 399 295
Cockatrice, The, [1908] P. 182; 77 L. J. (P.) 74; 98 L. T. 728; 24 T. L. R. 339 398
Cockayne *v.* Harrison (1873), L. R. 15 Eq. 298; 42 L. J. (CH.) 660; 21 W. R. 520 845
Cockburn *v.* Alexander (1848), 6 C. B. 791; 18 L. J. (C. P.) 74 . 100, 101, 140, 191, 197, 198, 308
———— *v.* Edward (1881), 18 Ch. D. 449; 51 L. J. (CH.) 46; 45 L. T. 500; 30 W. R. 446, C. A. 751, 798, 811
———— *v.* Wright (1840), 6 Bing. (N. C.) 223; 9 L. J. (C. P.) 166; 8 Scott, 489 196

PAGE
Cockerell *v.* —— (1740), Barn. (CH.) 264 845
Cockle *v.* Whiting (1829), 1 Russ. & M. 43 835
Cockrell's Estate, *Re*, [1911] 1 Ch. 23; 85 L. J. (CH.) 152; 105 L. T. 662, C. A. . 823
Cocks *v.* Bruce, Searl and Good (1904), 21 T. L. R. 62 744, 836
Coe, *Re* (1894), 38 Sol. Jo. 421 766
Coggs *v.* Bernard (1703), 2 Ld. Raym. 909; Com. 133; 1 Salk. 26; Holt (K. B.), 13; 1 Smith, L. C. (11th ed.), p. 173 195, 326
Cognac (1832), 2 Hag. Adm. 377 73, 243
Cohen *v.* Mitchell (1890), 25 Q. B. D. 262; 59 L. J. (Q. B.) 409; 63 L. T. 206; 38 W. R. 551; 7 Morr. 207, C. A. 740
—— and Cohen, *Re*, [1905] 2 Ch. 137; 74 L. J. (CH.) 517; 92 L. T. 782; 53 W. R. 529, C. A. 783
Cohn *v.* Davidson (1877), 2 Q. B. D. 455; 46 L. J. (Q. B.) 305; 36 L. T. 244; 25 W. R. 369; 3 Asp. M. L. C. 374, C. A. . 187, 188, 211, 212, 214, 217, 221
Colchester Corporation *v.* Brooke (1845), 7 Q. B. 339; 15 L. J. (Q. B.) 59; 9 Jur. 1090 516
Cole *v.* Eley, [1894] 2 Q. B. 180; 42 W. R. 505, C. A. 826
—— *v.* Meek (1864), 15 C. B. (N. S.) 795; 33 L. J. (C. P.) 183; 9 L. T. 653; 12 W. R. 349 103
—— *v.* North Western Bank (1875), L. R. 10 C. P. 354; 44 L. J. (C. P.) 233; 32 L. T. 733 146, 168
—— *v.* Park, *Re* Park. *See* Park, *Re*, Cole *v.* Park.
—— *v.* Terry (1861), 5 L. T. 347 836
Colegrave *v.* Manley (1823), Turn. & R. 400; 2 L. J. (O. S.) (CH.) 39 . . 737, 818
Coleman *v.* Lambert (1839), 5 M. & W. 502; 9 L. J. (EX.) 43 296
Collen *v.* Wright (1857), 8 E. & B. 647; 27 L. J. (Q. B.) 215; 4 Jur. (N. S.) 357; 6 W. R. 123 732, 737, 742
Collett *v.* Preston (1852), 15 Beav. 458 822
Collier, The (1866), L. R. 1 A. & E. 83; 16 L. T. 155; 12 Jur. (N. S.) 789. 565, 566
Collins, *Re* (1856), 18 C. B. 272 851
———, *Re*, Wheatley *v.* Bastow (1855), 7 De G. M. & G. 558; 24 L. J. (CH.) 732; 1 Jur. (N. S.) 1125; 3 Eq. Rep. 865, C. A. 742, 850
——— *v.* Brook (1859), 4 H. & N. 270; 28 L. J. (EX.) 143; 1 F. & F. 407 . 770
——— *v.* Godefroy (1831), 1 B. & Ad. 950; 9 L. J. (O. S.) (K. B.) 158; 1 Dowl. 326 802
——— *v.* Griffin (1734), Barnes, 37 846
——— *v.* Jackson, Jackson *v.* Collins (1862), 31 Beav. 645 842
——— *v.* Johnson (1855), 16 C. B. 588; 24 L. J. (C. P.) 231; 3 C. L. R. 1285 . 834
——— *v.* Lamport (1864), 4 De G. J. & Sm. 500 25, 26
——— *v.* Simpson Steamship Co. (1907), 24 T. L. R. 178, C. A. . 46, 52, 53, 60
Collyer-Bristow, Russell Hill & Co., *Re*, *Ex parte* Fletcher (1899), 81 L. T. 110 . 790
Colmer *v.* Ede (1870), 40 L. J. (CH.) 185; 23 L. T. 884; 19 W. R. 318 . . 816
"Cologne," The, Malcomson *v.* General Steam Navigation Co., The "Ranger." *See* Malcomson *v.* General Steam Navigation Co., The "Ranger" and The "Cologne."
Colonia, The (1844), 3 Notes of Cases, 13, n. 429, 431
Colquhoun, *Re*, *Ex parte* Ford (1854), 5 De G. M. & G. 35; 23 L. J. (CH.) 515; 2 W. R. 286; 2 Eq. Rep. 304, C. A. . . . 731, 782, 801
————, *Re*, Dunt *v.* Dunt (1846), 9 Beav. 146 788
Colstrup, The (1908), *Shipping Gazette*, October 22nd 449, 450
Coltman *v.* Chamberlain (1890), 25 Q. B. D. 328; 59 L. J. (Q. B.) 563; 39 W. R. 12 22, 24
Columbia, The (1838), 3 Hag. Adm. 428 557
Columbine, The (1843), 2 Wm. Rob. 27 370
Columbus, The (1848), Pritchard's Admiralty Digest, 3rd ed., p. 239 . . . 487
————(1849), 3 Wm. Rob. 158 538, 539
Colvin *v.* Newberry and Benson (1832), 1 Cl. & Fin. 283 . 85, 86, 169, 170, 174
Colyer *v.* Isaacs (1897), 77 L. T. 19, C. A. 731
Comet (Owners) *v.* W. H. No. 1 (Owners), The W. H. No. 1 and the Knight Errant, [1910] P. 199; 79 L. J. (P.) 61; 102 L. T. 643; 11 Asp M. L. C. 407, C. A.; affirmed, [1911] A. C. 30; 80 L. J. (P.) 22; 103 L. T. 677; 11 Asp. M. L. C. 497 491, 529
Commerce, The (1850), 3 Wm. Rob. 287 453
Commercial Steamship Co. *v.* Boulton (1875), L. R. 10 Q. B. 346; 44 L. J. (Q. B.) 219; 33 L. T. 707; 23 W. R. 854; 3 Asp. M. L. C. 111 . . 122, 123, 124
Commerell *v.* Poynton (1818), 1 Swan. 1 818
Commonwealth Land, Building, Estate and Auction Co., *Re*, *Ex parte* Hollington (1873), 43 L. J. (CH.) 99; 29 L. T. 502; 22 W. R. 106 832

PAGE

Compagnie Générale Transatlantique *v.* Law (Thomas) & Co., La "Bourgogne," [1899] A. C. 431; 68 L. J. (P.) 104; 80 L. T. 845; 15 T. L. R. 424; 8 Asp. M. L. C. 550 16

Compania Naveria Vasconzada *v.* Churchill and Sim, Same *v.* Burton & Co., [1906] 1 K. B. 237; 75 L. J. (K. B.) 94; 94 L. T. 59; 54 W. R. 406; 22 T. L. R. 85; 11 Com. Cas. 49; 10 Asp. M. L. C. 177 . . . 65, 155, 156, 165, 174

Companies (Consolidation) Act, 1908, *Re*, *Re* Palace Restaurants, Ltd. (1914), *Times*, January 21st, C. A. 780, 785

Compton *v.* Chandless (1802), cited 3 Camp. 19 755

Comtesse de Frègeville, The (1861), Lush. 329; 4 L. T. 713 68, 626

Concordia, The (1866), L. R. 1 A. & E. 93; 14 L. T. 896; 12 Jur. (N. S.) 77 . 367, 376, 436

Congreve, *Re* (1841), 4 Beav. 87. 783

Connolly to Sheridan and Russell, *Ex parte*, [1900] 1 I. R. 1; 33 I. L. T. 25, C. A. 764

Connor *v.* Smythe (1814), 5 Taunt. 654 126

Consolidated Tea and Lands Co. *v.* Oliver's Bonded Wharf etc., Proprietors, [1910] 2 K. B. 395; 79 L. J. (K. B.) 810; 102 L. T. 648; 54 Sol. Jo. 506; 26 T. L. R. 388; 15 Com. Cas. 212 325

Constable *v.* Clobery (1626), Palm. 397; Poph. 161; Lat. 12; Noy, 75; Hard. 69; Benl. 146 138

Constable's (Sir Henry) Case (1601), 5 Co. Rep. 106; 1 And. 86 . . 548, 549

Constancia, La (1845), 2 Wm. Rob. 404 222, 246

"Constancia," The (1866), 15 W. R. 183 625

Constantia, The (1889), 62 L. T. 236; 38 W. R. 272; 6 Asp. M. L. C. 478 . 414

Constitution, The (1879), 4 P. D. 39; 48 L. J. (P.) 13; 40 L. T. 219; 27 W. R. 739; 4 Asp. M. L. C. 79 560, 617, 619

"Constitution," The, Dean *v.* Mark. *See* Dean *v.* Mark, The "Constitution."

Cook, *Re*, *Ex parte* Cripps, [1899] 1 Q. B. 863; 68 L. J. (Q. B.) 597; 80 L. T. 495; 47 W. R. 524; 6 Mans. 194 823

——— *v.* Jennings (1797), 7 Term Rep. 381 . 235, 236, 237, 254, 307, 314, 315

——— *v.* Rosslyn (Earl), *Re* Hook. *See* Hook, *Re*, Cook *v.* Rosslyn (Earl).

Cooke, *Re* (1889), 33 Sol. Jo. 397, C. A. 850

——— *v.* Wilson (1856), 1 C. B. (N. S.) 153; 26 L. J. (C. P.) 15; 2 Jur. (N. S.) 1094; 5 W. R. 24 90, 294

Cooker *v.* Child (1673), 2 Lev. 74; 3 Keb. 94 89

Coolgardie Goldfields, Ltd., *Re*, *Re* Cannon, Son and Morten, [1900] 1 Ch. 475; 69 L. J. (CH.) 215; 82 L. T. 23; 48 W. R. 461; 16 T. L. R. 161 . . 831

Cooper, *Ex parte* (1854), 14 C. B. 663 776

———, *Ex parte*, *Re* Beyts and Craig. *See* Beyts and Craig, *Re*, *Ex parte* Cooper.

———, *Ex parte*, *Re* McLaren. *See* McLaren, *Re*, *Ex parte* Cooper.

———, *Re* (1898), 67 L. J. (Q. B.) 276 849

——— *v.* Ewart (1847), 15 Sim. 564 794

——— *v.* Jenkins, Haymes *v.* Cooper. *See* Haymes *v.* Cooper, Cooper *v.* Jenkins.

——— *v.* Stephenson (1852), 21 L. J. (Q. B.) 292; 16 Jur. 424 757

Cope *v.* Doherty (1858), 4 K. & J. 367, C. A. 12

Copenhagen, The (1799), 1 Ch. Rob. 289 305, 314, 317, 321

Coppin *v.* Braithwaite (1844), 8 Jur. 875 327

Corbett *v.* Pearce, [1904] 2 K. B. 422; 73 L. J. (K. B.) 885; 90 L. T. 781; 68 J. P. 387; 20 T. L. R. 473 14

Corcoran *v.* Gurney (1853), 1 E. & B. 456; 22 L. J. (Q. B.) 113; 17 Jur. 1152; 1 W. R. 129 111, 114

Cordelia, The, [1909] P. 27; 78 L. J. (P.) 48; 100 L. T. 197; 11 Asp. M. L. C. 202 127, 261, 276, 278

Cordilleras, The, [1904] P. 90; 73 L. J. (P.) 13; 89 L. T. 673; 9 Asp. M. L. C. 506 19, 615

Corennie, The, [1894] P. 338, n. 466

Corinthian, The, [1909] P. 260; 78 L. J. (P.) 121; 101 L. T. 265; 53 Sol. Jo. 650; 25 T. L. R. 693; 11 Asp. M. L. C. 208, C. A. . 436, 466, 467, 473, 474, 475

Coriolanus, The (1890), 15 P. D. 103; 59 L. J. (P.) 59; 62 L. T. 844; 6 Asp. M. L. C. 514 565

Corkling *v.* Massey (1873), L. R. 8 C. P. 395; 42 L. J. (C. P.) 153; 28 L. T. 636; 21 W. R. 680; 1 Asp. M. L. C. 18 91, 97, 179

Corlett *v.* Gordon (1813), 3 Camp. 472 166

Cormack *v.* Beisly (1858), 3 De G. & J. 157, C. A. 819, 824

PAGE
Cormack *v.* Gladstone (1809), 11 East, 347 95
Cornelia Henrietta, The (1866), L. R. 1 A. & E. 51; 12 Jur. (N. S.) 396; 14 W. R. 502 26, 625
Coromandel, The (1857), Sw. 205 559
Corry *v.* Coulthard (1877), cited 2 C. P. D. 583; 3 Asp. M. L. C. 546, n., C. A. . 317
Corsellis, *Re*, Lawton *v.* Elwes (1887), 34 Ch. D. 675; 56 L. J. (CH.) 294; 56 L. T. 411; 51 J. P. 597; 35 W. R. 309, C. A. 752, 781
Cory & Son, Ltd. *v.* France, Fenwick & Co., [1911] 1 K. B. 114; 80 L. J. (K. B.) 341; 103 L. T. 649; 27 T. L. R. 18; 55 Sol. Jo. 10; 11 Asp. M. L. C. 499, C. A. 544
——— *v.* Kopajtic, The "James Joicey" *v.* The "Kostrena," [1908] S. C. 295; 45 Sc. L. R. 216; 15 Scots Law Times, 558 . 387, 412, 414, 418, 421
—— Brothers & Co. *v.* Stewart (1886), 2 T. L. R. 508, C. A. . . . 25, 26
Cosmopolitan, The (1848), 6 Notes of Cases, Suppl. xvii. 560
Cossman *v.* West, Cossman *v.* British America Assurance Co. (1887), 13 App. Cas. 160; 57 L. J. (P. C.) 17; 58 L. T. 122; 6 Asp. M. L. C. 233 . 559, 560, 580, 585
Costa Rica Republic *v.* Erlanger (1876), 3 Ch. D. 62; 45 L. J. (CH.) 743; 35 L. T. 19; 24 W. R. 955, C. A. 408
——— *v.* ———, *Re* Clements. *See* Clements, *Re*, Costa Rica Republic *v.* Erlanger.
Cotterell *v.* Stratton (1872), 8 Ch. App. 295; 42 L. J. (CH.) 417; 28 L. T. 218; 21 W. R. 234 734
Cotton *v.* Vogan & Co., [1896] A. C. 457; 65 L. J. (Q. B.) 486; 74 L. T. 591; 61 J. P. 36 636
Cottrell, *Re*, Boughton-Leigh *v.* Boughton-Leigh, *Re* Jackson. *See* Jackson, *Re*, *Re* Cottrell, Boughton-Leigh *v.* Boughton-Leigh.
Coulthurst *v.* Sweet (1866), L. R. 1 C. P. 649 309, 310
Counsellor, The, [1913] P. 70; 82 L. J. (P.) 72 417, 418
Countess of Harcourt (1824), 1 Hag. Adm. 248 42, 60
"County of Lancaster" Steamship *v.* Sharp & Co. (1889), 24 Q. B. D. 158; 59 L. J. (Q. B.) 22; 61 L. T. 692; 6 Asp. M. L. C. 448 176
Courier, The, [1891] P. 355; 61 L. J. (P.) 11; 66 L. T. 386; 55 J. P. 793; 40 W. R. 336; 7 Asp. M. L. C. 157 805
Court *v.* Berlin, [1897] 2 Q. B. 396; 66 L. J. (Q. B.) 714; 77 L. T. 293; 46 W. R. 55, C. A. 730, 738
Courtney *v.* Stock (1842), 2 Dr. & War. 251; 1 Con. & Law. 366 . . 756, 834
Covington *v.* Roberts (1806), 2 Bos. & P. (N. R.) 378 319
Cowas-jee *v.* Thompson (1845), 5 Moo. P. C. C. 165; 3 Moo. Ind. App. 422 . 153, 160
Cowdell, *Re* (1883), 52 L. J. (CH.) 246; 31 W. R. 335 783
——— *v.* Neale (1856), 1 C. B. (N. S.) 332; 26 L. J. (C. P.) 37; 2 Jur. (N. S.) 1248 785
Cowdenbeath Coal Co. *v.* Clydesdale Bank (1895), 22 R. (Ct. of Sess.) 682; 32 Sc. L. R. 549; 3 Scots Law Times, 41 150
Cowdry *v.* Day (1859), 1 Giff. 316; 29 L. J. (CH.) 39; 1 L. T. 88; 5 Jur. (N. S.) 1199; 8 W. R. 55 751, 811
Cowell *v.* Betteley (1834), 10 Bing. 432; 3 L. J. (C. P.) 148; 2 Dowl. 780; 4 Moo. & S. 265 821, 822
——— *v.* Simpson (1809), 16 Ves. 275 820
Cowie, *Ex parte* (1835), 3 Dowl. 600; 1 Har. & W. 211 829
——— *v.* Witt (1874), 23 W. R. 76 90
Cox *v.* Bruce (1886), 18 Q. B. D. 147; 56 L. J. (Q. B.) 121; 57 L. T. 128; 35 W. R. 207; 6 Asp. M. L. C. 152, C. A. . . . 145, 154, 155, 165, 167, 174
—— *v.* Coleridge (1822), 1 B. & C. 37; 2 Dow. & Ry. (K. B.) 86 . . . 725
—— *v.* Harden (1803) 4 East, 211 160
—— *v.* Leech (1857), 1 C. B. (N. S.) 617; 26 L. J. (C. P.) 125; 3 Jur. (N. S.) 442; 5 W. R. 199 756
—— *v.* May (1815), 4 M. & S. 152 324, 586
Coxe *v.* Phillips (1736), Lee *temp.* Hard. 237 829
Cozens *v.* Graham (1852), 12 C. B. 398; 21 L. J. (C. P.) 206; 16 Jur. 952 . . 776
Cracknall *v.* Janson (1879), 11 Ch. D. 1; 48 L. J. (CH.) 168; 40 L. T. 640; 27 W. R. 851, C. A. 806
Craddock *v.* Rogers (1884), 53 L. J. (CH.) 968; 51 L. T. 191 811
Cradock *v.* Rogers, [1885] W. N. 134, C. A. 751
Craftsman, The, [1906] P. 153; 75 L. J. (P.) 87; 95 L. T. 157; 10 Asp. M. L. C. 274. . 541

PAGE
Cragg, *Ex parte* (1838), 6 Dowl. 256 710
Craig and Rose *v.* Delargy (1879), 6 R. (Ct. of Sess.) 1269; 16 Sc. L. R. 750 . 115, 225
Craigellachie, The, [1909] P. 1; 77 L. J. (P.) 145; 99 L. T. 252; 11 Asp. M. L. C. 103 397, 445, 471, 486
Craighall, The, [1910] P. 207; 103 L. T. 236, C. A. 14, 374
Crane *v.* Tyne Shipping Co. (1897), 13 T. L. R. 172 328
Cranston *v.* Marshall (1850), 5 Exch. 395; 19 L. J. (EX.) 340 . . . 83, 328
Craske *v.* Wade (1899), 80 L. T. 380, C. A. 796
Crathie, The, [1897] P. 178; 66 L. J. (P.) 93; 76 L. T. 534; 45 W. R. 631 541, 612
Craven *v.* Ryder (1816), 6 Taunt. 433 152, 153, 160
——— *v.* Stubbins (1864), 34 L. J. (Q. B.) 126; 11 L. T. 402; 10 Jur. (N. S.) 1189; 13 W. R. 208 712
Craven's Settlement, *Re* (1889), 6 T. L. R. 105 801
Crawford ("Warsaw") *v.* Granite City Steamship Co., Ltd. ("Linn O'Dee") (1906), 8 F. (Ct. of Sess.) 1013; 43 Sc. L. R. 732; 14 Scots Law Times, 203 420, 423
——— and Law *v.* Allan Line Steamship Co., Ltd., [1912] A. C. 130; 81 L. J. (P. C.) 113; 105 L. T. 964; 28 T. L. R. 168; 12 Asp. M. L. C. 100; 17 Com. Cas. 135; [1912] S. C. (House of Lords) 56; 49 Sc. L. R. 117 149, 156
——— and Rowat *v.* Wilson, Sons & Co. (1896), 1 Com. Cas. 277, C. A. . 132, 201
Crawshay, *Re*, Dennis *v.* Crawshay (1890), 45 Ch. D. 318; 63 L. T. 597, C. A. . 794, 806
——— *v.* Eades (1823), 1 B. & C. 181; 1 L. J. (O. S.) (K. B.) 90; 2 Dow. & Ry. (K. B.) 288 287
Creadon, The (1886), 54 L. T. 880; 5 Asp. M. L. C. 585 615
Creen *v.* Wright (1876), 1 C. P. D. 591; 35 L. T. 339; 3 Asp. M. L. C. 254 . 40
Crescent, The (1853), Stuart's Vice-Admiralty Court Cases, Lower Canada, 289 464
Cressington, The, [1891] P. 152; 60 L. J. (P.) 25; 64 L. T. 329; 7 Asp. M. L. C. 27 116, 117, 203, 221, 225
Cresswell *v.* Byron (1807), 14 Ves. 271 738
Crew, Widgery & Co. *v.* Great Western Steamship Co., [1887] W. N. 161 . . 109
Cricket, The, The Endeavour (1882), 48 L. T. 535; 5 Asp. M. L. C. 53 . . 613
Crimdon, The, [1900] P. 171; 69 L. J. (P.) 103; 82 L. T. 660; 48 W. R. 623; 16 T. L. R. 403; 9 Asp. M. L. C. 104 831
Cripps, *Ex parte*, *Re* Cook. *See* Cook, *Re*, *Ex parte* Cripps.
Cripwell, *Ex parte* (1837), 5 Dowl. 689; 1 Jur. 755; Will. Woll. & Dav. 356 . 840
Crisp, *Ex parte* (1834), 2 Dowl. 455 840, 841
Croghan *v.* Maffett (1891), 28 L. R. Ir. 97 823
Cronbach *v.* Isaac, *Re* Isaac. *See* Isaac, *Re*, Cronbach *v.* Isaac.
Croockewit *v.* Fletcher (1857), 1 H. & N. 893; 26 L. J. (EX.) 153; 5 W. R. 348 . 94, 139, 142, 179, 192
Crook *v.* Wright (1825), Ry. & M. 278 741
Crooks *v.* Allan (1879), 5 Q. B. D. 38; 49 L. J. (Q. B.) 201; 41 L. T. 800; 28 W. R. 304; 4 Asp. M. L. C. 216 112, 148, 316, 323, 325
Cropton *v.* Pickernell (1847), 16 M. & W. 829 125
Cross *v.* Cross (1880), 43 L. T. 533, C. A. 817
—— *v.* Hyne (1868), 3 Mar. L. C. 80 61
—— *v.* Pagliano (1870), L. R. 6 Exch. 9; 40 L. J. (EX.) 18; 23 L. T. 420; 19 W. R. 159 137, 138, 142, 196
Crossley *v.* Crowther (1851), 9 Hare, 384; 21 L. J. (CH.) 565 . . . 729, 833
Crouan *v.* Stanier, [1904] 1 K. B. 87; 73 L. J. (K. B.) 102; 9 Com. Cas. 27 . 563
Crow *v.* Falk (1846), 8 Q. B. 467; 15 L. J. (Q. B.) 183; 10 Jur. 374 . . 93, 178
Crowder *v.* Shee (1808), 1 Camp. 437 778
Crowdy, *Re*, *Ex parte* Incorporated Law Society (1895), 11 T. L. R. 406 . . 855
Crown Steamship Co., Ltd. *v.* Leitch, [1908] S. C. 506; 45 Sc. L. R. 402; 15 Scots Law Times, 811 277
Crus. V., The (1862), Lush. 583 571, 572
Crusader, The [1907] P. 15; 76 L. J. (P.) 19; 96 L. T. 126; 10 Asp. M. L. C. 353; affirmed, [1907] P. 196; 76 L. J. (P.) 102; 97 L. T. 20; 23 T. L. R. 382; 10 Asp. M. L. C. 442, C. A. 568, 571
Crystal, The, Arrow Shipping Co. *v.* Tyne Improvement Commissioners. *See* Arrow Shipping Co. *v.* Tyne Improvement Commissioners, The Crystal.

PAGE
C. S. Butler, The (1874), L. R. 4 A. & E. 238; 31 L. T. 549; 23 W. R. 113; 2 Asp. M. L. C. 237 14, 374, 377, 478, 577
———, The Baltic (1874), L. R. 4 A. & E. 178; 43 L. J. (ADM.) 17; 30 L. T. 475; 22 W. R. 759 547
Cuba, The (1860), Lush. 14 575
——— *v.* McMillan (1896), 26 Supreme Court of Canada Reports, 651 . 441, 466
Cubison *v.* Mayo, [1896] 1 Q. B. 246; 65 L. J. (Q. B.) 267; 74 L. T. 65; 60 J. P. 212; 44 W. R. 473, C. A. 812
Cullen, *Re* (1859), 27 Beav. 51 839, 840
——— *v.* Butler (1816), 5 M. & S. 461; 4 Camp. 289 111, 233
——— and Andrews *v.* Mico (1665), 1 Keb. 831 305
Culliford *v.* Warren, *Ex parte* (1828), 8 B. & C. 220; 5 L. J. (O. S.) (K. B.) 229 . 839
Cumberland, The (1836), Stuart's Vice-Admiralty Court Cases, Lower Canada, 75 489
Cumbrian, The (1887), 57 L. T. 205; 6 Asp. M. L. C. 151 . . 570, 587, 619
Cuming *v.* Brown (1808), 9 East, 506 163
Cumming, *Re* (1860), 2 De G. F. & J. 376; 30 L. J. (CH.) 29; 3 L. T. 391; 6 Jur. (N. S.) 1129; 9 W. R. 213, C. A. 827
Cunningham *v.* Collier (1785), 4 Doug. (K. B.) 233 89
——— *v.* Colvils, Lowden & Co. (1888), 16 R. (Ct. of Sess.) 295; 26 Sc. L. R. 249 117, 212, 215
——— *v.* Dunn (1878), 3 C. P. D. 443; 48 L. J. (Q. B.) 62; 38 L. T. 631; 3 Asp. M. L. C. 359, C. A. 198, 201
——— *v.* Frontier S.S. Co., [1906] 2 I. R. 12, C. A. 77, 212
——— *v.* M'Donagh, [1904] 2 I. R. 417 809
Curfew, The, [1891] P. 131; 60 L. J. (P.) 53; 64 L. T. 330; 39 W. R. 367; 7 Asp. M. L. C. 29 140, 181, 256
Curlewis *v.* Broad (1862), 1 H. & C. 322; 31 L. J. (EX.) 473; 10 W. R. 797 . 758
Curling *v.* Long (1797), 1 Bos. & P. 634 314
——— *v.* Sedger (1838), 4 Bing. (N. C.) 743; 8 L. J. (C. P.) 71; 6 Scott, 678; 6 Dowl. 759 781
Curnock *v.* Born, *Re* Born. *See* Born, *Re*, Curnock *v.* Born.
Curnot and Parkinson, *Re* (1871), 40 L. J. (CH.) 608 791, 847
Curran, The, [1910] P. 184; 79 L. J. (P.) 83; 102 L. T. 640, C. A. . . . 411
Currie, *Re* (1846), 9 Beav. 602; 10 Jur. 976 789
——— *v.* M'Knight, [1897] A. C. 97; 66 L. J. (P. C.) 19; 75 L. T. 457; 8 Asp. M. L. C. 193 518, 525, 617, 618
Curtis *v.* Auber (1820), 1 Jac. & W. 526 301
——— *v.* Stovin (1889), 22 Q. B. D. 513; 58 L. J. (Q. B.) 174; 60 L. T. 772 37 W. R. 315, C. A. 368
——— *v.* Williamson (1874), L. R. 10 Q. B. 57; 44 L. J. (Q. B.) 27; 31 L. T. 678; 23 W. R. 236 68
Curwen *v.* Milburn (1889), 42 Ch. D. 424; 62 L. T. 278; 38 W. R. 49, C. A. . 792, 816
Cusack, *Re* (1888), 21 L. R. Ir. 493 783
Cuthbert *v.* Cumming (1855), 10 Exch. 809; 24 L. J. (EX.) 198; affirmed, 11 Exch. 405; 24 L. J. (EX.) 310; 1 Jur. (N. S.) 686; 3 W. R. 553 . 100, 102, 103, 140, 197
Cutter *v.* Powell (1795), 6 Term Rep. 320 51
Cybele, The (1877), 2 P. D. 224; 37 L. T. 165; 25 W. R. 830; 3 Asp. M. L. C. 478; (1878), 3 P. D. 8; 47 L. J. (P.) 86; 37 L. T. 773; 26 W. R. 345; 3 Asp. M. L. C. 532, C. A. . . . 375, 569, 629
——— (1879), 5 Quebec Law Reports, 262 399
Cynthia, The (1852), 16 Jur. 748 40
——— (1876), 2 P. D. 52; 46 L. J. (P.) 58; 36 L. T. 184; 3 Asp. M. L. C. 378 532, 640, 648
Czech *v.* General Steam Navigation Co. (1867), L. R. 3 C. P. 14; 37 L. J. (C. P.) 3; 17 L. T. 246; 16 W. R. 130 115, 116, 203, 225

D.

D., *Re*, *Ex parte* Law Society (1911), 55 Sol. Jo. 670; 27 T. L. R. 535 . . 856
D. *v.* A. & Co., [1900] 1 Ch. 484; 69 L. J. (CH.) 382; 82 L. T. 47; 48 W. R. 429 . 828
Da Costa *v.* Edmunds (1815), 4 Camp. 142 205
——— *v.* Newnham (1788), 2 Term Rep. 407 320, 321
Dahl *v.* Nelson, Donkin & Co. (1881), 6 App. Cas. 38; 50 L. J. (CH.) 411; 44 L. T. 381; 29 W. R. 543; 4 Asp. M. L. C. 392 . . 138, 183, 184, 254, 255. 256, 257, 258, 259, 260, 261, 262, 267, 271, 274, 275

PAGE
Dakin *v.* Oxley (1864), 15 C. B. (N. S.) 646; 33 L. J. (C. P.) 115; 10 L. T. 268; 10 Jur. (N. S.) 655; 12 W. R. 557 304, 306, 308, 309
Dalby, *Re* (1845), 8 Beav. 469 782
Dale, *Re*, Stubbs *v.* Dale (1889), 62 L. T. 28 806, 807
—— *v.* Hall (1750), 1 Wils. 281 108, 232, 325, 326
—— and Plant, Ltd., *Re* (1889), 61 L. T. 206 734
Dalglish *v.* Davidson (1824), 5 Dow. & Ry. (K. B.) 6 323
Dalhousie, The (1875), 1 P. D. 271, n. 569
Dall' Orso *v.* Mason & Co. (1876), 3 R. (Ct. of Sess.) 419; 13 Sc. L. R. 270 . . 184
Dallow *v.* Garrold (1881), 14 Q. B. D. 543; 54 L. J. (Q. B.) 76; 52 L. T. 240; 33 W. R. 219, C. A. 825
Dalton *v.* Denton (1857), 1 C. B. (N. S.) 672; 5 W. R. 203 490, 516
Dalyell *v.* Tyrer (1858), E. B. & E. 899; 28 L. J. (Q. B.) 52; 5 Jur. (N. S.) 335; 6 W. R. 684 238, 526
Dampskibsselskabet "Skjoldborg" *v.* Calder (Charles) & Co. (1912), 106 L. T. 263; 17 Com. Cas. 97 110, 202
Dangar's Trusts, *Re* (1889), 41 Ch. D. 178; 58 L. J. (CH.) 315; 60 L. T. 491; 37 W. R. 651 835
Daniell, *Ex parte*, *Re* Deakin. *See* Deakin, *Re*, *Ex parte* Daniell.
Daniels *v.* Harris (1874), L. R. 10 C. P. 1; 44 L. J. (C. P.) 1; 31 L. T. 408; 23 W. R. 86; 2 Asp. M. L. C. 413 214
——— *v.* Trefusis (1913), 136 L. T. Jo. 253 741
Dannebrog, The (1874), L. R. 4 A. & E. 386; 44 L. J. (ADM.) 21; 31 L. T. 759; 23 W. R. 419; 2 Asp. M. L. C. 452 621
Dante, The (1846), 2 Wm. Rob. 427 72
Dantzic Packet (1837), 3 Hag. Adm. 383 577, 585
Danube and Black Sea Rail. Co. *v.* Xenos (1863), 13 C. B. (N. S.) 825; 31 L. J. (C. P.) 284; 8 Jur. (N. S.) 439; 10 W. R. 320 191, 196, 197, 201
Dapueto *v.* Wyllie & Co., The "Pieve Superiore" (1874), L. R. 5 P. C. 482; 43 L. J. (ADM.) 20; 30 L. T. 887; 22 W. R. 777; 2 Asp. M. L. C. 319 546, 621
Darbell, *Ex parte* (1838), 6 Dowl. 505; 1 Will. Woll. & H. 174 716
Darby *v.* Barnes (1851), 9 Hare, 369; 21 L. J. (CH.) 801 35
Daring, The (1868), L. R. 2 A. & E. 260; 37 L. J. (ADM.) 29 246, 623
Darling *v.* Raeburn, [1907] 1 K. B. 846; 76 L. J. (K. B.) 570; 96 L. T. 437; 23 T. L. R. 354; 12 Com. Cas. 262, C. A. 185, 258
Dart, The (1899), 80 L. T. 23; 8 Asp. M. L. C. 481 563, 564
Dartnall, *Re*, Sawyer *v.* Goddard, [1895] 1 Ch. 474; 64 L. J. (CH.) 341; 72 L. T. 404; 43 W. R. 644; 12 R. 237, C. A. 833
Dashwood *v.* Magniac, [1892] W. N. 54 795
Dauntley *v.* Hyde (1841), 6 Jur. 133 758
Davenport *v.* Rylands (1865), L. R. 1 Eq. 302; 14 L. T. 53; 12 Jur. (N. S.) 71; 14 W. R. 243 799
David, *Re* (1861), 30 Beav. 278 788
——— *v.* Britannic Merthyr Coal Co., [1909] 2 K. B. 146; 78 L. J. (K. B.) 659; 100 L. T. 678; 53 Sol. Jo. 398; 25 T. L. R. 431, C. A. 45
——— *v.* Rees, [1904] 2 K. B. 435; 73 L. J. (K. B.) 729; 91 L. T. 244; 52 W. R. 579; 20 T. L. R. 577, C. A. 794, 806, 822
David Cannon, The (1865), 2 Asp. M. L. C. 353, n. . . . 368, 444, 448, 471, 472
Davidson *v.* Bisset & Son (1878), 5 R. (Ct. of Sess.) 709; 15 Sc. L. R. 397 . 149, 169
——— *v.* Gwynne (1810), 12 East, 381 . . . 93, 119, 143, 144, 199, 306
——— *v.* Napier (1827), 1 Sim. 297 740
Davies, *Re* (1843), 12 L. J. (CH.) 456; 7 Jur. 589 841
———, *Re* (1865), 15 L. T. 161; 15 W. R. 46 839
———, *Re*, *Ex parte* Cleland (1867), 2 Ch. App. 808; 36 L. J. (BCY.) 45; 15 W. R. 1160 822
——— (W. R.), *Re* (1898), 14 T. L. R. 161; affirmed (1898), 14 T. L. R. 332, C. A. 851, 852, 854, 855
———, *Re*, Jenkins *v.* Davies (1891), 64 L. T. 824 798
——— *v.* Bower (1863), 7 L. T. 739 848
——— *v.* Chatwood, *Re* Allen. *See* Allen, *Re*, Davies *v.* Chatwood.
——— *v.* Davies (1887), 36 Ch. D. 359; 56 L. J. (CH.) 962; 58 L. T. 209; 36 W. R. 86, C. A. 768
——— *v.* ———, *Re* Watts. *See* Watts, *Re*, Davies *v.* Davies.
——— *v.* McVeagh (1879), 4 Ex. D. 265; 48 L. J. (Q. B.) 686; 41 L. T. 308; 28 W. R. 143; 4 Asp. M. L. C. 149, C. A. 183, 260, 261
——— *v.* Mann (1842), 10 M. & W. 546; 12 L. J. (EX.) 10; 6 Jur. 954 . 513, 514

PAGE
Davies *v.* Parry (1859), 1 Giff. 174; 27 L. J. (CH.) 294; 5 Jur. (N. S.) 758; 6 W. R. 171 811
——— *v.* Wood (1903), 88 L. T. 19 754
Davis *v.* Dysart (Earl) (1856), 8 De G. M. & G. 33; 25 L. J. (CH.) 322; 2 Jur. (N. S.) 219; 4 W. R. 268, C. A. 778
——— *v.* Garrett (1830), 6 Bing. 716; 8 L. J. (O. S.) (C. P.) 253; 4 Moo. & P. 540 . . 83, 95
Davison *v.* Allen (1840), 8 Dowl. 673 808
Davys *v.* Richardson (1888), 21 Q. B. D. 202; 57 L. J. (Q. B.) 409; 59 L. T. 765; 36 W. R. 728, C. A. 835
Daw *v.* Eley (1868), L. R. 7 Eq. 49; 38 L. J. (CH.) 113; 17 W. R. 245 . . 829
Dawes, *Re*, Dryden *v.* Dawes, Gerrard *v.* Dawes. *See* Gerrard *v.* Dawes, *Re* Dawes, Dryden *v.* Dawes.
Dawlish, The, [1910] P. 339; 79 L. J. (P.) 111; 103 L. T. 315 . . . 84, 136
Dawson, *Re* (1860), 2 L. T. 686 784
——— and Bryan, *Re* (1860), 28 Beav. 605 782, 786
Day *v.* Day (1857), 1 De G. & J. 144; 26 L. J. (CH.) 585; 3 Jur. (N. S.) 782; 5 W. R. 701, C. A. 782
—— *v.* Kelland, [1900] 2 Ch. 745; 70 L. J. (CH.) 3; 83 L. T. 445; 49 W. R. 66, C. A. 762
—— *v.* Ward (1886), 17 Q. B. D. 703; 55 L. J. (Q. B.) 494; 55 L. T. 518; 35 W. R. 59 727
—— *v.* Woolwich Equitable Building Society (1888), 40 Ch. D. 491; 58 L. J. (CH.) 280; 60 L. T. 752; 37 W. R. 461 745
Deacon *v.* Evans, [1911] 1 K. B. 571; 80 L. J. (K. B.) 385; 104 L. T. 99; 75 J. P. 162; 11 Asp. M. L. C. 550 63, 362
——— *v.* Quayle, Neate *v.* Wilson, [1912] 1 K. B. 445; 81 L. J. (K. B.) 409; 106 L. T. 269; 76 J. P. 79; 12 Asp. M. L. C. 125 49, 50
Deakin, *Re*, *Ex parte* Daniell, [1900] 2 Q. B. 489; 69 L. J. (Q. B.) 725; 82 L. T. 776; 48 W. R. 678; 7 Mans. 302, C. A. 826, 827
Dean, *Re*, Ward *v.* Holmes (1886), 32 Ch. D. 209; 55 L. J. (CH.) 420; 54 L. T. 266 762
——— *v.* Hogg (1834), 10 Bing. 345; 3 L. J. (C. P.) 113; 4 Moo. & S. 188 . . 86
——— *v.* M'Ghie (1826), 4 Bing. 45; 5 L. J. (O. S.) (C. P.) 44; 2 C. & P. 387; 12 Moore (C. P.), 185 299
——— *v.* Mark, The "Constitution" (1864), 2 Moo. P. C. C. (N. S.) 453 . . 434
——— *v.* Richards, The "Europa" (1863), 2 Moo. P. C. C. (N. S.) 1; 32 L. J. (P. M. & A.) 188; 8 L. T. 368; 9 Jur. (N. S.) 690; Brown. & Lush. 89 . 619, 627
Deane, *Ex parte* (1834), 2 Dowl. 533 838
Dearden, *Re* (1853), 9 Exch. 210; 23 L. J. (EX.) 14; 17 Jur. 993; 2 W. R. 18; 2 C. L. R. 308 788
"De Bay," The, Bird *v.* Gibb. *See* Bird *v.* Gibb, The "De Bay."
De Bay *v.* Griffin (1875), 10 Ch. App. 291; 23 W. R. 737 785
Debenham and Walker, *Re*, [1895] 2 Ch. 430; 64 L. J. (CH.) 859; 73 L. T. 115; 43 W. R. 699; 13 R. 631 793, 812, 814
De Bussche *v.* Alt (1878), 8 Ch. D. 286; 47 L. J. (CH.) 381; 38 L. T. 370; 3 Asp. M. L. C. 384, C. A. 748
De Clermont *v.* General Steam Navigation Co. (1891), 7 T. L. R. 187 . . 151
De Cuadra *v.* Swann (1864), 16 C. B. (N. S.) 772 236
Dee Estates, Ltd., *Re*, Wright *v.* Dee Estates, Ltd., [1911] 2 Ch. 85; 80 L. J. (CH.) 461; 104 L. T. 903; 55 Sol. Jo. 424; 18 Mans. 247, C. A. 816
Deere, *Re* (1875), 10 Ch. App. 658; 44 L. J. (BCY.) 120; 33 L. T. 115; 23 W. R. 866 839
——— *v.* Robinson (1849), 7 Hare, 283; 19 L. J. (CH.) 405 844
Deerhound, The, Ogmore Steamship Co., Ltd. *v.* Borner (H.) & Co., Ltd. *See* Ogmore Steamship Co., Ltd. *v.* Borner (H.) & Co., Ltd., The Deerhound.
Deering & Sons *v.* Targett, [1913] 1 K. B. 129; 82 L. J. (K. B.) 85; 107 L. T. 709; 57 Sol. Jo. 113; 29 T. L. R. 100; 12 Asp. M. L. C. 273 . . 530, 605
Deffell *v.* Brocklebank (1817), 4 Price, 36 91
——— *v.* ——— (1821), 3 Bli. 561 93, 179
De Garay *v.* Clagget (1795), 2 Hy. Bl. 551, n. 83
De Garteig *v.* Mersey Docks and Harbour Board (1877), 37 L. T. 411 . . 636
D'Eguino *v.* Bewicke (1795), 2 Hy. Bl. 551 83
De Hart *v.* Stephenson (1876), 1 Q. B. D. 313; 45 L. J. (Q. B.) 575; 24 W. R. 367 . 297
De La Bere *v.* Pearson, Ltd., [1907] 1 K. B. 483; 76 L. J. (K. B.) 309; 96 L. T. 425; 23 T. L. R. 264; affirmed, [1908] 1 K. B. 280; 77 L. J. (K. B.) 380; 98 L. T. 71; 24 T. L. R. 120, C. A. 537
De la Pole (Lady) *v.* Dick (1885), 29 Ch. D. 351; 54 L. J. (CH.) 940; 52 L. T. 457; 33 W. R. 585, C. A. 737, 738, 743

PAGE
Delaroque *v.* Oxenholme (S. S.) & Co., [1883] W. N. 227 . . . 769, 800, 806
———— *v.* Oxenholme (S.S.) Co., Ltd. (1883), Cab. & El. 122 . . . 48
Delaurier *v.* Wyllie (1889), 17 R. (Ct. of Sess.) 167 ; 27 Sc. L. R. 148 . . 169
De Mattos *v.* Gibson (1859), 4 De G. & J. 276 ; 38 L. J. (CH.) 165 ; 5 Jur. (N. S.) 347 ; 7 W. R. 100, C. A. 25, 26, 84, 98
De Medina, *Re* (1862), 10 W. R. 627 851
De Montmorency *v.* Devereux (1840), 7 Cl. & Fin. 188 ; 2 Dr. & Wal. 410 ; 4 Jur. 403 ; West, 64 757
De Mora *v.* Concha, *Re* Ward, Mills, Witham and Lambert. *See* Ward, Mills, Witham and Lambert, *Re*, De Mora *v.* Concha.
Den of Airlie S.S. Co. *v.* Mitsui & Co. (1912), 106 L. T. 451 ; 17 Com. Cas. 116, C. A. 136, 164, 169, 176, 291
Denaby and Cadeby Main Collieries, Ltd. *v.* Anson, [1911] 1 K. B. 171 ; 80 L. J. (K. B.) 320 ; 103 L. T. 349 ; 54 Sol. Jo. 748 ; 26 T. L. R. 667 ; 11 Asp. M. L. C. 471, C. A. . 640
———————— *v.* Yorkshire Miners' Association (1907), 23 T. L. R. 635, C. A. 796, 804
Dene Steam Shipping Co., Ltd. *v.* Bucknall Brothers (1900), 5 Com. Cas. 372 99
Denholme & Co. *v.* Halmoe (1887), 15 R. (Ct. of Sess.) 152 ; 25 Sc. L. R. 112 . 141
Dennis *v.* Addy, [1894] 1 I. R. 511 825, 826
——— *v.* Crawshay, *Re* Crawshay. *See* Crawshay, *Re*, Dennis *v.* Crawshay.
——— *v.* Tovell (1872), L. R. 8 Q. B. 10 ; 42 L. J. (M. C.) 33 ; 27 L. T. 482 ; 21 W. R. 170 ; 2 Asp. M. L. C. 402 526, 644
——— (W.) & Sons, Ltd. *v.* Cork Steamship Co., Ltd., [1913] 2 K. B. 393 ; 82 L. J. (K. B.) 660 ; 108 L. T. 726 ; 29 T. L. R. 489 ; 18 Com. Cas. 177 . 148, 279, 281, 287
Denny and Brothers *v.* Board of Trade (1880), 7 R. (Ct. of Sess.) 1019 ; 17 Sc. L. R. 694 17, 333, 650
Dent *v.* Hallifax (1809), 1 Taunt. 493 741
Denton *v.* Donner (1856), 23 Beav. 285 749
De Pothonier *v.* De Mattos (1858), E. B. & E. 461 ; 27 L. J. (Q. B.) 260 ; 4 Jur. (N. S.) 1034 302
Depperman *v.* Hubbersty (1852), 17 Q. B. 766 161, 162
De Rosaz, *Re*, Rymer *v.* de Rosaz (1883), 24 Ch. D. 684 ; 53 L. J. (CH.) 448 ; 49 L. T. 133 769, 801
De Rothschild *v.* Royal Mail Steam Packet Co. (1852), 7 Exch. 734 ; 21 L. J. (EX.) 273 110, 113, 224
De Roufigny *v.* Peale (1811), 3 Taunt. 484 756, 758, 834
De Silvale *v.* Kendall (1815), 4 M. & S. 37 312, 313
Deslandes *v.* Gregory (1860), 2 E. & E. 602 ; 30 L. J. (Q. B.) 36 ; 2 L. T. 634 ; 6 Jur. (N. S.) 651 ; 8 W. R. 585 90
Despatch, The (1860), Lush. 98 488
Dever, *Ex parte*, *Re* Suse. *See* Suse, *Re*, *Ex parte* Dever.
Devonian, The (1901), 84 L. T. 125 ; 9 Asp. M. L C. 158 ; affirmed, [1901] P. 221 ; 70 L. J. (P.) 66 ; 84 L. T. 675 ; 49 W. R. 665 ; 17 T. L. R. 532 ; 9 Asp. M. L. C. 179, C. A. 382, 386, 404, 481, 491
Devonshire, S.S. *v.* Leslie (Barge), [1912] A. C. 634 ; 81 L. J. (P.) 94 ; 107 L. T. 179 ; 57 Sol. Jo. 10 ; 28 T. L. R. 551 ; 12 Asp. M. L. C. 210 ; 50 Sc. L. R. 621 358, 491, 522, 528, 529
Devonshire, The, and St. Winifred, [1913] P. 13 ; 82 L. J. (P.) 61 ; 108 L. T. 427 ; 29 T. L. R. 86 ; 12 Asp. M. L. C. 314 359
————————, The Seacombe. *See* Seacombe, The, The Devonshire.
Dewdney, *Ex parte*, *Ex parte* Seaman (1809), 15 Ves. 479 813
Dewell *v.* Moxon (1808), 1 Taunt. 391 65
De Wolf *v.* Pitcairn (1868), 17 W. R. 914 28
D. H. Bills, The (1878), 4 P. D. 32, n. 70
Diamond, The, [1906] P. 282 ; 25 L. J. (P.) 90 ; 95 L. T. 550 ; 10 Asp. M. L. C. 286 77, 111, 213, 226, 614, 661
Diana, The (1862), 1 Wm. Rob. 131 531
———— (1874), 31 L. T. 202 ; 2 Asp. M. L. C. 366 547
" Diana," S.S. *v.* S.S. "Clieveden," The "Clieveden," [1894] A. C. 625 ; 64 L. J. (P. C.) 22 ; 71 L. T. 101 ; 6 R. 515 ; 7 Asp. M. L. C. 489 . . 466, 470, 481
Dicas, *Re* (1831), 9 L. J. (O. S.) (CH.) 183 841
——— *v.* Stockley (1836), 7 C. & P. 587 845
Dick *v.* Badart (1883), 10 Q. B. D. 387 ; 48 L. T. 391 ; 47 J. P. 422 ; 5 Asp. M. L. C. 49 266, 646

PAGE
Dick *v.* Lumsden (1793), Peake, 250 [189] 160, 163, 164
Dickens, *Ex parte, Re* Foster. *See* Foster, *Re, Ex parte* Dickens.
Dickenson *v.* Lano (1860), 2 F. & F. 188 140, 292, 296
Dickie *v.* Rodocanachi (1859), 4 H. & N. 455 236
Dickinson, *Re*, Bute (Marquis) *v.* Walker, *Ex parte* Hoyle, Shipley *v.* Hoyle, [1888] W. N. 94 822
——— *v.* Jacobs (1862), 5 L. T. 757; 10 W. R. 303 833
——— *v.* Kitchen (1858), 8 E. & B. 789 25, 27, 28
——— *v.* Martini & Co. (1874), 1 R. (Ct. of Sess.) 1185 258
Dickson, *Re* (1856), 8 De G. M. & G. 655; 26 L. J. (CH.) 89; 5 W. R. 108; 3 Jur. (N. S.) 29, C. A. 783, 784, 787, 789
——— *v.* Buchanan (1876), 13 Sc. L. R. 401 306
Dictator, The, [1892] P. 304; 61 L. J. (P.) 73; 67 L. T. 563; 7 Asp. M. L. C. 251 545
Diederichsen *v.* Farquharson Brothers, [1898] 1 Q. B. 150; 67 L. J. (Q. B.) 103; 77 L. T. 543; 46 W. R. 162; 14 T. L. R. 59; 8 Asp. M. L. C. 333; 3 Com. Cas. 87, C. A. 106, 165, 176
Digby, *Ex parte* (1876), 45 L. J. (CH.) 692 714
———, *Ex parte*, Jackson *v.* Smith. *See* Jackson *v.* Smith, *Ex parte* Digby.
Dillon (H. W.) and Aldgate Steamship Co., Ltd. *v.* Livingston, Briggs & Co. and Peninsular and Oriental Steam Navigation Co. (1895), 11 T. L. R. 312 155, 310
Dimech *v.* Corbett (1858), 12 Moo. P. C. C. 199 . 91, 93, 94, 124, 139, 143, 144, 178, 190, 193, 197, 294
Dimes *v.* Wright (1849), 8 C. B. 831; 19 L. J. (C. P.) 137; 7 Dow. & L. 292 . . 776
Dione, The (1885), 52 L. T. 61; 5 Asp. M. L. C. 347 615
Ditchman, *Re, Ex parte* Bull (1833), 3 Deac. & Ch. 116; 2 L. J. (BCY.) 76 . 829
Ditton, *Ex parte, Re* Wood. *See* Wood, *Re, Ex parte* Ditton.
Dixon, *Re*, Tousey *v.* Sheffield, [1898] 2 Ch. 443; 67 L. J. (CH.) 537; 79 L. T. 163; 46 W. R. 677; 14 T. L. R. 536, C. A. 803
——— *v.* Farrer (1886), 18 Q. B. D. 43; 56 L. J. (Q. B.) 53; 55 L. T. 578; 35 W. R. 95; 6 Asp. M. L. C. 52, C. A. 81
——— *v.* Heriot (1862), 2 F. & F. 760 142
——— *v.* Sadler (1839), 5 M. & W. 405; 9 L. J. (EX.) 48; affirmed (1841), 8 M. & W. 895; 11 L. J. (EX.) 435 211, 213, 215
——— *v.* Wilkinson (1859), 4 De G. & J. 508; 4 Drew. 614; 5 Jur. (N. S.) 1063; 7 W. R. 351, C. A. 835, 837, 838
Dobbin *v.* Thornton (1806), 6 Esp. 16 295
Dobell *v.* Watts, Ward & Co. (1891), 7 T. L. R. 622, C. A. 120
——— & Co. *v.* Green & Co., [1900] 1 Q. B. 526; 69 L. J. (Q. B.) 454; 82 L. T. 314; 16 T. L. R. 204; 5 Com. Cas. 161; 9 Asp. M. L. C. 52, C. A. 195
——— *v.* Steamship Rossmore Co., [1895] 2 Q. B. 408; 64 L. J. (Q. B.) 777; 73 L. T. 74; 44 W. R. 37; 14 R. 558; 8 Asp. M. L. C. 83, C. A. . 116, 216
Dobson *v.* Droop (1830), Mood. & M. 441; 4 C. & P. 112 121, 274
——— *v.* Wilson (1813), 3 Camp. 480 316, 323
Docker, *Ex parte, Re* Heritage. *See* Heritage, *Re, Ex parte* Docker.
Dodds *v.* Duke (1884), 25 Ch. D. 617; 53 L. J. (CH.) 598; 50 L. T. 320; 32 W. R. 424 798
Doe d. Hickman *v.* Hickman (1840), 8 Dowl. 833 841
Doeg *v.* Trist (1897), 2 Com. Cas. 153 36
Dolland *v.* Johnson, *Re* Hall. *See* Hall, *Re*, Dolland *v.* Johnson.
Dolman, *Re* (1854), 2 W. R. 447 789
Domett *v.* Beckford (1833), 5 B. & Ald. 521; 2 Nev. & M. (K. B.) 374; 3 L. J. (K. B.) 10 292, 293, 294
——— *v.* Young (1842), Car. & M. 465 75, 76
Dominion of Canada Plumbago Co., *Re* (1884), 27 Ch. D. 33; 53 L. J. (CH.) 702; 50 L. T. 518; 33 W. R. 9, C. A. 819
Domira, The (1913), 29 T. L. R. 557 569
Donaldson, *Re* (1884), 27 Ch. D. 544; 54 L. J. (CH.) 151; 51 L. T. 622 . . 791
——— *v.* Haldane (1840), 7 Cl. & Fin. 762 753, 754, 757
——— Brothers *v.* Little & Co. (1882), 10 R. (Ct. of Sess.) 413; 20 Sc. L. R. 275 93, 179
Donkin *v.* Hastie (1897), 61 J. P. 568 60
Donne, *Re* (1794), 3 Swan. 96, n. 712
Donnelly *v.* Malone (1913), 47 I. L. T. 208 798
Doobey *v.* Watson (1888), 39 Ch. D. 178; 57 L. J. (CH.) 865; 58 L. T. 943; 36 W. R. 764 754

PAGE

Doolan *v.* Midland Rail. Co. (1877), 2 App. Cas. 792 ; 37 L. T. 317 ; 25 W. R. 882 ; 3 Asp. M. L. C. 685 613
Dooley *v.* Reade, Townsend *v.* Reade. *See* Townsend *v.* Reade, Dooley *v.* Reade.
Dora Forster, The, [1900] P. 241 ; 69 L. J. (P.) 85 ; 49 W. R. 271 ; 16 T. L. R. 380 71
Dordogne, The (1884), 10 P. D. 6 ; 54 L. J. (P.) 29 ; 51 L. T. 650 ; 33 W. R. 360 ; 5 Asp. M. L. C. 328, C. A. 416, 419, 421, 424
Dormont *v.* Furness Rail. Co. (1883), 11 Q. B. D. 496 ; 52 L. J. (Q. B.) 331 ; 49 L. T. 134 ; 5 Asp. M. L. C. 127 534, 555
Dorothy Foster, The (1805), 6 Ch. Rob. 88 589
Dotesio *v.* Biss (No. 2) (1912), 56 Sol. Jo. 736, C. A. 832
Dougal *v.* Kemble (1826), 3 Bing. 383 ; 4 L. J. (O. S.) (C. P.) 103 ; 11 Moore (C. P.), 251 295
Douglas, The (1882), 7 P. D. 151 ; 51 L. J. (P.) 89 ; 47 L. T. 15 ; 5 Asp. M. L. C. 15, C. A. 370, 383, 505, 534, 555, 648
Douglas, *Re* (1842), 3 Q. B. 825 ; 12 L. J. (Q. B.) 49 ; 7 Jur. 39 ; 3 Gal. & Dav. 509 726
——— *v.* Russell (1831), 4 Sim. 524 ; (1833), 1 My. & K. 488 302
Doward *v.* Lindsay, The "William Lindsay" (1873), L. R. 5 P. C. 338 ; 29 L. T. 355 ; 22 W. R. 6 ; 2 Asp. M. L. C. 118 484, 485, 490, 503, 536
Dowdell *v.* Australian Royal Mail Steam Navigation Co. (1854), 3 E. & B. 902 ; 23 L. J. (Q. B.) 369 ; 18 Jur. 579 ; 2 W. R. 554 ; 2 C. L. R. 1656 . . 802
Dowell *v.* General Steam Navigation Co. (1855), 5 E. & B. 195 ; 26 L. J. (Q. B.) 59 ; 1 Jur. (N. S.) 800 ; 3 W. R. 492 513
Dowlais, The (1902), 18 T. L. R. 683, C. A. 310
Downes, *Re* (1844), 5 Beav. 425 ; 13 L. J. (CH.) 159 784, 790
———, *Re*, Verity *v.* Wylde (1859), 4 Drew. 427 ; 28 L. J. (CH.) 561 . 820, 821
——— *v.* Cottam, *Re* Beddoe. *See* Beddoe, *Re*, Downes *v.* Cottam.
Downie *v.* Connell Brothers, Ltd., [1910] S. C. 781 ; 47 Sc. L. R. 666 ; 1 Scots Law Times, 425 55
Downing College Case (1838), 3 My. & Cr. 474 804
Downman *v.* Williams (1845), 7 Q. B. 103 ; 14 L. J. (Q. B.) 226 ; 9 Jur. 454 . 830
Dowson, *Re*, *Ex parte* Webb (1851), 4 De G. & Sm. 366 813
Dowthorpe, The (1843), 2 Wm. Rob. 73 29, 222, 244, 623
Doxford & Sons, Ltd. *v.* Sea Shipping Co. (1897), 14 T. L. R. 111 . . . 723
Doyle *v.* Dallas (1831), 1 Mood. & R. 48 75
Dracachi *v.* Anglo-Egyptian Navigation Co. (1868), L. R. 3 C. P. 190 ; 37 L. J. (C. P.) 71 ; 17 L. T. 472 ; 16 W. R. 277 147, 164, 167
Drain *v.* Henderson (1860), 11 I. C. L. R. 497 97
Drake, *Re* (1844), 8 Beav. 123 789
———, *Re* (1856), 22 Beav. 438 784
——— *v.* Lewin (1834), 4 Tyr. 730 741
Draupner, S.S. (Owners) *v.* S.S. Draupner (Cargo Owners), [1910] A. C. 450 ; 79 L. J. (P.) 88 ; 103 L. T. 87 ; 26 T. L. R. 571 . 154, 166, 172, 173, 174, 175
Drew, *Re* (1847), 10 Beav. 368 789
———, *Re* (1913), 135 L. T. Jo. 322 825
——— *v.* Bird (1828), Mood. & M. 156 292, 293
——— *v.* Josolyne (1888), 4 T. L. R. 717 804
——— *v.* Nunn (1879), 4 Q. B. D. 661 ; 48 L. J. (Q. B.) 591 ; 40 L. T. 671 ; 27 W. R. 810, C. A. 732
Drielsma *v.* Manifold, [1894] 3 Ch. 100 ; 63 L. J. (CH.) 653 ; 71 L. T. 62 ; 42 W. R. 578 ; 7 R. 368, C. A. 766
Driscoll *v.* Bromley (1837), 1 Jur. 238 749
Droege *v.* Suart, The Karnak (1869), L. R. 2 P. C. 505 ; 38 L. J. (ADM.) 57 ; 21 L. T. 159 ; 17 W. R. 1028 ; 6 Moo. P. C. C. (N. S.) 136 . 70, 72, 77, 141, 228, 229, 230, 231, 240, 242, 243, 245, 253, 314
Druce, *Re* (1893), 94 L. T. Jo. 583 780
Druid, The (1842), 1 Wm. Rob. 391 328, 503, 525, 619
Drumlanrig, The, Tongariro (Owners of Cargo) *v.* Drumlanrig (Owners). *See* Tongariro (Owners of Cargo) *v.* Drumlanrig (Owners), The Drumlanrig.
Drury and Hudson, *Re*, *Ex parte* Leslie (1833), 3 L. J. (BCY.) 4 34
Dryden *v.* Allix, The "Moderation" (1863), 1 Moo. P. C. C. (N. S.) 528 ; 9 L. T. 586 366
——— *v.* Dawes, Gerrard *v.* Dawes, *Re* Dawes. *See* Gerrard *v.* Dawes, *Re* Dawes, Dryden *v.* Dawes.

PAGE

Dublin and Manchester Steamship Co. *v.* London and North-Western Rail. Co. (1913), 108 L. T. 122; 28 T. L. R. 511 149
Dublin, Wicklow and Wexford Rail. Co. *v.* Slattery (1878), 3 App. Cas. 1155; 39 L. T. 365; 27 W. R. 191 513, 514
Duc d'Aumale, The (No. 2), [1904] P. 60; 73 L. J. (P.) 8; 89 L. T. 486; 52 W. R. 319; 20 T. L. R. 14; 9 Asp. M. L. C. 502 563, 566, 569
Duckett *v.* Satterfield (1868), L. R. 3 C. P. 227; 37 L. J. (C. P.) 144 . . 103, 197
Dudley, *Re* (1883), 12 Q. B. D. 44; 53 L. J. (Q. B.) 16; 49 L. T. 737; 32 W. R. 264, C. A. 837
Duero, The (1869), L. R. 2 A & E. 393; 38 L. J. (ADM.) 69; 22 L. T. 37 . 117, 202, 203, 204
Du Faur, *Ex parte* (1837), 3 Hodg. 135 841
Dufaur *v.* Sigel (1853), 4 De G. M. & G. 20; 22 L. J. (CH.) 678, C. A. . . 713
Duffett *v.* McEvoy (1885), 10 App. Cas. 300; 54 L. J. (P. C.) 25; 52 L. T. 633 780
Duffield, *Re*, *Ex parte* Peacock (1873), 8 Ch. App. 682; 42 L. J. (BCY.) 78; 28 L. T. 830; 21 W. R. 755 776
Dufourcet *v.* Bishop (1886), 18 Q. B. D. 373; 56 L. J. (Q. B.) 497; 56 L. T. 633; 6 Asp. M L. C. 109 290, 312, 314
Duke of Buccleuch, The (1889), 15 P. D. 86; 62 L. T. 94; 6 Asp. M. L. C. 471. 368, 382
"Duke of Buccleuch," The, Eastern Steamship Co. *v.* Smith. *See* Eastern Steamship Co. *v.* Smith, The "Duke of Buccleuch."
Duke of Cornwall, The (1862), Pritchard's Admiralty Digest, 3rd ed., p. 226 . 488
Duke of Manchester, The (1846), 2 Wm. Rob. 470 531
——— Shersby *v.* Hibbert. *See* Shersby *v.* Hibbert, The Duke of Manchester.
Duke of Sussex, The (1841), 1 Wm. Rob. 270; 1 Notes of Cases, 161 . 491, 529
——— (1841), 1 Wm. Rob. 274; 1 Notes of Cases, 165 . 363, 364, 365, 428, 465
Duke of Sutherland, The (1875), L. R. 4 A. & E. 417; 32 L. T. 129; 2 Asp. M. L. C. 478 382
Dumfries, The (1856), Sw. 63 428
Duna, The (1860), 5 Ir. Jur. (N. S.) 384 488
——— (1861), 1 Mar. L. C. 159 622
Dunbar *v.* Smithwaite (1854), 3 W. R. 68 217
Dunbeth, The, [1897] P. 133; 66 L. J. (P.) 66; 76 L. T. 658; 8 Asp. M. L. C. 284 74, 75, 94, 95, 96
Duncan, *Ex parte* (1864), 5 B. & S. 341; 33 L. J. (Q. B.) 190; 10 L. T. 337; 10 Jur. (N. S.) 939; 12 W. R. 752 716
———, *Re* (1907), 51 Sol. Jo. 485 774
———, *Re*, *Ex parte* Duncan, [1892] 1 Q. B. 331; 65 L. T. 681; 40 W. R. 159; 8 Morr. 297 735
——— *v.* Richmond (1817), 7 Taunt. 391; 1 Moore (C. P.), 99 . . . 841
Dundee, The (1821), *Times*, December 5th 373, 501
Dundee (1823), 1 Hag. Adm. 109 503, 537, 619
Dundonald (Earl) *v.* Masterman (1869), L. R. 7 Eq. 504; 38 L. J. (CH.) 350; 20 L. T. 271; 17 W. R. 548 759
Dunelm, The (1884), 9 P. D. 164; 53 L. J. (P.) 81; 51 L. T. 214; 32 W. R. 970; 5 Asp. M. L. C. 304, C. A. . 361, 378, 397, 398, 399, 404, 405, 472
Dunford & Co., Ltd. *v.* Cia Anonima Maritima Union (1911), 104 L. T. 811; 55 Sol. Jo. 424; 16 Com. Cas. 181 93, 99
Dungey *v.* Angove (1794), 2 Ves. 304 835
Dunlop & Sons *v.* Balfour, Williamson & Co., [1892] 1 Q. B. 507; 61 L. J. (Q. B.) 354; 66 L. T. 455; 40 W. R. 371; 7 Asp. M. L. C. 181, C. A. . 126, 134, 135, 285
Dunlop Pneumatic Tyre Co. *v.* Actien-Gesellschaft für Motor und Motorfahrzeugbau vorm. Cudell & Co., [1902] 1 K. B. 342; 71 L. J. (K. B.) 284; 86 L. T. 472; 50 W. R. 226; 18 T. L. R. 229; 19 R. P. C. 46, C. A. . 16
Dunn *v.* Bucknall Brothers, Dunn *v.* Currie (Donald) & Co., [1902] 2 K. B. 614; 71 L. J. (K. B.) 963; 87 L. T. 497; 51 W. R. 100; 18 T. L. R. 807; 9 Asp. M. L. C. 336; 8 Com. Cas. 33, C. A. . 101, 109, 289, 541
——— *v.* Ferrior, *Re* Ferrior, Carrow *v.* Ferrior. *See* Ferrior, *Re*, Carrow *v.* Ferrior, Dunn *v.* Ferrior.
Dunnage *v.* Jolliffe (1789), cited in Abbott on Shipping, 5th ed., p. 250; 14th ed., p. 565 267
Dunning *v.* Grosvenor Dairies, Ltd., [1901] W. N. 218; 112 L. T. Jo. 83; 46 Sol. Jo. 69 805

PAGE
Dunottar Castle, The, [1902] W. N. 70 565, 583
Dunstanborough, The (1891), [1892] P. 363, n. 482, 485, 495, 500, 510, 519
Dunt *v.* Dunt, *Re* Colquhoun. *See* Colquhoun, *Re*, Dunt *v.* Dunt.
Dunvegan Castle (2) (1836), 3 Hag. Adm. 331 70
Dupen *v.* Keeling (1829), 4 C. & P. 102 742
Duranty *v.* Hart, Cargo ex "Hamburg" (1863), 2 Moo. P. C. C. (N. S.) 289; 33 L. J. (P. M. & A.) 116; 10 L. T. 206; 10 Jur. (N. S.) 600; 12 W. R. 628; Brown. & Lush. 253 . . 71, 74, 220, 223, 229, 230, 231, 235, 236, 240, 244, 245, 253
Durham City, The (1889), 14 P. D. 85; 58 L. J. (P.) 46; 61 L. T. 339; 6 Asp. M. L. C. 411 105
Duthie *v.* Hilton (1868), L. R. 4 C. P. 138; 38 L. J. (C. P.) 93; 19 L. T. 285; 17 W. R. 55 304, 305, 306
Dutton, *Re*, [1892] 1 Q. B. 486; 61 L. J. (Q. B.) 190; 66 L. T. 324; 56 J. P. 455; 40 W. R. 270 726
——— *v.* Powles (1861), 2 B. & S. 174; 31 L. J. (Q. B.) 191; 6 L. T. 224; 8 Jur. (N. S.) 970; 10 W. R. 408 213
Dwina, The, [1892] P. 58; 61 L. J. (P.) 71; 66 L. T. 862; 7 Asp. M. L. C. 173 547, 577
Dyer *v.* London School Board (1903), 19 T. L. R. 413 804
Dymond *v.* Scott (1877), 5 R. (Ct. of Sess.) 196; 15 Sc. L. R. 96 . . 231, 245

E.

EADY *v.* Elsdon, [1901] 2 K. B. 460; 70 L. J. (K. B.) 701; 84 L. T. 615; 49 W. R. 595, C. A. 798
Eager *v.* Barnes (1862), 31 Beav. 579; 7 L. T. 408 760
Earl of Dumfries, The (1885), 5 Asp. M. L. C. 329, n. 423
——— (1885), 10 P. D. 31; 54 L. J. (P.) 7; 51 L. T. 906; 33 W. R. 568; 5 Asp. M. L. C. 342 82
Earl of Eglinton, The (1855), Sw. 7 577
"Earl of Elgin," The, and The "Jesmond." *See* "Jesmond," The, and The "Earl of Elgin."
Earl Spencer, The (1875), L. R. 4 A. & E. 431; 32 L. T. 370; 23 W. R. 661; 2 Asp. M. L. C. 523 379, 399, 486
——— (1875), 33 L. T. 235; 3 Asp. M. L. C. 4 400
Earl Wemys, The (1889), 61 L. T. 289; 6 Asp. M. L. C. 407, C. A. . 366, 431, 432, 451
Earle, *Ex parte* (1853), Bail Ct. Cas. 180 715
——— *v.* Hopwood (1861), 9 C. B. (N. S.) 566; 30 L. J. (C. P.) 217; 3 L. T. 670; 7 Jur. (N. S.) 775; 9 W. R. 272 772
——— *v.* Rowcroft (1806), 8 East, 126 62, 66, 113
Early, *Re*, [1897] 1 I. R. 6, C. A. 784
Earnshaw-Wall, *Re*, [1894] 3 Ch. 156; 63 L. J. (CH.) 836; 71 L. T. 173; 42 W. R. 567; 8 R. 558 766
East *v.* Berkshire County Council (1911), 106 L. T. 65 799
East India Co. *v.* Ekines (1718), 2 Bro. Parl. Cas. 382 75
——— *v.* Tod (1788), 1 Bro. Parl. Cas. 405 107
East London Harbour Board *v.* Caledonia Landing, Shipping and Salvage Co., Ltd., East London Harbour Board *v.* Colonial Fisheries Co., Ltd., [1908] A. C. 271; 77 L. J. (P. C.) 111; 98 L. T. 682; 24 T. L. R. 516 . 640, 641, 648
East Stonehouse Local Board *v.* Victoria Brewery Co., [1895] 2 Ch. 514; 64 L. J. (CH.) 793; 73 L. T. 54; 43 W. R. 585; 13 R. 657 802
East Yorkshire Steamship Co. *v.* Hancock (1900), 5 Com. Cas. 266 . . . 177
Eastern Belle, The (1875), 33 L. T. 214; 3 Asp. M. L. C. 19 29
Eastern Monarch, The (1860), Lush. 81 558
Eastern Steamship Co. *v.* Smith, The "Duke of Buccleuch," [1891] A. C. 310; 65 L. T. 422; 7 Asp. M. L. C. 68 364, 382, 534
Eastman *v.* Harry (1885), 33 L. T. 800; 3 Asp. M. L. C. 117, C. A. . . . 206
Easton *v.* London Joint Stock Bank (1888), 38 Ch. D. 25; 57 L. J. (CH.) 329; 58 L. T. 364; 36 W. R. 375, C. A. 805
Ebenezer, The (1843), 2 Wm. Rob. 206 419
Ebor, The (1886), 11 P. D. 25; 54 L. T. 200; 34 W. R. 448; 5 Asp. M. L. C. 560, C. A. 415, 418, 424, 455
Eclipse, The, The Saxonia. *See* Saxonia, The, The Eclipse.

PAGE
Écossaise, The (1885), *Shipping Gazette*, December 15th, cited in The Carlotta 478, 482
Edenmore, The, [1893] P. 79; 69 L. T. 230; 41 W. R. 654; 1 R. 574; 7 Asp. M. L. C. 334 559, 575, 578, 579, 581
Edgell *v.* Day (1865), L. R. 1 C. P. 80; 1 Har. & Ruth. 8; 35 L. J. (C. P.) 7; 13 L. T. 328; 12 Jur. (N. S.) 27; 14 W. R. 87 746
Edgill *v.* Alward (J. & G.), Ltd., [1902] 2 K. B. 239; 71 L. J. (K. B.) 690; 87 L. T. 121; 66 J. P. 760; 9 Asp. M. L. C. 341; 20 Cox, C. C. 302 . . 60
Edgington *v.* Fitzmaurice (1885), 29 Ch. D. 459; 55 L. J. (CH.) 650; 53 L. T. 369; 50 J. P. 52; 33 W. R. 911, C. A. 805
Edina, The (1855), 4 W. R. 91 580
Edith, The (1876), 10 I. R. Eq. 345 378, 399
Edmond, The (1860), Lush. 57; 29 L. J. (P. M. & A.) 76; 2 L. T. 192..66, 70, 71, 243
——— (1860), Lush. 211; 30 L. J. (P. M. & A.) 128; 2 L. T. 394 . . 297
Edmundson *v.* Render (1904), 90 L. T. 814 843
——— *v.* ———, [1905] 2 Ch. 320; 74 L. J. (CH.) 585; 93 L. T. 124; 53 W. R. 632 843
Edward *v.* Southgate (1862), 10 W. R. 528 288
——— *v.* Trevellick (1854), 4 E. & B. 59; 24 L. J. (Q. B.) 9; 1 Jur. (N. S.) 110; 2 W. R. 586; 2 C. L. R. 1605 61
Edward Cardwell, The (1865), 2 Mar. L. C. 236 27
———, Belfast Harbour Commissioners *v.* Lawther. *See* Belfast Harbour Commissioners *v.* Lawther, The Edward Cardwell.
"Edward Oliver," The (1867), L. R. 1 A. & E. 379; 36 L. J. (ADM.) 13; 16 L. T. 575 246
Edwards, *Ex parte*, *Re* Johnson. *See* Johnson, *Re*, *Ex parte* Edwards.
——— *v.* Havill (1853), 14 C. B. 107; 23 L. J. (C. P.) 8; 17 Jur. 1103; 2 W. R. 12 67, 69
——— *v.* Hope (1885), 14 Q. B. D. 922; 54 L. J. (Q. B.) 379; 53 L. T. 69; 33 W. R. 672, C. A. 822
——— *v.* Lawless (1848), 6 C. B. 329; 17 L. J. (C. P.) 293; 5 Ry. & Can. Cas. 357 778
——— *v.* Southgate (1862), 10 W. R. 528 162
——— *v.* Steel, Young & Co., [1897] 2 Q. B. 327; 66 L. J. (Q. B.) 690; 45 W. R. 689, C. A. 56
——— *v.* Williams (1863), 32 L. J. (CH.) 763; 8 L. T. 477; 11 W. R. 561, C. A. 750
Edwin, The (1864), Brown. & Lush. 281 620
Edye, *Re* (1891), 63 L. T. 762; 39 W. R. 198 839
Eede, *Re* (1890), 25 Q. B. D. 228; 59 L. J. (Q. B.) 376; 38 W. R. 683, C. A. . . 855
Effort (1834), 3 Hag. Adm. 165 576
———, The (1847), 5 Notes of Cases, 279 499
Egginton *v.* Cumberledge (1847), 1 Exch. 271; 16 L. J. (EX.) 283; 11 Jur. 932; 5 Ry. & Can. Cas. 113. 778
Egyptian, The (1864), 2 Mar. L. C. 56 537, 538
"Egyptian," The, Bibby *v.* Boissevain. *See* Bibby *v.* Boissevain, The "Egyptian."
Egyptienne (1825), 1 Hag. Adm. 346, n. 36
Eicke *v.* Nokes (1829), Mood. & M. 303 776, 813
Eland *v.* Medland, *Re* Medland. *See* Medland, *Re*, Eland *v.* Medland.
El Argentino, [1909] P. 236; 78 L. J. (P.) 102; 101 L. T. 80; 25 T. L. R. 518; 11 Asp. M. L. C. 280 26, 27
Elder, Dempster & Co. *v.* Dunn & Co. (1909), 101 L. T. 578; 15 Com. Cas. 49; 11 Asp. M. L. C. 337 116, 145, 175, 270
Elderslie Steamship Co. *v.* Borthwick, [1905] A. C. 93; 74 L. J. (K. B.) 338; 92 L. T. 274; 53 W. R. 401; 21 T. L. R. 277; 10 Asp. M. L. C. 25; 10 Com. Cas. 109 139, 141, 189, 190, 358, 359
Elderton, *Re*, *Ex parte* Russell, [1887] W. N. 21, C. A. 724
Eldridge, *Re* (1849), 12 Beav. 387 775, 791
Eleanor, The *v.* The Alma (1865), 2 Mar. L. C. 240 . . . 432, 433, 463, 493
Elephanta (1851), 15 Jur. 1185 72, 222, 241
Eley, *Re* (1887), 37 Ch. D. 40; 56 L. J. (CH.) 905; 57 L. T. 253; 36 W. R. 96 766, 789
—— *v.* Positive Assurance Co. (1875), 1 Ex. D. 20; 45 L. J. (Q. B.) 451; 34 L. T. 190; 24 W. R. 338, C. A. 729
Elgood *v.* Harris, [1896] 2 Q. B. 491; 66 L. J. (Q. B.) 53; 75 L. T. 419; 45 W. R. 158; 3 Mans. 332; 8 Asp M. L. C. 206 301
Elin, The (1883), 8 P. D. 39; 52 L. J. (P.) 55; 49 L. T. 87; 31 W. R. 736; 5 Asp. M. L. C. 120, C. A. 622, 624

PAGE
Elise, The (1859), Sw. 436 572, 573
Eliza (1823), 1 Hag. Adm. 182 42, 60
—— (1833), 3 Hag. Adm. 87 72, 623
——, The (1862), Lush. 536 558
———— *v.* The Orinoco (1865), Holt (ADM.), 98 367, 472, 473
"Eliza Cornish," otherwise "Segredo." *See* "Segredo," otherwise "Eliza Cornish."
Elizabeth, The, The Adalia (1870), 22 L. T. 74 484, 504
Elizabeth and Jane, The (1841), 1 Wm. Rob. 278 36
"Elizabeth Jenkins," The, and The "Agra." *See* "Agra," The, and The "Elizabeth Jenkins."
Elkington *v.* Holland (1842), 9 M. & W. 659; 11 L. J. (EX.) 273; 1 Dowl. (N. S.) 643 754
Ella Constance, The (1864), 33 L. J. (P. M. & A.) 189 562, 575
Ellershaw *v.* Magniac (1843), 6 Exch. 570 160
Elliott *v.* Lord (1883), 52 L. J. (P. C.) 23; 48 L. T. 542; 5 Asp. M. L. C. 63 127, 191, 192, 200
—— *v.* Rossell (1813), 10 Johnson's Reports, 1 326
—— *v.* Von Glehn (1849), 13 Q. B. 632; 18 L. J. (Q. B.) 221 . . . 144, 192
Ellis, *Re* (1862), 5 L. T. 686 714
—— *v.* Goulton, [1893] 1 Q. B. 350; 62 L. J. (Q. B.) 232; 68 L. T. 144; 41 W. R. 411; 4 R. 267, C. A. 746
—— *v.* Pearce (1858), E. B. & E. 431; 27 L. J. (M. C.) 257; 4 Jur. (N. S.) 1275; 6 W. R. 683 332
—— *v.* Thompson (1838), 3 M. & W. 445; 7 L. J. (EX.) 185 83
—— *v.* Turner (1800), 8 Term Rep. 531 65, 94, 95
Ellison *v.* Airey (1748), 1 Ves. Sen. 111 753
Ellora, The (1862), Lush. 550 557, 562
Elmslie, *Re* (1850), 12 Beav. 538 789
———— & Co., *Re* (1869), L. R. 9 Eq. 72 782
————————, *Re, Ex parte* Tower Subway Co. (1873), L. R. 16 Eq. 326; 42 L. J. (CH.) 570; 28 L. T. 731; 22 W. R. 54 786
Elmville, The, [1904] P. 319; 73 L. J. (P.) 104; 91 L. T. 151; 9 Asp. M. L. C. 606 66
———————— (No. 2), [1904] P. 422; 74 L. J. (P.) 69; 53 W. R. 287; 10 Asp. M. L. C. 23 53, 67, 620
Elpis, The (1872), L. R. 4 A. & E. 1; 42 L. J. (ADM.) 43; 27 L. T. 664; 21 W. R. 576; 1 Asp. M. L. C. 472 70, 624
El Salto (1908), 25 T. L. R. 99 626
Elsam, *Re* (1824), 3 B. & C. 597; 3 L. J. (O. S.) (K. B.) 75; 5 Dow. & Ry. (K. B.) 389 829
Elsie, The, [1899] W. N. 54 580, 585
Elswick Park, The, [1904] P. 76; 9 Asp. M. L. C. 481 479, 562
Elswick Steamship Co., Ltd. *v.* Montaldi, [1907] 1 K. B. 626; 76 L. J. (K. B.) 672; 96 L. T. 845; 23 T. L. R. 322; 12 Com. Cas. 240 273
Elton, *Re* (1868), 37 L. J. (CH.) 482; 17 L. T. 487; 16 W. R. 323 . . . 721
Elton, The, [1891] P. 265; 60 L. J. (P.) 69; 65 L. T. 232; 39 W. R. 703; 7 Asp. M. L. C. 66 558, 580, 581, 587
Elwes and Turner, *Re* (1888), 58 L. T. 580. 808
Elworthy *v.* Billing (1841), 10 Sim. 98; 10 L. J. (CH.) 176 750
Elysia, The (1882), 46 L. T. 840; 4 Asp. M. L. C. 540, C. A. . . . 416, 418, 419
————————, [1912] P. 152; 81 L. J. (P.) 104; 106 L. T. 896; 28 T. L. R. 376 . 413, 532, 611
Emancipation, The (1840), 1 Wm. Rob. 124 71, 242
Emanuel, The (1799), 1 Ch. Rob. 296 305
Emanuel and Simmonds, *Re* (1886), 33 Ch. D. 40; 55 L. J. (CH.) 710; 55 L. T. 79; 51 J. P. 22; 34 W. R. 613, C. A. 763
Emden *v.* Carte (1881), 19 Ch. D. 311; 51 L. J. (CH.) 371; 45 L. T. 328; 30 W. R. 17, C. A. 821, 825, 826
Emerald, The, The Greta Holme, [1896] P. 192; 65 L. J. (P.) 69; 74 L. T. 645; 8 Asp. M. L. C. 134, C. A. 539
Emery *v.* Cichero, The "Arklow" (1883), 9 App. Cas. 136; 53 L. J. (P. C.) 9; 50 L. T. 305; 5 Asp. M. L. C. 219 382
Emilie Galline, The, [1903] P. 106; 72 L. J. (P.) 39; 88 L. T. 743; 9 Asp. M. L. C. 401 546, 558, 568
Emilie Millon, The, [1905] 2 K. B. 817; 75 L. J. (K. B.) 31, C. A. . . . 624, 639
Emilien Marie, The (1875), 44 L. J. (ADM.) 9; 32 L. T. 435; 2 Asp. M. L. C. 514 154, 155, 163, 166, 167, 172, 173, 174, 175, 266, 270

PAGE
Emma, The (1850), 3 Wm. Rob. 151 565
Emma Silver Mining Co., *Re*, *Re* Turner (1875), 24 W. R. 54 . . . 819, 839
Emmens *v.* Elderton (1853), 13 C. B. 495; 4 H. L. Cas. 624; 18 Jur. 21 . . 731
Emmy Haase, The (1884), 9 P. D. 81; 53 L. J. (P.) 43; 50 L. T. 372; 32 W. R. 880; 5 Asp. M. L. C. 216 372, 457, 504
Emperor, The *v.* The Lady of the Lake (1864), Holt (ADM.), 202; (1865), Holt (ADM.), 37 381, 390, 415
Empire of Peace, The (1869), 39 L. J. (ADM.) 12; 21 L. T. 763; 3 Mar. L. C. 324 71, 243
Empress Engineering Co., *Re* (1880), 16 Ch. D. 125; 43 L. T. 742; 29 W. R. 342, C. A. 734
Empress Eugénie, The (1860), Lush. 138 539
Empress of Britain, The (1913), 29 T. L. R. 423 540
Empusa, The (1879), 5 P. D. 6; 48 L. J. (P.) 36; 41 L. T. 383; 28 W. R. 263; 4 Asp. M. L. C. 185 73, 612, 616
Enchantress, The (1860), Lush. 93; 30 L. J. (P. M. & A.) 15; 2 L. T. 574 . 573, 574, 582
Endeavour, The (1890), 62 L. T. 840; 6 Asp. M. L. C. 511 539
————, The Cricket. *See* Cricket, The, The Endeavour.
"Energie," The, Miedbrodt *v.* Fitzsimon. *See* Miedbrodt *v.* Fitzsimon, The "Energie."
Energy, The (1870), L. R. 3 A. & E. 48; 39 L. J. (ADM.) 25; 23 L. T. 601; 18 W. R. 1009 358, 491
England, The (1886), 12 P. D. 32; 56 L. J. (P.) 115; 56 L. T. 896; 35 W. R. 367; 6 Asp. M. L. C. 140 36, 37
Engleheart *v.* Moore (1846), 15 M. & W. 548; 15 L. J. (EX.) 312; 4 Dan. & Ll. 60. 776
Englishman, The (1877), 3 P. D. 18; 47 L. J. (P.) 9; 27 L. T. 412; 3 Asp. M. L. C. 506 382, 398, 399, 534
————, and The Australia, [1894] P. 239; 63 L. J. (P.) 133; 70 L. T. 846; 43 W. R. 62; 6 R. 743; 7 Asp. M. L. C. 603; [1895] P. 212; 64 L. J. (P.) 74; 72 L. T. 203; 43 W. R. 670; 7 Asp. M. L. C. 605; 11 R. 457 516, 521, 528
Engman *v.* Palgrave, Broun & Son (1898), 15 T. L. R. 113; 4 Com. Cas. 75 . 91, 97, 142, 144
Enterprise, The, [1912] P. 207; 82 L. J. (P.) 1; 107 L. T. 271; 28 T. L. R. 598 382, 517
Erasmo Treglia *v.* Smith's Timber Co., Ltd. (1896), 1 Com. Cas. 360 . . . 258
Erato, The (1888), 13 P. D. 163; 57 L. J. (P.) 107; 59 L. T. 840; 6 Asp. M. L. C. 334 557, 558, 575, 577, 579
Erichsen *v.* Barkworth (1858), 3 H. & N. 601; 27 L. J. (EX.) 472; on appeal, 3 H. & N. 894; 28 L. J. (EX.) 95; 5 Jur. (N. S.) 517; 7 W. R. 97. 121, 147, 264, 265, 279
Ericsson, The (1856), Sw. 38 427
Ermen, *Re*, Tatham *v.* Ermen, [1903] 2 Ch. 156; 72 L. J. (CH.) 492; 88 L. T. 352; 51 W. R. 474 767, 768, 769, 797, 800
Esdaile *v.* Oxenham (1824), 3 B. & C. 225; 5 Dow. & Ry (K. B.) 49 . . . 817
Esk, The (1869), L. R. 2 A. & E. 350; 38 L. J. (ADM.) 33; 20 L. T. 587; 17 W. R. 1064 378, 379, 389, 403, 404
"Esk," The, and The "Niord" (1870), L. R. 3 P. C. 436; 7 Moo. P. C. C. (N. S.) 276; 24 L. T. 167; 1 Asp. M. L. C. 1 377, 439, 468
Esposito *v.* Bowden (1857), 7 E. & B. 763; 27 L. J. (Q. B.) 17; 3 Jur. (N. S.) 1209; 5 W. R. 732 132, 193, 196
Essarts *v.* Whinney (1903), 88 L. T. 191; 19 T. L. R. 235; 9 Asp. M. L. C. 363, C. A. 27, 299
Essequibo, The (1888), 13 P. D. 51; 57 L. J. (P.) 29; 58 L. T. 596; 6 Asp. M. L. C. 276 402
Esther, The *v.* The Concordia (1866), Holt (ADM.), 142 434
Etna, The, [1908] P. 269; 77 L. J. (P.) 138; 98 L. T. 424; 24 T. L. R. 270 408, 449, 514, 515
Ettrick, The (1881), 6 P. D. 127; 45 L. T. 399; 4 Asp. M. L. C. 465, C. A. . 316, 555, 563, 586, 612
"E. U.," The (1853), 1 Ecc. & Ad. 63 563, 564, 584
Eudora, The (1879), 4 P D. 208; 48 L. J. (P.) 32; 40 L. T. 166; 4 Asp. M. L. C. 78 73
Eugene (1834), 3 Hag. Adm. 156 585
Eugenie, The (1844), 3 Notes of Cases, 430 562
———— (1873), L. R. 4 A. & E. 123; 29 L. T. 314; 21 W. R. 957; 2 Asp. M. L. C. 104 246

PAGE

Europa, The (1850), 14 Jur. 627; (1851), Pritchard's Admiralty Digest, 3rd ed., p. 223. 411, 418, 486, 487, 535
——— (1863), Brown. & Lush. 89 545
———, [1908] P. 84; 77 L. J. (P.) 26; 98 L. T. 246; 24 T. L. R. 151 77, 96, 188, 189, 217, 218
"Europa," The, Dean *v.* Richards. *See* Dean *v.* Richards, The "Europa."
European, The (1885), 10 P. D. 99; 54 L. J. (P.) 61; 52 L. T. 868; 33 W. R. 937; 5 Asp. M. L. C. 417 536
European and Australian Royal Mail Co. *v.* Peninsular and Oriental Steam Navigation Co. (1866), 14 L. T. 704; 12 Jur. (N. S.) 909; 14 W. R. 843; 2 Mar. L. C. 351 . . . 14, 22
——— *v.* Royal Mail Steam Packet Co. (1858), 4 K. & J. 676; 5 Jur. (N. S.) 310 27
Euterpe Steamship Co., Ltd. *v.* Bath & Son (1897), 2 Com. Cas. 196 . . 280, 288
Evangelismos, The (1858), 11 Moo. P. C. C. 352; Sw. 378 33
Evangelistria, The (1876), 2 P. D. 241; 35 L. T. 410. 37
Evans, *Ex parte* (1838), 1 Will. Woll. & H. 34; 2 Jur. 47 710
———, *Ex parte* (1840), 4 Jur. 991 830
———, *Ex parte, Re* Marseilles Extension Rail. and Land Co. *See* Marseilles Extension Rail. and Land Co., *Re, Ex parte* Evans.
———, *Re* (1845), 15 L. J. (CH.) 115 786
———, *Re*, [1905] 1 Ch. 290; 74 L. J. (CH.) 204; 92 L. T. 151; 69 J. P. 104; 3 L. G. R. 169 761
———, *Re, Ex parte* Bovill (1826), 2 Mont. & A. 382, n. 811
———, *Re, Ex parte* Brown (1887), 35 W. R. 546 769, 794, 798
——— *v.* Bullock (1877), 38 L. T. 34; 3 Asp. M. L. C. 552 257
——— *v.* Duncombe (1831), 1 Cr. & J. 372; 9 L. J. (O. S.) (EX.) 82; 1 Tyr. 283 830
——— *v.* Forster (1830), 1 B. & Ald. 118; 8 L. J. (O. S.) (K. B.) 348 . . . 125
——— *v.* Griffiths, *Re* Thomas. *See* Thomas, *Re*, Evans *v.* Griffiths.
——— *v.* Hoare, [1892] 1 Q. B. 593; 61 L. J. (CH.) 470; 66 L. T. 345; 56 J. P. 664; 40 W. R. 442 771
——— *v.* Hutton (1841), 2 Man. & G. 954; 12 L. J. (C. P.) 17; 5 Scott (N. R.), 670; 2 Dowl. 600 109
——— *v.* Marlett (1697), 1 Ld. Raym. 271; 12 Mod. Rep. 156; 3 Salk. 290 . 157
——— *v.* Nichol (1841), 3 Man. & G. 614; 11 L. J. (C. P.) 6; 4 Scott (N. R.), 43 . 153
——— *v.* Phillpotts (1840), 9 C. & P. 270 836
——— *v.* Soule (1813), 2 M. & S. 1 107, 325
——— *v.* Staniar, Staniar *v.* Evans. *See* Staniar *v.* Evans, Evans *v.* Staniar.
——— and Glamorgan County Council Arbitration, *Re* (1912), 76 J. P. 468; 56 Sol. Jo. 668; 28 T. L. R. 517; 10 L. G. R. 805 692
———, Sons & Co. *v.* Cunard Steamship Co. (1902), 18 T. L. R. 374 . . 95, 96
Everard *v.* Kendall (1870), L. R. 5 C. P. 428; 39 L. J. (C. P.) 234; 22 L. T. 408; 18 W. R. 892 14, 374
Everitt, *Ex parte, Re* Gray. *See* Gray, *Re, Ex parte* Everitt.
Ewbank *v.* Nutting (1849), 7 C. B. 797 247, 290
Ewell Grove (1835), 3 Hag. Adm. 209 575
Excelsior, The (1868), L. R. 2 A. & E. 268; 37 L. J. (ADM.) 54; 19 L. T. 87 . 490, 495, 499, 502, 532, 547, 639, 640, 641
Exeter, The (1799), 1 Ch. Rob. 173 622
Expert, The (1877), 36 L. T. 258; 3 Asp. M. L. C. 381 616
Express, The (1872), L. R. 3 A. & E. 597; 41 L. J. (ADM.) 79; 26 L. T. 956; 1 Asp. M. L. C. 355 83, 96, 141, 234, 235
Eyre *v.* Hughes (1876), 2 Ch. D. 148; 45 L. J. (CH.) 395; 34 L. T. 211; 24 W. R. 597 751, 811
—— *v.* Shelley (1841), 8 M. & W. 154; 10 L. J. (EX.) 295; 5 Jur. 439 . . 796
—— *v.* Wynn-Mackenzie, [1896] 1 Ch. 135; 65 L. J. (CH.) 194; 73 L. T. 571; 44 W. R. 273, C. A. 762
Ezardian, The, [1911] P. 92; 80 L. J. (P.) 81; 104 L. T. 400 . 370, 470, 481, 496
Ezart *v.* Lister (1842), 5 Beav. 585; 12 L. J. (CH.) 10 835

F.

FAEDRELANDET, The, [1895] P. 205; 64 L. J. (P.) 122; 72 L. T. 650; 8 Asp. M. L. C. 1, C. A. 381, 387, 404
Fair Haven, The (1866), L. R. 1 A. & E. 67; 14 W. R. 821 . . . 246, 626

PAGE
Fairbridge *v.* Pace (1844), 1 Car. & Kir. 317 186
Fairlie, The (1868), 37 L. J. (P. M. & A.) 66 27
Fairport, The (1882), 8 P. D. 48; 52 L. J. (P.) 21; 48 L. T. 536; 31 W. R. 616; 5 Asp. M. L. C. 62 627
——— (1884), 10 P. D. 13; 54 L. J. (ADM.) 3; 52 L. T. 62; 33 W. R. 448; 5 Asp. M. L. C. 348 27
———, [1912] P. 168; 81 L. J. (P.) 108; 106 L. T. 382 579
Fairthorne, *Re* (1846), 1 Saund. & C. 40; 15 L. J. (Q. B.) 131; 10 Jur. 287; 3 Dow. & L. 548 830
Faith, *Ex parte* (1841), 9 Dowl. 973 838
——— *v.* East India Co. (1821), 4 B. & Ald. 630 . . 104, 171, 176, 285, 287
Faithful, The (1862), 31 L. J. (P. M. & A.) 81 71, 243
Faithfull, *Re*, *Re* London, Brighton and South Coast Rail. Co. (1868), L. R. 6 Eq. 325; 18 L. T 502 816, 818
——— *v.* Ewen (1878), 7 Ch. D. 495; 47 L. J. (CH.) 457; 37 L. T. 805; 26 W. R. 270, C. A. 826
——— *v.* Kesteven (1910), 103 L. T. 56, C. A. 755
Falcke *v.* Scottish Imperial Insurance Co. (1886), 34 Ch. D. 234; 56 L. J. (CH.) 707; 56 L. T. 220; 35 W. R. 143, C. A. 557, 579
Falke *v.* Fletcher (1865), 18 C. B. (N. S.) 403; 34 L. J. (C. P.) 146; 11 Jur. (N. S.) 176; 13 W. R. 346 152, 199
Falkland, The, The Navigator (1863), Brown. & Lush. 204; 1 Moo. P. C. C. (N. S.) 379; 9 Jur. (N. S.) 113 464, 493
Falkner *v.* Earl (1863), 3 B. & S. 360; 32 L. J. (Q. B.) 124; 7 L. T. 672; 9 Jur. (N. S.) 847; 11 W. R. 307 140, 308
Falls, *Re* (1891), 29 L. R. Ir. 1 788, 790
Famenoth, The (1882), 7 P. D. 207; 48 L. T. 28; 5 Asp. M. L. C. 35 . 592, 595
Fanchon, The (1880), 5 P. D. 173; 50 L. J. (P.) 4; 42 L. T. 483; 29 W. R. 339; 4 Asp. M. L. C. 272 25
Fanny, The, The Mathilda (1883), 48 L. T. 771; 5 Asp. M. L. C. 75, C. A. . 64, 65, 66, 88, 89, 90
"Fanny M. Carvill" (Owners) *v.* "Peru" (Owners), The "Fanny M. Carvill" (1875), 13 App. Cas. 455, n.; 44 L. J. (ADM.) 34; 32 L. T. 646; 24 W. R. 62; 2 Asp. M. L. C. 569 382, 510, 534, 535
Fanshawe, *Ex parte*, *Re* Wood. *See* Wood, *Re*, *Ex parte* Fanshawe.
——— (H. H.), *Re*, [1905] W. N. 64; 40 L. J. 261; 118 L. T. Jo. 526; 49 Sol. Jo. 404 791
Farewell, The (1882), 8 Quebec Law Reports, 87 448, 464
Farewell *v.* Coker (1728), 2 P. Wms. 460 845
Farley *v.* Buckler (1893), *Times*, October 30th 835
Farman, *Re* (1883), 18 L. J. N. C. 352 851
Farmer *v.* Davies (1786), 1 Term Rep. 108 67, 68
——— *v.* Wilson (1900), 69 L. J. (Q. B.) 496; 82 L. T. 566; 64 J. P. 486; 16 T. L. R. 309 61
Farnley Hall, The (1881), 46 L. T. 216; 4 Asp. M. L. C. 499, C. A. . . . 578
Farr *v.* Pearce (1818), 3 Madd. 74 843
Farrant *v.* Barnes (1862), 11 C. B. (N. S.) 553; 31 L. J. (C. P.) 137; 8 Jur. (N. S.) 868 101, 197
Faulkner, *Re* (1887), 36 Ch. D. 566; 56 L. J. (CH.) 1011; 57 L. T. 342; 36 W. R. 59 766, 767
Faust, The, Burn *v.* Herlofson and Siemensen. *See* Burn *v.* Herlofson and Siemensen, The Faust.
Faviell *v.* Eastern Counties Rail. Co. (1848), 2 Exch. 344; 17 L. J. (EX.) 297; 6 Dow. & L. 54 732, 743
Favourite, The (1799), 2 Ch. Rob. 232 40
——— (1844), 2 Wm. Rob. 255 557, 567, 568
Fawcett & Co. *v.* Baird & Co. (1900), 16 T. L. R. 198 277
Fearon *v.* Bowers (1753), 1 Hy. Bl. 364, n. 167
Featherstone *v.* Wilkinson (1873), L. R. 8 Exch. 122; 42 L. J. (EX.) 78; 28 L. T. 448; 21 W. R. 422; 2 Asp. M. L. C. 31 186, 210
Featherstonehaugh *v.* Reen (1833), 1 Cr. & M. 495 808
Felix, The (1868), L. R. 2 A. & E. 273; 37 L. J. (ADM.) 48; 18 L. T. 587; 17 W. R. 102 166, 183, 184, 262
Fendall *v.* Noakes (1839), 3 Jur. 726; 7 Scott, 647; 2 Arn. 101 836
"Fenham," The (1870), L. R. 3 P. C. 212; 6 Moo. P. C. C. (N. S.) 501; 23 L. T. 329 382, 507
Fenton, *Re* (1835), 3 Ad. & El. 404; 4 L. J. (K. B.) 204; 1 Har. & W. 310; 5 Nev. & M. (K. B.) 239 837

PAGE

Fenton *v.* City of Dublin Steam Packet Co. (1838), 8 Ad. & El. 835; 8 L. J. (Q. B.) 28; 1 Per. & Dav. 103 85, 503, 526
——— *v.* Crickett (1818), 3 Madd. 496 796
Fenwick *v.* Boyd (1846), 15 M. & W. 632 104, 304, 308
——— *v.* Robinson (1828), 3 C. & P. 323 324
——— *v.* Schmalz (1868), L. R. 3 C. P. 313; 37 L. J. (C. P.) 78; 18 L. T. 27; 16 W. R. 481 120, 130, 132, 191, 194
Fereday, *Ex parte* (1877), 46 L. J. (CH.) 504 714
———, *Re*, [1895] 2 Ch. 437; 64 L. J. (CH.) 894; 73 L. T. 56; 13 R. 639 839
Fergus Navigation and Embankment Co. *v.* Kingdon (1861), 4 L. T. 262 . 729, 834
Ferguson, *Ex parte* (1871), L. R. 6 Q. B. 280; 40 L. J. (Q. B.) 105; 24 L. T. 96; 19 W. R. 746; 1 Asp. M. L. C. 8 14, 331, 371, 520
——— & Co. to Buckley, *Ex parte* (1888), 21 L. R. Ir. 392 764, 766
Ferns *v.* Carr (1885), 28 Ch. D. 409; 54 L. J. (CH.) 478; 52 L. T. 348; 49 J. P. 503; 33 W. R. 363 712
Feronia, The (1868), L. R. 2 A. & E. 65; 37 L. J. (ADM.) 60; 17 L. T. 619; 16 W. R. 585 29, 623
"Ferret," The, Phillips *v.* Highland Rail. Co. *See* Phillips *v.* Highland Rail. Co., The "Ferret."
Ferrior, *Re*, Carrow *v.* Ferrior, Dunn *v.* Ferrior (1867), 3 Ch. App. 175; 37 L. J. (CH.) 571, n.; 18 L. T. 65; 16 W. R. 298 736
Ferro, The, [1893] P. 38; 62 L. J. (P.) 48; 68 L. T. 418; 1 R. 562; 7 Asp. M. L. C. 309 117, 205, 206, 207
Fiddey, *Re*, Heinrich *v.* Sutton (1871), 6 Ch. App. 865; 25 L. T. 643; 19 W. R. 1075 827
———, *Re*, Jones *v.* Frost (1872), 7 Ch. App. 773; 42 L. J. (CH.) 47; 27 L. T. 465; 20 W. R. 1025 826, 827
Field, *Re* (1853), 16 Beav. 593 793
——, *Re* (1885), 29 Ch. D. 608; 54 L. J. (CH.) 661; 52 L. T. 480; 49 J. P. 613; 33 W. R. 553, C. A. 763
Fielder and Sumner, *Re* (1871), 40 L. J. (CH.) 615; 25 L. T. 56 . . 788, 789
Figlia Maggiore, The (1868), L. R. 2 A. & E. 106; 37 L. J. (ADM.) 52; 18 L. T. 532 111, 170, 204, 206
Finch, *Re* (1853), 16 Beav. 585; 1 Eq. Rep. 109 789
——— and Shepheard, *Re*, *Ex parte* Barton (1853), 4 De G. M. & G. 108, C. A. . 789, 790
Finchett *v.* How and Jarratt (1809), 2 Camp. 275 778
Findlay, *Re*, Findlay *v.* Cuthbertson (1910), 44 I. L. T. 214, C. A. . . . 796
Finlay *v.* Liverpool and Great Western Steamship Co. (1870), 23 L. T. 251 . 109, 163, 224
Fire Queen, The (1887), 12 P. D. 147; 56 L. J. (P.) 90; 57 L. T. 312; 36 W. R. 15; 6 Asp. M. L. C. 146 382, 389, 400, 481
Firth *v.* Forbes (1862), 4 De G. F. & J. 409; 32 L. J. (CH.) 10; 10 Jur. (N. S.) 1113; 10 W. R. 291, C. A. 162
Fish, *Re*, Bennett *v.* Bennett, [1893] 2 Ch. 413; 62 L. J. (CH.) 977; 69 L. T. 233; 2 R. 467, C. A. 753
—— *v.* Kelly (1864), 17 C. B. (N. S.) 194 753
Fisher, *Re* (1854), 18 Beav. 183 783
———, Renwick & Co. *v.* Calder & Co. (1896), 1 Com. Cas. 456 . . . 146, 154
Fitzgerald *v.* Bermingham (1842), 1 Con. & Law. 405 820
Five Steel Barges (1890), 15 P. D. 142; 59 L. J. (P.) 77; 63 L. T. 499; 39 W. R. 127; 6 Asp. M. L. C. 580 . . . 558, 561, 568, 580, 581, 586
Flatau *v.* Cullen (1899), 81 L. T. 402; 48 W. R. 36; 16 T. L. R. 1, C. A. . 806, 807
Flavell, *Re*, Murray *v.* Flavell (1883), 25 Ch. D. 89; 53 L. J. (CH.) 185; 49 L. T. 690; 32 W. R. 102, C. A. 843
"Flecha," The (1854), 1 Ecc. & Ad. 438 69
Fleece, The (1850), 3 Wm. Rob. 278 585, 586, 588
Fleming *v.* Hardcastle (1885), 52 L. T. 851; 33 W. R. 776 761
Flemyng *v.* Hector (1836), 2 M. & W. 172; 6 L. J. (EX.) 43; 2 Gale, 180 . . 734
Fletcher, *Ex parte*, *Re* Collyer-Bristowe, Russell, Hill & Co. *See* Collyer-Bristowe, Russell, Hill & Co., *Re*, *Ex parte* Fletcher.
——— *v.* Alexander (1868), L. R. 3 C. P. 375; 37 L. J. (C. P.) 193; 18 L. T. 432; 16 W. R. 803 322, 324
——— *v.* Braddick (1806), 2 Bos. & P. (N. R.) 182 65
——— *v.* Gillespie (1826), 3 Bing. 635; 4 L. J. (O. S.) (C. P.) 202; 11 Moore (C. P.), 547 198, 199, 267
——— *v.* Inglis (1819), 2 B. & Ald. 315 110

PAGE
Flora, The (1866), L. R. 1 A. & E. 45; 35 L. J. (ADM.) 15; 14 L. T. 192 . 303, 545
Florence, The (1852), 16 Jur. 572 576
Florence Nightingale, The, The Mœander (1863), 1 Mar. L. C. 301 . . 466, 467
Flory *v.* Denny (1852), 7 Exch. 581; 21 L. J. (EX.) 223 162
Flower, *Ex parte* (1868), 18 L. T. 457. 786
Floyd *v.* Nangle (1747), 3 Atk. 568 758
Flux, Argles and Rawlins, *Re* (1874), 44 L. J. (CH.) 375 794
Flying Fish, The (1865), Brown. & Lush. 436; 34 L. J. (P. M. & A.) 113; 12 L. T. 619; 2 Moo. P. C. C. (N. S.) 77 538
Foley *v.* Smith (1851), 11 Beav. 456; 20 L. J. (CH.) 621 . . . 791, 844, 847
Foljambe, *Re* (1846), 9 Beav. 402 780
Foong, Tai & Co. *v.* Buckheister & Co., [1908] A. C. 458; 99 L. T. 526 . . 621
Ford, *Ex parte, Re* Colquhoun. *See* Colquhoun, *Re, Ex parte* Ford.
——, *Re, Ex parte* Ford (1838), 3 Deac. 494; Mont. & Ch. 97 813
—— *v.* Cotesworth (1868), L. R. 4 Q. B. 127; 9 B. & S. 559; 38 L. J. (Q. B.) 52; 19 L. T. 634; 17 W. R. 282; affirmed (1870), L. R. 5 Q. B. 544; 10 B. & S. 991; 39 L. J. (Q. B.) 188; 23 L. T. 165; 18 W. R. 1169 . 121, 201, 265, 266, 271, 274, 275, 276, 277, 278
—— and Thomas, *Re* (1840), 8 Dowl. 684 839
Fore Street Warehouse Co. *v.* Durrant (1883), 10 Q. B. D. 471; 52 L. J. (Q. B.) 287; 48 L. T. 531; 31 W. R. 765 732
Forest Oak Steam Shipping Co. *v.* Richard & Co. (1899), 5 Com. Cas. 100 . 93, 178, 179
Forest Steamship Co. *v.* Iberian Iron Ore Co. (1899), 81 L. T. 563; 16 T. L. R. 59; 9 Asp. M. L. C. 1; 5 Com. Cas. 83 124, 263
Forfarshire, The, [1908] P. 339; 99 L. T. 587 358, 359
Forman & Co. Proprietary, Ltd. *v.* Ship Liddesdale, [1900] A. C. 190; 69 L. J. (P.) 44; 82 L. T. 331; 9 Asp. M. L. C. 45 65
Forster *v.* Davies (1863), 32 Beav. 624 804
——— *v.* Mackreth (1867), L. R. 2 Exch. 163; 36 L. J. (EX.) 94; 16 L. T. 23; 15 W. R. 747 759
Forsyth, *Re* (1865), 2 De G. J & Sm. 509; 12 L. T. 687; 13 W. R. 932, C. A. 791
Fortescue *v.* Mercantile Bank of London, [1897] 2 Q. B. 236; 66 L. J. (Q. B.) 591; 76 L. T. 645; 45 W. R. 529, C. A. 762
Fortuna, The (1802), 4 Ch. Rob. 278 305
"Fortunato Figari" (Owners) *v.* "Coogee" (Owners) (1904), 29 Victorian Law Reports, 874 412
Forward *v.* Pittard (1785), 1 Term Rep. 27 109
Foscolino, The (1885), 52 L. T. 866; 5 Asp. M. L. C. 420 617
Foss, Bilbrough, Plaskitt and Foss, *Re*, [1912] 2 Ch. 161; 81 L. J. (CH.) 558; 106 L. T. 835; 56 Sol. Jo. 574 780, 785, 788
Foster, *Re, Ex parte* Dickens (1878), 8 Ch. D. 598; 26 W. R. 915 803
——, *Re, Ex parte* Walker (1860), 2 De G. F. & J. 105; 29 L. J. (CH.) 625; 2 L. T. 553; 6 Jur. (N. S.) 687; 8 W. R. 620, C. A. 789
—— *v.* Blakelock (1826), 5 B. & C. 328; 4 L. J. (O. S.) (K. B.) 170 . . . 836
—— *v.* Colby (1858), 3 H. & N. 705; 28 L. J. (EX.) 81 . . 154, 173, 284, 286, 312
—— *v.* Elsley (1881), 19 Ch. D. 518; 51 L. J. (CH.) 275; 30 W. R. 596 . . 735
Fothergill *v.* Walton (1818), 8 Taunt. 576 143, 192
Foulkes *v.* Metropolitan District Rail. Co. (1880), 5 C. P. D. 157; 49 L. J. (Q. B.) 361; 42 L. T. 345; 28 W. R. 526, C. A. 238
Four Solicitors, *Re, Ex parte* Incorporated Law Society, [1901] 1 K. B. 187; 70 L. J. (K. B.) 5; 83 L. T. 484; 49 W. R. 219; 17 T. L. R. 73 . . 851
Fowler *v.* Fowler (1881), 50 L. J. (CH.) 686; 44 L. T. 799; 29 W. R. 800 . . 817
——— *v.* Knoop (1879), 4 Q. B. D. 299; 48 L. J. (Q. B.) 333; 40 L. T. 180; 27 W. R. 299, C. A. 121, 164, 165, 166, 266, 274
——— *v.* Monmouthshire Canal Co. (1879), 4 Q. B. D. 334; 48 L. J. (Q. B.) 457; 41 L. T. 159; 27 W. R. 659 720
——— *v.* Moore (1837), 2 Jo. Ex. Ir. 415 811
Fox, The, Walker (Thomas) & Co. *v.* Horlock (1913), 30 T. L. R. 58 . . 259, 274
Fox *v.* Charlton, Charlton *v.* Fox (1865), 6 New Rep. 352 810
—— *v.* Nott (1861), 6 H. & N. 630; 30 L. J. (EX.) 259; 7 Jur. (N. S.) 663 . 164, 165, 292, 293
—— *v.* R. (1859), 1 E. & E. 729; 29 L. J. (M. C.) 54; 1 L. T. 216; 5 Jur. (N. S.) 1248; 8 W. R. 93 842
Foxon *v.* Gascoigne (1874), 9 Ch. App. 654; 43 L. J. (CH.) 729; 31 L. T. 289; 22 W. R. 939 824, 826

PAGE
Foy *v.* Cooper (1842), 2 Q. B. 937 798
Fragano *v.* Long (1825), 4 B. & C. 219; 3 L. J. (O. S.) (K. B.) 177; 6 Dow. & Ry. (K. B.) 283 152, 202
France, Fenwick & Co., Ltd. *v.* Spackman (Philip) & Sons (1913), 18 Com. Cas. 52 119, 132, 139, 140, 142, 273
Frances, The (1820), 2 Dods. 420 21
"Frances" (Owners) *v.* "Highland Loch" (Owners), [1912] A. C. 312; 81 L. J. (P.) 30; 106 L. T. 81; 28 T. L. R. 213; 12 Asp. M. L. C. 106; 49 Sc. L. R. 691 481, 484, 505
Francesco *v.* Massey (1873), L. R. 8 Exch. 101; 42 L. J. (EX.) 75; 21 W. R. 440 133, 134, 135
Francis *v.* Francis (1854), 5 De G. M. & G. 108, C. A. 821
——— and Eliza (1816), 2 Dods. 115 569
Franconia, The (1876), 2 P. D. 8; 35 L. T. 721; 25 W. R. 197; 3 Asp. M. L. C. 295, C. A. 376, 400, 448, 449, 455, 462, 463
——————— (1877), 2 P. D. 163; 46 L. J. (P.) 33; 36 L. T. 640; 25 W. R. 796, C. A. 546
——————— (1878), 3 P. D. 164; 39 L. T. 57; 27 W. R. 128; 4 Asp. M. L. C. 1, C. A. 615, 635
Frank, The (1876), 2 Quebec Law Reports, 295 420
Frankfort, The, [1910] P. 50; 79 L. J. (P.) 49; 101 L. T. 664; 11 Asp. M. L. C. 326, C. A. 476, 481, 497, 510
Frankland, The, [1901] P. 161; 70 L. J. (P.) 42; 84 L. T. 395; 17 T. L. R. 419; 9 Asp. M. L. C. 196 522
"Frankland," The, and The "Kestrel," Morton *v.* Hutchinson. *See* Morton *v.* Hutchinson, The "Frankland" and The "Kestrel."
Franklin *v.* Featherstonhaugh (1834), 1 Ad. & El. 475; 3 L. J. (K. B.) 163; 3 Nev. & M. (K. B.) 779 775
——— *v.* Hosier (1821), 4 B. & Ald 341 621
Frape, *Re*, *Ex parte* Perrett, [1893] 2 Ch. 284; 62 L. J. (CH.) 473; 68 L. T. 558; 41 W. R. 417; 2 R. 411, C. A. 771, 774, 788
——, *Re*, *Ex parte* Perrett (No. 2), [1894] 2 Ch. 290; 63 L. J. (CH.) 678; 71 L. T. 80; 42 W. R. 475; 8 R. 274 791
Fraser *v.* Province of Brescia Steam Tramways Co. (1887), 56 L. T. 771 . . 768
——— *v.* Telegraph Construction Co. (1872), L. R. 7 Q. B. 566; 41 L. J. (Q. B.) 249; 27 L. T. 373; 20 W. R. 724 91, 143, 148, 377
——— and White *v.* Bee (1900), 49 W. R. 336; 17 T. L. R. 101 105
Fray *v.* Foster (1860), 1 F. & F. 681 756
——— *v.* Voules (1859), 1 E. & E. 839; 28 L. J. (Q. B.) 232; 5 Jur. (N. S.) 1253; 7 W. R. 446 744
Frayes *v.* Worms (1865), 19 C. B. (N. S.) 159 322
Frazer *v.* Cuthbertson (1880), 6 Q. B. D. 93; 50 L. J. (Q. B.) 277; 29 W. R. 396 34, 35, 525, 590
——— *v.* Hatton (1857), 2 C. B. (N. S.) 512; 26 L. J. (C. P.) 226; 3 Jur. (N. S.) 694 51, 60
——— *v.* Marsh (1810), 13 East, 238 85, 170
"Freedom," The (1871), L. R. 3 P. C. 594; 24 L. T. 452; 1 Asp. M. L. C. 136 111, 115, 164, 189, 204, 225, 232, 233
Freehold Land and Brickmaking Co., *Re*, *Ex parte* Massey (1870), L. R. 9 Eq. 367; 39 L. J. (CH.) 492; 22 L. T. 195; 18 W. R. 444 825
Freeman *v.* East India Co. (1822), 5 B. & Ald. 617; 1 Dow. & Ry. (K. B.) 234 76, 248, 250
——— *v.* Fairlie (1839), 8 L. J. (CH.) 44 834, 848
——— *v.* Fox (1911), 55 Sol. Jo. 650 843
——— *v.* Taylor (1831), 8 Bing. 124; 1 L. J. (C. P.) 26; 1 Moo. & S. 182 . 83, 92, 93, 97, 144, 178
French, *Re*, Love *v.* Hills, *Re* Miller. *See* Miller, *Re*, *Re* French, Love *v.* Hills.
——— *v.* Gerber (1876), 1 C. P. D. 737; 45 L. J. (Q. B.) 880; 25 W. R. 113; affirmed (1877), 2 C. P. D. 247; 46 L. J. (Q. B.) 320; 36 L. T. 350; 25 W. R. 355; 3 Asp. M. L. C. 574, C. A. . . . 133, 134, 257
——— *v.* Newgass (1878), 3 C. P. D. 163; 47 L. J. (Q. B.) 361; 38 L. T. 164; 26 W. R. 430; 3 Asp. M. L. C. 574, C. A. 92
Freston, *Re* (1883), 11 Q. B. D. 545; 52 L. J. (Q. B.) 545; 49 L. T. 290; 31 W. R. 804, C. A. 726, 837
Frewen, *Re*, Frewen *v.* Frewen, [1889] W. N. 109 746
Fricker *v.* Van Grutten, [1896] 2 Ch. 649; 65 L. J. (CH.) 823; 75 L. T. 117; 45 W. R. 53, C. A. 742, 744, 833

PAGE
Friedlander *v.* Shaw, Savill and Albion Co. (1897), 2 Com. Cas. 124 . . . 267
"Friedrich," The, Inman *v.* Reck, The "City of Antwerp," and. *See* Inman *v.* Reck, The "City of Antwerp," and The "Friedrich."
Friend *v.* Solly (1847), 10 Beav. 329; 11 Jur. 958 796, 804
Friends, The (1801) 4 Ch. Rob. 143 49
——— (1810), Edw. 246 314
——— (1842), 1 Wm. Rob. 478; affirmed, *sub nom.* General Steam Navigation Co. *v.* Tonkin, The Friends (1844), 4 Moo. P. C. C. 314 . 365, 366, 368, 370, 465
Friesland, The, [1904] P. 345; 73 L. J. (P.) 121; 91 L. T. 324; 20 T. L. R. 699 . . 573
Friswell *v.* King (1846), 15 Sim. 191 815
Frith *v.* Forbes (1862), 4 De G. F. & J. 409; 32 L. J. (CH.) 10; 10 Jur. (N. S.) 1113; 10 W. R. 291, C. A. 285
Frost *v.* Knight (1872), L. R. 7 Exch. 111; 41 L. J. (EX.) 78; 26 L. T. 77; 20 W. R. 471 209
Fruiter, The *v.* The Fingal (1865), Holt (ADM.), 158 434, 436
Fry *v.* Chartered Mercantile Bank of India (1866), L. R. 1 C. P. 689; 35 L. J. (C. P.) 306; 14 L. T. 709; 14 W. R. 920 . . 107, 148, 154, 155, 164, 173, 175, 176, 177, 286
—— *v.* Lane, *Re* Fry, Whittet *v.* Bush (1888), 40 Ch. D. 312; 58 L. J. (CH.) 113; 60 L. T. 12; 37 W. R. 135 748
Fryer *v.* Sturt (1855), 16 C. B. 218; 24 L. J. (C. P.) 154 802
Fulham, The, [1898] P. 206; 67 L. J. (P.) 78; 79 L. T. 127; 47 W. R. 62; 14 T. L. R. 507; 8 Asp. M. L. C. 425; affirmed, [1899] P. 251; 68 L. J. (P.) 75; 81 L. T. 19; 47 W. R. 598; 15 T. L. R. 404; 8 Asp. M. L. C. 559, C. A. 550, 591
Fullagsen *v.* Walford (1883), Cab. & El. 198 310
Fullalove *v.* Parker (1862), 12 C. B. (N. S.) 246; 31 L. J. (C. P.) 239; 6 L. T. 353; 8 Jur. (N. S.) 1078; 10 W. R. 581 720
Fuller, *Ex parte*, *Re* Long. *See* Long, *Re*, *Ex parte* Fuller.
Fulton *v.* Andrew (1875), L. R. 7 H. L. 448; 23 W. R. 566 752
Furber, *Re*, [1898] 2 Ch. 538; 67 L. J. (CH.) 593; 79 L. T. 266; 47 W. R. 184 . 766
———, *Re* (1898), 33 L. J. 343, C. A. 795
Furlong *v.* Howard (1804), 2 Sch. & Lef. 115 816
——— *v.* Scallan (1875), 9 I. R. Eq. 202 731
Furnell *v.* Thomas (1828), 5 Bing. 188 263, 272
Furness *v.* Davis (1885), 51 L. T. 854; 33 W. R. 320 833
——— *v.* Forwood Brothers & Co. (1897), 77 L. T. 95; 2 Com. Cas. 223; 8 Asp. M. L. C. 298 192, 194, 195
——— *v.* Tennant, Sons & Co. (1892), 66 L. T. 635; 8 T. L. R. 336; 7 Asp. M. L. C. 179, C. A. 102, 103, 198, 203
Fusilier, The (1865), Brown. & Lush. 341; on appeal, 3 Moo. P. C. C. (N. S.) 51 . 561, 578, 586, 618, 619
Fyenoord, The (1858), Sw. 374 469, 479
Fyson, *Re* (1846), 9 Beav. 117 783, 789

G.

G., *Re* (1909), 53 Sol. Jo. 469 786
Gabarron *v.* Kreeft, Kreeft *v.* Thompson (1875), L. R. 10 Exch. 274; 44 L. J. (EX.) 238; 33 L. T. 365; 24 W. R. 146; 3 Asp. M. L. C. 36 . 147, 152, 160, 167, 172, 209, 264
Gabay *v.* Lloyd (1825), 3 B. & C. 793; 3 L. J. (O. S.) (K. B.) 116; 5 Dow. & Ry. (K. B.) 641 110
Gabriel, *Re* (1846), 10 Beav. 45 792
Gadd *v.* Houghton (1876), 1 Ex. D. 357; 46 L. J. (Q. B.) 71; 35 L. T. 222; 24 W. R. 975, C. A. 90
—— and Mason *v.* Manchester Corporation (1892), 9 R. P. C. 516, C. A. . . . 768
Gadney *v.* Rough (1879), 40 L. T. 258; 4 Asp. M. L. C. 73 482
Gaetano and Maria, The (1882), 7 P. D. 137; 51 L. J. (P.) 67; 46 L. T. 835; 30 W. R. 766; 4 Asp. M. L. C. 470, C. A. . . . 77, 141, 240, 242, 244
Gairdner *v.* Senhouse (1810), 3 Taunt. 16 96
"Gairloch," The, Aberdeen Glen Line Steamship Co. *v.* Macken. *See* Aberdeen Glen Line Steamship Co. *v.* Maken, The "Gairloch"
Gaitskell, *Re* (1845), 1 Ph. 576; 14 L. J. (CH.) 450; 9 Jur. 909 785
Galam, Cargo ex, Cleary *v.* McAndrew. *See* Cleary *v.* McAndrew, Cargo ex Galam.
Galatea, The (1858), Sw. 349; 4 Jur. (N. S.) 1064; 7 W. R. 21 568

PAGE
Gale *v.* Pakington (1823), M'Cle. & Yo. 354 808
Galileo, The, [1914] P. 9 ; 30 T. L. R. 86, C. A. 215, 235
Galland, *Re* (1885), 31 Ch. D. 296 ; 55 L. J. (CH.) 478 ; 53 L. T. 921 ; 34 W. R. 158, C. A. 731, 816, 841
Gallard, *Re, Ex parte* Harris (1888), 21 Q. B. D. 38 ; 57 L. J. (Q. B.) 528 ; 59 L. T. 147 ; 36 W. R. 592 ; 5 Morr. 123 762
Galloway *v.* London Corporation (1867), L. R. 4 Eq. 90 ; 36 L. J. (CH.) 978 ; 16 L. T. 407 ; 15 W. R. 1032 731, 857
Games, *Ex parte, Re* Williams *v.* Lloyd. *See* Williams *v.* Lloyd, *Re, Ex parte* Games.
Gananoque, The (1862), Lush. 448 40
Gane and Kilner *v.* Linley (1909), 53 Sol. Jo. 198, C. A. 788
"Gannet" (Owners) *v.* "Algoa" (Owners), The "Gannet," [1900] A. C. 234 ; 69 L. J. (P.) 49 ; 82 L. T. 329 ; 9 Asp. M. L. C. 43 . . . 382, 405, 501, 502
Gapp *v.* Bond (1887), 19 Q. B. D. 200 ; 56 L. J. (Q. B.) 438 ; 57 L. T. 437 ; 35 W. R. 683, C. A. 14, 374
Garbett, *Re* (1856), 18 C. B. 403 849
Gardener *v.* Ennor, Humby *v.* Moody (1866), 35 Beav. 549 747
Gardiner *v.* Macfarlane, M'Crindell & Co. (1889), 16 R. (Ct. of Sess.) 658 ; 26 Sc. L. R. 492 191
——— *v.* ——— (1893), 20 R. (Ct. of Sess.) 414 ; 30 Sc. L. R. 541 130, 132, 134, 195
Gardner *v.* Cazenove (1856), 1 H. & N. 423 ; 26 L. J. (EX.) 17 ; 5 W. R. 195 . 27, 300
——— *v.* Trechmann (1884), 15 Q. B. D. 154 ; 54 L. J. (Q. B.) 515 ; 53 L. T. 518 ; 5 Asp. M. L. C. 522, C. A. . 106, 107, 171, 172, 173, 177, 286, 312
——— *v.* Whitford (1858), 4 C. B. (N. S.) 665 640
Garland *v.* Jacomb (1873), L. R. 8 Exch. 216 ; 28 L. T. 877 ; 21 W. R. 868 . . 759
Garnham *v.* Bennett (1728), 2 Stra. 816 ; Barn. (K. B.) 96 66
Garrard *v.* Edge (1890), 44 Ch. D. 224 ; 59 L. J. (CH.) 379 ; 62 L. T. 510 ; 38 W. R. 455, C. A. 806
Garrett *v.* Melhuish (1858), 4 Jur. (N. S.) 943 ; 6 W. R. 491 . . . 306, 308
——— *v.* Wilkinson (1848), 2 De G. & Sm. 244 747
Garriock *v.* Walker (1873), 1 R. (Ct. of Sess.) 100 ; 11 Sc. L. R. 16 . . . 231
"Garston" Sailing Ship Co. *v.* Hickie (1885), 15 Q. B. D. 580 ; 53 L. T. 795 ; 5 Asp. M. L. C. 499, C. A. . 139, 219, 220
——— *v.* ———, Borman & Co. (1887), 18 Q. B. D. 17 ; 56 L. J. (Q. B.) 38 ; 55 L. T. 879 ; 35 W. R. 33 ; 6 Asp. M. L. C. 71, C. A. . 114, 115, 182, 291, 308
Gas Float Whitton (No. 2), The, [1895] P. 301 ; 73 L. T. 319 ; 11 R. 812 ; 8 Asp. M. L. C. 85 559
———, [1896] P. 42 ; 65 L. J. (P.) 17 ; 73 L. T. 698 ; 44 W. R. 263 ; 8 Asp. M. L. C. 110, C. A. 375, 548, 557, 559
———, [1897] A. C. 337 ; 66 L. J. (P.) 99 ; 76 L. T. 663 559
Gaudet *v.* Brown, Cargo ex Argos. *See* Argos, Cargo ex, Gaudet *v.* Brown.
Gayford *v.* Chouler, [1898] 1 Q. B. 316 ; 67 L. J. (Q. B.) 404 ; 78 L. T. 42 ; 62 J. P. 165 ; 14 T. L. R. 166 ; 18 Cox, C. C. 702 362
Gazelle, The (1842), 1 Wm. Rob. 471 364, 365, 368, 465, 502
——— (1844), 3 Notes of Cases, 75 ; 2 Wm. Rob. 279 . . 537, 541, 621
Gedye, *Re* (1851), 14 Beav. 56 ; 20 L. J. (CH.) 410 ; 15 Jur. 851 . . 777, 786
———, *Re* (1852), 15 Beav. 254 ; 21 L. J. (CH.) 430 785, 790
———, *Re* (1857), 23 Beav. 347 844, 847
Gee, *Re* (1846), 2 Dow. & L. 997 ; 10 Jur. 694 832
Geelong, The (1908), *Shipping Gazette*, March 5th, C. A. 421
Geen *v.* Herring, [1905] 1 K. B. 152 ; 74 L. J. (K. B.) 62 ; 92 L. T. 37 ; 53 W. R. 326 ; 21 T. L. R. 93, C. A. 769
Geilinger *v.* Gibbs, [1897] 1 Ch. 479 ; 66 L. J (CH.) 230 ; 76 L. T. 111 ; 46 W. R. 315 742, 833
Geipel *v.* Smith (1872), L. R. 7 Q. B. 404 ; 41 L. J. (Q. B.) 153 ; 26 L. T. 361 ; 20 W. R. 332 ; 1 Asp. M. L. C. 268 . . 93, 109, 178, 180, 198, 254 258
Gem of the Nith, The (1863), Brown. & Lush. 72 246
Gemma, The, [1899] P. 285 ; 68 L. J. (P.) 110 ; 81 L. T. 379 ; 15 T. L. R. 529 ; 8 Asp. M. L. C. 585, C. A. 545
General Council of the Bar (England) *v.* Inland Revenue Commissioners, [1907] 1 K. B. 462 ; 76 L. J. (K. B.) 212 ; 96 L. T. 267 ; 71 J. P. 117 ; 23 T. L. R. 192 804

PAGE
General Gordon, The (1892), 68 L. T. 469; 7 Asp. M. L. C. 317 . . . 452
General Havelock, The (1905), 21 T. L. R. 438 517
General Iron Screw Co. *v.* Moss, The Araxes and The Black Prince (1861), 15 Moo. P. C. C. 122 365, 434
General Lee, of Dublin, The (1869), 19 L. T. 750 . . . 444, 451, 452, 458
General Steam Navigation Co. *v.* British and Colonial Steam Navigation Co. (1869), L. R. 4 Exch. 238; 38 L. J. (EX.) 97; 20 L. T. 581; 17 W. R. 741 . . . 530
——— *v.* Hedley, The "Velocity" (1869), L. R. 3 P. C. 44; 39 L. J. (ADM.) 20; 21 L. T. 686; 18 W. R. 264; 6 Moo. P. C. C. (N. S.) 263 . 376, 377, 436, 438, 439, 447
——— *v.* Slipper (1862), 11 C. B. (N. S.) 493; 31 L. J. (C. P.) 185; 5 L. T. 641; 8 Jur. (N. S.) 821; 10 W. R. 311 . . . 126, 180, 181, 199
——— *v.* Tonkin, The Friends. *See* Friends, The (1842).
Generous, The (1868), L. R. 2 A. & E. 57; 37 L. J. (ADM.) 37; 17 L. T. 552; 16 W. R. 519 517
Genochio *v.* Steward (1909), 100 L. T. 525; 73 J. P. 158; 11 Asp. M. L. C. 226 78
Georg, The, [1894] P. 330; 71 L. T. 22; 7 Asp. M. L. C. 476 . . 587, 589, 622
George, The (1845), 2 Wm. Rob. 386; 9 Jur. 670; 4 Notes of Cases, 161 . 485, 531, 532
George *v.* Elston (1835), 1 Bing. (N. C.) 513; 4 L. J. (C. P.) 167; 1 Hodg. 63; 1 Scott, 518; 3 Dowl. 419 822
George and Richard, The (1871), L. R. 3 A. & E. 466; 24 L. T. 717; 20 W. R. 246; 1 Asp. M. L. C. 50 538, 543
George Arkle, The (1861), Lush. 382 378, 389
George Dean, The (1857), Sw. 290 583, 587, 588
George Gordon, The (1884), 9 P. D. 46; 53 L. J. (P.) 28; 50 L. T. 371; 32 W. R. 596; 5 Asp. M. L. C. 216 577
George Home (1825), 1 Hag. Adm. 370 42, 60
George Roper, The (1883), 8 P. D. 119; 52 L. J. (P.) 69; 49 L. T. 185; 31 W. R. 953; 5 Asp. M. L. C. 134 481, 484
Geraldes *v.* Donison (1816), Holt (N. P.), 346 310
Gerard's Case (1777), 2 Wm. Bl. 1123 726
Gere, The, [1909] P. 287; 78 L. J. (P.) 130; 100 L. T. 620 482
Germania, The (1868), 37 L. J. (ADM.) 59; 19 L. T. 20; 3 Mar. L. C. 140; affirmed (1869), 21 L. T. 44; 3 Mar. L. C. 269 . 385, 389, 486
——— (1875), 1 Maude and Pollock, Law of Merchant Shipping, 4th ed., p. 606, note (i) 376
———, [1904] P. 131; 73 L. J. (P.) 52; 90 L. T. 296; 9 Asp. M. L. C. 538 587
Gerrard *v.* Arnold (1838), 6 Dowl. 336 777
——— *v.* Dawes, *Re* Dawes, Dryden *v.* Dawes (1870), 21 L. T. 322; 18 W. R. 32 827
Gertor, The (1894), 70 L. T. 703; 7 Asp. M. L. C. 472 . . . 485, 505, 537
Gertrude, The (1861), 30 L. J. (P. M. & A.) 130 559, 580
———, The Baron Aberdare (1888), 13 P. D. 105; 59 L. T. 251; 36 W. R. 616; 6 Asp. M. L. C. 315, C. A. 289
Gether *v.* Capper (1856), 18 C. B. 866; 25 L. J. (C. P.) 260; 2 Jur. (N. S.) 789; 4 W. R. 644 308
Gibbens *v.* Buisson (1834), 1 Bing. (N. C.) 283; 4 L. J. (C. P.) 11; 1 Scott, 133 104, 308
Gibbon *v.* Mendez (1818), 2 B. & Ald. 17 105, 305
Gibbs *v.* Charleton (1857), 26 L. J. (EX.) 321 313
——— *v.* Grey, Grey *v.* Gibbs (1857), 2 H. & N. 22, 26; 26 L. J. (EX.) 286; 3 Jur. (N. S.) 543; 5 W. R. 608 92, 102, 191, 236, 237, 238, 239, 240
Giblin *v.* McMullen (1868), L. R. 2 P. C. 317; 38 L. J. (P. C.) 25; 5 Moo. P. C. C. (N. S.) 434; 21 L. T. 214; 17 W. R. 445 754
Gibraltar Sanitary Commissioners *v.* Orfila (1890), 15 App. Cas. 400; 59 L. J. (P. C.) 95; 63 L. T. 58 45
Gibson *v.* Bradford (1855), 4 E. & B. 586; 24 L. J. (Q. B.) 159; 1 Jur. (N. S.) 520; 3 W. R. 183 350
——— *v.* Crick (1862), 1 H. & C. 142; 31 L. J. (EX.) 304; 6 L. T. 392; 10 W. R. 525 137

PAGE
Gibson *v.* Ingo (1847), 6 Hare, 112 21, 299
——— *v.* Jeyes (1801), 6 Ves. 266 749
——— *v.* May (1853), 4 De G. M. & G. 512, C. A. 815
——— *v.* Small (1853), 4 H. L. Cas. 353; 17 Jur. 1131; 1 C. L. R. 363 187, 188, 216
——— *v.* Sturge (1855), 10 Exch. 622; 24 L. J. (EX.) 121; 1 Jur. (N. S.) 259; 3 W. R. 165; 3 C. L. R. 421 309
Giertsen *v.* Turnbull & Co., [1908] S. C. 1101; 45 Sc. L. R. 916; 16 Scots Law Times, 250 105
Gifford & Co. *v.* Dishington & Co (1871), 4 Macph. (Ct. of Sess.) 1045; 43 Sc. Jur. 554 181
Gilbert *v.* Cooper (1848), 15 Sim. 647, n.; 17 L. J. (CH.) 265 830
——— *v.* Guignon (1872), 8 Ch. App. 16; 27 L. T. 733; 21 W. R. 281; 1 Asp. M. L. C. 498 158, 163, 168
——— *v.* Trinity House Corporation (1886), 17 Q. B. D. 795; 56 L. J. (Q. B.) 85; 35 W. R. 30 555, 628
Giles *v.* Hamer, Hamer *v.* Giles. *See* Hamer *v.* Giles, Giles *v.* Hamer.
Gilkison *v.* Middleton (1857), 2 C. B. (N. S.) 134; 26 L. J. (C. P.) 209 . 135, 154, 170, 173, 283, 286, 288, 297, 298, 312
Gill *v.* Lougher (1830), 1 Cr. & J. 170; 9 L. J. (O. S.) (EX.) 24; 1 Tyr. 121. . 755
Gillan *v.* Simpkin (1815), 4 Camp. 241 329
Gillespie *v.* Thompson (1856), 6 E. & B. 477, n.; 2 Jur. (N. S.) 712 . . 203, 204
Gillett *v.* Peppercorne (1840), 3 Beav. 78 749
Gilroy, Sons & Co. *v.* Price & Co., [1893] A. C. 56; 68 L. T. 302; 1 R. 76 . 107, 116, 189, 211, 213, 214, 217, 218
Gilsenan *v.* M'Govern (1892), 30 L. R. Ir. 300 812
Gingell, *Re*, *Ex parte* Gingell (1833), 2 Deac. & Ch. 546; 2 L. J. (BCY.) 22 . . 782
Ginn *v.* Robey, [1911] W. N. 28; 130 L. T. Jo. 337; 46 L. J. 73, C. A. . . 796
Gipsey King, The (1847), 5 Notes of Cases, 282; 2 Wm. Rob. 537 . 358, 490, 531
Gipsy Queen, The, [1895] P. 176; 64 L. J. (P.) 86; 72 L. T. 454; 43 W. R. 359; 7 Asp. M. L. C. 586, C. A. 582, 583
Giraffe, The (1853), Pritchard's Admiralty Digest, 3rd ed., p. 249 . . . 381
Girolamo (1834), 3 Hag. Adm. 169 417, 488, 532
Gladstone *v.* Birley (1817), 2 Mer. 401 171, 285
Gladys, The, [1910] P. 13; 79 L. J. (P.) 5; 101 L. T. 720; 26 T. L. R. 66; 11 Asp. M. L. C. 352 369, 378, 397, 443, 445
Glaholm *v.* Barker (1866), L. R. 2 Eq. 598; 35 L. J. (CH.) 657; 14 L. T. 880; 12 Jur. (N. S.) 764; 14 W. R. 1006 614
——— *v.* Hays (1841), 2 Man. & G. 257; 10 L. J. (C. P.) 98; 2 Scott (N. R.), 471 91, 94, 179, 192
Glamorgan County Council *v.* Great Western Rail. Co., [1895] 1 Q. B. 21; 64 L. J. (Q. B.) 138; 71 L. T. 736; 59 J. P. 182; 9 Ry. & Can. Tr. Cas. 1 . . 796
"Glamorganshire," The (1888), 13 App. Cas. 454; 59 L. T. 572; 6 Asp. M. L. C. 344 162, 382, 389, 534
Glannibanta, The (1876), 1 P. D. 283; 34 L. T. 934; 24 W. R. 1033; 3 Asp. M. L. C. 339, C. A. 485, 501
Glanystwyth, The, [1899] P. 118; 68 L. J. (P.) 371; 80 L. T. 204; 15 T. L. R. 224; 8 Asp. M. L. C. 513 611
Glascodine and Carlyle, *Re* (1885), 52 L. T. 781, C. A. 763, 790
Glasgow, The (otherwise Ya Macraw) (1856), Sw. 145; 12 Moo. P. C. C. 355, n.; 2 Jur. (N. S.) 1147; 5 W. R. 10 75, 76
Glasgow Navigation Co. *v.* Howard Brothers & Co. (1910), 102 L. T. 172; 26 T. L. R. 247; 11 Asp. M. L. C. 376; 15 Com. Cas. 88 267, 269
———————, Ltd. *v.* Iron Ore Co., Ltd., [1909] S. C. 1414; 46 Sc. L. R. 908; 2 Scots Law Times, 133 132, 278
Glasgow Packet, The (1844), 2 Wm. Rob. 306 580, 585
Gledstanes *v.* Allen (1852), 12 C. B. 202 148, 169, 173, 286
Glegg *v.* Bromley, [1912] 3 K. B. 474; 81 L. J. (K. B.) 1081; 106 L. T. 825, C. A. 163
Glendarroch, The, [1894] P. 226; 63 L. J. (P.) 89; 70 L. T. 344; 6 R. 686; 7 Asp. M. L. C. 420, C. A. 111, 114, 225, 226
Glendevon, The, [1893] P. 269; 62 L. J. (P.) 123; 70 L. T. 416; 1 R. 662; 7 Asp. M. L. C. 439 122, 128, 129
"Glenduror," The, Arnold *v.* Cowie. *See* Arnold *v.* Cowie, The "Glenduror."
Glenfruin, The (1885), 10 P. D. 103; 54 L. J. (P.) 49; 52 L. T. 769; 33 W. R. 826; 5 Asp. M. L. C. 413 107, 111, 115, 187, 188, 189, 216, 217, 218, 566

PAGE
Glengaber, The (1872), L. R. 3 A. & E. 534; 41 L. J. (ADM.) 84; 27 L. T. 386; 21 W. R. 168; 1 Asp. M. L. C. 401 563, 566
Glengariff, The, [1905] P. 106; 74 L. J. (P.) 90; 93 L. T. 281; 53 W. R. 537; 21 T. L. R. 299; 10 Asp. M. L. C. 103 441, 466, 468
Glengarnock Iron and Steel Co. *v.* Cooper & Co. (1895), 22 R. (Ct. of Sess.) 672; 32 Sc. L. R. 546; 3 Scots Law Times, 36 198
Glengarry, The (1874), 2 P. D. 235, n.; 43 L. J. (ADM.) 37; 30 L. T. 341; 23 W. R. 110; 2 Asp. M. L. C. 230 481, 484
Glengyle, The, [1898] P. 97; 67 L. J. (P.) 48; 78 L. T. 139; 46 W. R. 308; 14 T. L. R. 231; 8 Asp. M. L. C. 341, C. A.; affirmed, *sub nom.* "Glengyle" Cargo and Freight (Owners) *v.* Neptune Salvage Co., The "Glengyle," [1898] A. C. 519; 67 L. J. (P.) 87; 78 L. T. 801; 14 T. L. R. 522; 8 Asp. M. L. C. 436 575, 576, 581, 582
Glenmanna, The (1860), Lush. 115 73, 231, 239, 242, 243, 247
Glenmorven, The, [1913] P. 141; 29 T. L. R. 412 568
Glenochil, The, [1896] P. 10; 65 L. J. (P.) 1; 73 L. T. 416; 8 Asp. M. L. C. 219 116, 117, 221
Gliddon *v.* Brodersen, Vaughan & Co. (1883), Cab. & El. 197 90
Globe, The (1848), 6 Notes of Cases, 275 463, 488
Glory, The (1849), 13 Jur. 991 577
Gloucester Rail. Co., *Re* (1860), 8 W. R. 175 819
Glyn Mills & Co. *v.* East and West India Dock Co. (1882), 7 App. Cas. 591; 52 L. J. (Q. B.) 146; 47 L. T. 309; 31 W. R. 206; 4 Asp. M. L. C. 580. 147, 148, 151, 158, 167, 264, 265, 280, 281
Glynn *v.* Margetson & Co., [1893] A. C. 351; 62 L. J. (Q. B.) 466; 69 L. T. 1; 1 R. 193; 7 Asp. M. L. C. 366 74, 96, 142
Glynoeron, The (1905), 21 T. L. R. 648 551
Goddard *v.* Carlisle (1821), 9 Price, 169 747
Godefroy *v.* Dalton (1830), 6 Bing. 460; 8 L. J. (O. S.) (C. P.) 79; 4 Moo. & P. 149 755
——— *v.* Jay (1831), 7 Bing. 413; 5 Moo. & P. 284 756
Godfrey *v.* George, [1896] 1 Q. B. 48; 65 L. J. (Q. B.) 249; 73 L. T. 599; 44 W. R. 245, C. A. 854
Goff *v.* Clinkard (1750), 1 Wils. 282, n. 203, 325, 326
Gold Reef of Western Australia, Ltd. *v.* Dawson, [1897] 1 Ch. 115; 66 L. J. (CH.) 147; 75 L. T. 575; 45 W. R. 285 834
Golden Light, The, The H. M. Hayes, The Annapolis. *See* Annapolis, The, The Golden Light, The H. M. Hayes.
Golden Pledge, The *v.* The Cognac (1865), Holt (ADM.), 133 434
Golden Sea, The (1882), 7 P. D. 194; 51 L. J. (P.) 64; 47 L. T. 579; 30 W. R. 842; 5Asp. M. L. C. 23 592, 595
Goldring *v.* Lancaster, *Re* Ormston. *See* Ormston, *Re*, Goldring *v.* Lancaster.
Goldschmidt *v.* Whitmore (1811), 3 Taunt. 508 112
Goldsmith *v.* Slattery (1890), 63 L. T. 273; 6 Asp. M. L. C. 561 482
Golondrina, The (1867), L. R. 1 A. & E. 334 583
Gomley *v.* Wood and Daly (1846), 3 Jo. & Lat. 678; 9 I. Eq. R. 418 . . . 811
Good *v.* London Steamship Owners' Association (1871), L. R. 6 C. P. 563; 20 W. R. 33 117, 205
—— & Co. *v.* Isaacs, [1892] 2 Q. B. 555; 61 L. J. (Q. B.) 649; 67 L. T. 450; 40 W. R. 629; 7 Asp. M. L. C. 212, C. A. . . . 121, 263, 266, 274, 276, 277
Goodbody & Co. and Balfour, Williamson & Co., *Re* (1899), 82 L. T. 484; 9 Asp. M. L. C. 69; 5 Com. Cas. 59, C. A. 256
Goodfellow *v.* Gray, [1899] 2 Q. B. 498; 68 L. J. (Q. B.) 1032; 81 L. T. 314, C. A. 822, 824
Goodwin *v.* Gosnell, *Ex parte* Hill (1846), 10 Jur. 422 850, 852
Gordon *v.* Dalzell (1852), 15 Beav. 351; 21 L. J. (CH.) 206; 16 Jur. 186 . . 844
——— *v.* Morley, Campbell *v.* Bordieu (1747), 2 Stra. 1265 83
——— *v.* Powis (1892), 8 T. L. R. 397 119, 186
Gordon Steamship Co., Ltd. *v.* Moxey, Savon & Co., Ltd. (1913), 108 L. T. 808; 18 Com. Cas. 170 131, 132, 194
Gore *v.* Gardiner, The Hersey (1837), 3 Moo. P. C. C. 79 70
Gorris *v.* Scott (1874), L. R. 9 Exch. 125; 43 L. J. (EX.) 92; 30 L. T. 431; 22 W. R. 575 189
Gosling *v.* Higgins (1808), 1 Camp. 451 109
——— *v.* Newton, Gosling *v.* Eagers, [1895] 1 Q. B. 793; 64 L. J. (M. C.) 160; 72 L. T. 500; 59 J. P. 406; 43 W. R. 559; 15 R. 395; 18 Cox, C. C. 135; 7 Asp. M. L. C. 587 482

PAGE
Gosnell *v.* Bishop (1888), 38 Ch. D. 385; 57 L. J. (CH.) 642; 36 W. R. 505 800
Goss *v.* Quinton (1842), 4 Scott (N. R.), 471; 3 Man. & G. 825; 12 L. J. (C. P.) 173; 7 Jur. 901 18
Gough, *Re*, Lloyd *v.* Gough (1894), 70 L. T. 725; 8 R. 290 818
Gould, *Ex parte*, *Re* Salmon and Woods. *See* Salmon and Woods, *Re*, *Ex parte* Gould.
——— *v.* Davis (1831), 1 Cr. & J. 415; 9 L. J. (O. S.) (EX.) 111; 1 Dowl. 288; 1 Tyr. 380 823
——— *v.* Oliver (1837), 4 Bing. (N. C.) 134; 7 L. J. (C. P.) 68; 5 Scott, 445 . 318
——— *v.* ——— (1840), 2 Man. & G. 208; 2 Scott (N. R.), 241 . . . 102, 205
Governor Raffles, The (1815), 2 Dods. 14 567
Graces, The (1844), 2 Wm. Rob. 294 570
"Gracie" (Owners) *v.* "Argentino" (Owners), The "Argentino" (1888), 13 P. 191; 58 L. J. (P.) 1; 59 L. T. 914; 37 W. R. 210; 6 Asp. M. L. C. 348, C. A.; affirmed (1889), 14 App. Cas. 519; 59 L. J. (P.) 17; 61 L. T. 706; 6 Asp. M. L. C. 433 210, 537, 540
Gradwell *v.* Aitchison (1893), 10 T. L. R. 20 766
Graham and Wigley, *Re* (1908), 52 Sol. Jo. 684 791
Grampian Steamship Co. *v.* Carver & Co. (1893), 9 T. L. R. 210 . . . 185
Grange & Co. *v.* Taylor (1904), 90 L. T. 486; 52 W. R. 429; 20 T. L. R. 386; 9 Asp. M. L. C. 559; 9 Com. Cas. 223 265, 270, 271
Granger *v.* Dent (1829), Mood. & M. 475 94, 98, 180
Granite City Steamship Co. *v.* Ireland & Son, The "Linn O'Dee" (1891), 19 R. (Ct. of Sess.) 124; 29 Sc. L. R. 115 . . 121, 130, 131, 132, 273, 274
Grant, *Ex parte* (1835), 3 Dowl. 320 852
——— *v.* Norway (1851), 10 C. B. 665; 20 L. J. (C. P.) 93; 15 Jur. 296 . 64, 65, 66, 145, 154, 155, 164, 165, 174
——— & Co. *v.* Coverdale, Todd & Co. (1884), 9 App. Cas. 470; 53 L. J. (Q. B.) 462; 51 L. T. 472; 32 W. R. 831; 5 Asp. M. L. C. 353 . 120, 130, 131, 132, 142, 190, 191, 192, 194, 201, 202
———, Bulcraig & Co., *Re*, [1906] 1 Ch. 124; 75 L. J. (CH.) 106; 93 L. T. 760; 54 W. R. 165; 22 T. L. R. 96 775
Gratitudine, The (1801), 3 Ch. Rob. 240 . . 69, 74, 222, 231, 236, 239, 241, 242, 243, 244, 246, 248, 252, 254, 318
Gray, *Ex parte* (1847), 12 Jur. 119; 5 Dow. & L. 275 721
———, *Re*, [1901] 1 Ch. 239; 70 L. J. (CH.) 133; 84 L. T. 24; 49 W. R. 298 . 783
———, *Re*, *Ex parte* Everitt (1886), 30 Sol. Jo. 551 774
——— (W. R.), *Re*, *Ex parte* Incorporated Law Society (1869), 20 L. T. 730 . 729, 742, 851
———, *Re*, Gray *v.* Coles (1891), 65 L. T. 743 729, 741, 833
——— *v.* Carr (1871), L. R. 6 Q. B. 522; 40 L. J. (Q. B.) 257; 25 L. T. 215; 19 W. R. 1173 . . . 126, 133, 135, 165, 175, 176, 209, 285, 286
——— *v.* Kirby (1834), 2 Dowl. 601 845, 846
——— *v.* Smith (1889), 43 Ch. D. 208; 59 L. J. (CH.) 145; 62 L. T. 335; 38 W. R. 310, C. A. 843
——— *v.* Wainman (1823), 7 Moore (C. P.), 467; 1 L. J. (O. S.) (C. P.) 21 . . 729
——— & Co. *v.* Christie & Co. (1889), 5 T. L. R. 577 99
Graydon, *Re*, *Ex parte* Official Receiver, [1896] 1 Q. B. 417; 65 L. J. (Q. B.) 328; 44 W. R. 495 821
Great Central Rail. Co. *v.* North-Eastern Steam Fishing Co. (1906), 22 T. L. R. 520 635
Great Eastern, The (1864), 2 Mar. L. C. 97 487
——————— (1867), L. R. 1 A. & E. 384; 36 L. J. (ADM.) 15; 17 L. T. 228 40
"Great Eastern," The, Great Ship Co. *v.* Sharples. *See* Great Ship Co., *v.* Sharples, The "Great Eastern."
Great Eastern Rail. Co. *v.* Norwich and Spalding Rail. Co., [1881] W. N. 92 801
Great Eastern Steamship Co., *Re*, Williams' Claim (1885), 53 L. T. 594; 5 Asp. M. L. C. 511 15, 34, 41, 47, 48, 52
Great Indian Peninsula Rail. Co. *v.* Turnbull (1885), Cab. & El. 595; 53 L. T. 325; 33 W. R. 874; 5 Asp. M. L. C. 465 219, 290
Great Northern Fishing Co. *v.* Edgehill (1883), 11 Q. B. D. 225 61
Great Pacific, The, Stephens *v.* Broomfield. *See* Stephens *v.* Broomfield, The Great Pacific.
Great Ship Co. *v.* Sharples, The "Great Eastern" (1864), 3 Moo. P. C. C. (N. S.) 31 446

PAGE
Great Western Railway *v.* Carpalla United China Clay Co., Ltd. (No. 2), [1910] A. C. 83; 79 L. J. (CH.) 117; 101 L. T. 785; 74 J. P. 57; 26 T. L. R. 190; 47 Sc. L. R. 612 . 804
——— *v.* Phillips & Co., Ltd., [1908] A. C. 101; 77 L. J. (K. B.) 306; 98 L. T. 319; 24 T. L. R. 293 125
Green, *Re*, Green *v.* Green (1884), 26 Ch. D. 16; 54 L. J. (CH.) 54; 50 L. T. 513; 32 W. R. 373, C. A. 824
——— *v.* Briggs (1848), 6 Hare, 395; 17 L. J. (CH.) 323; 12 Jur. 326 . 34, 35, 36
——— *v.* Georgii (1902), not reported 287
——— *v.* Royal Exchange Assurance Co. (1815), 6 Taunt. 68 75
Greening *v.* Reeder (1892), 67 L. T. 28; 40 W. R. 623 775, 813
Greenock Steamship Co. *v.* Maritime Insurance Co., Ltd., [1903] 2 K. B. 657; 72 L. J. (K. B.) 868; 89 L. T. 200; 52 W. R. 186; 19 T. L. R. 680; 9 Asp. 364; 9 Com. Cas. 41; 9 Asp. M. L. C. 463, C. A. 215
Greenock Towing Co. *v.* Hardie (1901), 4 F. (Ct. of Sess.) 215; 39 Sc. L. R. 151 530, 531
Greenough *v.* Gaskell (1833), 1 My. & K. 98; Coop. *temp.* Brough. 96 . . 726
Greenshields, Cowie & Co. *v.* Stephens & Sons, Ltd., [1908] A. C. 431; 77 L. J (K. B.) 985; 99 L. T. 597; 24 T. L. R. 880. . . 111, 157, 316, 318, 322
Greer *v.* Young (1883), 24 Ch. D. 545; 52 L. J. (CH.) 915; 49 L. T. 224; 31 W. R. 930, C. A. 826
Greeves *v.* West India and Pacific Steamship Co. (1869), 3 Mar. L. C. 255 . 329
——— *v.* ——— (1870), 22 L. T. 615 . 149, 150, 234, 235, 312
Gregg, *Re* (1861), 30 Beav. 259; 31 L. J. (CH.) 632; 10 W. R. 127 . . . 788
———, *Re*, *Re* Prance (1869), L. R. 9 Eq. 137; 39 L. J. (CH.) 107; 23 L. T. 234; 18 W. R. 589 832, 833, 841
Gregory *v.* Brunswick (Duke), *Re* Vallance and Beioley. *See* Vallance and Beioley, *Re*, Gregory *v.* Brunswick (Duke).
——— *v.* Gregory (1815), Coop. G. 201 748
——— and Hitch, *Re* (1842), 6 Jur. 282 841
Grell *v.* Levy (1864), 16 C. B. (N. S.) 73; 9 L. T. 721; 10 Jur. (N. S.) 210; 12 W. R. 378 772
Gresham Life Assurance Society *v.* Bishop, Manchester Corporation *v.* Sugden. *See* Manchester Corporation *v.* Sugden, Gresham Life Assurance Society *v.* Bishop.
Gresley *v.* Mousley (1859), 4 De G. & J. 78; 28 L. J. (CH.) 620; 5 Jur. (N. S.) 583; 7 W. R. 427, C. A. 748, 749
Greta Holme, The, The Emerald. *See* Emerald, The, The Greta Holme.
"Greta Holme," The, No. 7 Steam Sand Pump Dredger (Owners) *v.* "Greta Holme" (Owners), The "Greta Holme." *See* No. 7 Steam Sand Pump Dredger (Owners) *v.* "Greta Holme" (Owners), The "Greta Holme."
Greville, *Re* (1873), L. R. 9 C. P. 13; 43 L. J. (C. P.) 58; 29 L. T. 542; 22 W. R. 160 715
Greville's Settlement, *Re* (1888), 40 Ch. D. 441; 58 L. J. (CH.) 256; 60 L. T. 43; 37 W. R. 150 761, 766
Grey (H. A.), *Re*, [1892] 2 Q. B. 440; 61 L. J. (Q. B.) 795; 41 W. R. 3, C. A. 839
——— *v.* Cox (1825), 4 B. & C. 108; 6 Dow. & Ry. (K. B.) 200; 1 C. & P. 184 . 327
——— *v.* Curtice, [1899] 1 Ch. 121; 68 L. J. (CH.) 60; 79 L. T. 713; 47 W. R. 294, C. A. 765
——— *v.* Gibbs, Gibbs *v.* Grey. *See* Gibbs *v.* Grey, Grey *v.* Gibbs.
Greys Brewery Co., *Re* (1883), 25 Ch. D. 400; 53 L. J. (CH.) 262; 50 L. T. 14; 32 W. R. 381 723
Gridley *v.* Austen (1849), 16 Q. B. 504; 18 L. J. (Q. B.) 337; 13 Jur. 680 . . 778
Grieb's Case (1890), 45 Ch. D. 606; 59 L. J. (CH.) 532; 62 L. T. 561; 38 W. R. 462 801
Griefswald, The (1859), Sw. 430 546
Grieve, Son & Co. *v.* König & Co. (1880), 7 R. (Ct. of Sess.) 521; 17 Sc. L. R. 325 155
Griffin, *Ex parte*, *Re* Adams. *See* Adams, *Re*, *Ex parte* Griffin.
——— *v.* Eyles (1789), 1 Hy. Bl. 122 821
Griffith, Eggar and Griffith, *Re* (1891), 7 T. L. R. 268 779, 780
———, Jones & Co., *Re* (1883), 53 L. J. (CH.) 303, C. A. 789
Griffiths, *Re*, Jones *v.* Owen, [1904] 1 Ch. 807; 90 L. T. 639 799
——— *v.* Griffiths 1843), 2 Hare, 587; 12 L. J. (CH.) 397; 7 Jur. 573 . 737, 818
——— *v.* Hughes (1847), 16 M. & W. 809; 16 L. J. (EX.) 176; 11 Jur. 313 . 814
——— *v.* Williams (1787), 1 Term Rep. 710 744, 847

PAGE

Grill *v.* General Iron Screw Collier Co. (1866), L. R. 1 C. P. 600; 35 L. J. (C. P.) 321; 12 Jur. (N. S.) 727; 14 W. R. 893; affirmed, (1868) L. R. 3 C. P. 476; 37 L. J. (C. P.) 205; 18 L. T. 485; 16 W. R. 796 . . 112, 114, 224, 233, 326, 362, 503, 518
Grissell *v.* Peto (1832), 9 Bing. 1; 1 L. J. (C P.) 139; 2 Moo. & S. 2. . . 735
Groom *v.* Cheesewright, [1895] 1 Ch. 730; 64 L. J. (CH.) 406; 72 L. T. 555; 43 W. R. 475; 13 R. 386 824
Grote *v.* Milne (1811), 4 Taunt. 133 162
Grove, *Ex parte* (1836), 3 Bing. (N. C.) 304; 6 L. J. (C. P.) 30; 3 Scott, 671; 2 Hodg. 246 859
Grovehurst, The, [1910] P. 316; 79 L. J. (P.) 124; 103 L. T. 239, C. A. . 366, 396, 397, 398, 445, 471, 472, 486
Groves, Maclean & Co. *v.* Volkart Brothers (1884), Cab. & El. 309 . . 97, 179, 185, 192
Grundy, Kershaw & Co., *Re* (1881), 17 Ch. D. 108; 50 L. J. (CH.) 467; 44 L. T. 541; 29 W. R. 581 783
Guest *v.* Smythe (1870), 5 Ch. App. 551; 39 L. J. (CH.) 536; 22 L. T. 563; 18 W. R. 742 750
Guildhall, The, [1908] P. 29; 77 L. J. (P.) 52; 98 L. T. 7; 10 Asp. M. L. C. 585, C. A.; reversed, [1908] A. C. 159; 77 L. J. (P.) 113; 98 L. T. 763 . . 483
Guilford *v.* Sims (1853), 13 C. B. 370 852
Gulf Line, Ltd. *v.* Laycock (1901), 18 T. L. R. 14; 7 Com. Cas. 1 . . 141, 310
Gullischen *v.* Stewart Brothers (1884), 13 Q. B. D. 317; 53 L. J. (Q. B.) 173; 50 L. T. 47; 32 W. R. 763; 5 Asp. M. L. C. 200, C. A. . . 106, 133, 149, 169, 176, 295
Gumm *v.* Tyrie (1865), 6 B. & S. 298; 34 L. J. (Q. B.) 124; 13 W. R. 436 . 26, 142, 299, 300, 308
Gundry *v.* Sainsbury, [1910] 1 K. B. 645; 79 L. J. (K. B.) 713; 102 L. T. 440; 26 T. L. R. 321; 54 Sol. Jo. 327, C. A. 770, 771, 773
Gunn *v.* Bolckow, Vaughan & Co. (1875), 10 Ch. App. 491; 44 L. J. (CH.) 732; 32 L. T. 781; 23 W. R. 739 288
——— *v.* Roberts (1874), L. R. 9 C. P. 331; 43 L. J. (C. P.) 233; 30 L. T. 424; 22 W. R. 652; 2 Asp. M. L. C. 250 . . . 67, 70, 242, 243, 248, 249
Gurney *v.* Behrend (1854), 3 E. & B. 622; 23 L. J. (Q. B.) 265; 18 Jur. 856; 2 W. R. 425 147, 158, 160, 161, 163, 167, 168
Gustaf, The (1862), Lush. 506; 31 L. J. (P. M. & A.) 207; 6 L. T. 660 . 623, 624, 625
Gustafsberg, The, [1905] P. 10; 74 L. J. (P.) 42; 92 L. T. 630; 53 W. R. 350; 20 T. L. R. 79; 10 Asp. M. L. C. 61 466, 467
Gustav, The, The New Ed. (1864), 9 L. T. 547 389
Guy *v.* Churchill (1887), 35 Ch. D. 489; 56 L. J. (CH.) 670; 57 L. T. 510; 35 W. R. 706, C. A. 825, 827
Guy Mannering, The (1882), 7 P. D. 132; 51 L. J. (P.) 57; 46 L. T. 905; 30 W. R. 835; 4 Asp. M. L. C. 553, C. A. 481
Gwynn *v.* Krous (1845), 7 I. Eq. R. 274 822

H.

H., *Re* (1875), 31 L. T. 730. 852
—, *Re*, Walker *v.* Beanlands (1866), 15 W. R. 168 819
Haabet, The, [1899] P. 295; 68 L. J. (P.) 121; 81 L. T. 463; 48 W. R. 223; 16 T. L. R. 548; 8 Asp. M. L. C. 605. 71
Hackney *v.* Knight (1891), 7 T. L. R. 254 759
Haddelsey, *Re* (1891), 35 Sol. Jo. 563 791
Haddow *v.* Parry (1810), 3 Taunt. 303 156
Hadji Ali Akbar & Sons, Ltd. *v.* Anglo-Arabian and Persian Steamship Co., Ltd. (1906), 95 L. T. 610; 22 T. L. R. 600; 10 Asp. M. L. C. 307; 11 Com. Cas. 219 96, 234
Hadley *v.* Baxendale (1854), 9 Exch. 341; 23 L. J. (EX.) 179; 18 Jur. 358; 2 W. R. 302; 2 C. L. R. 517 210, 290
——— *v.* Clarke (1799), 8 Term Rep. 259 254, 258
Hagedorn *v.* Whitmore (1816), 1 Stark. 157 111
Haigh, *Re* (1849), 12 Beav. 307; 19 L. J. (CH.) 79; 14 Jur. 340 . . 776, 809
——— *v.* Jones (1843), 1 Dow. & L. 81; 6 Scott (N. R.), 696; 5 Man. & G. 634 839

PAGE
Haigh *v.* Ousey (1857), 7 E. & B. 578; 26 L. J. (Q. B.) 217; 5 W. R. 523; 3 Jur. (N. S.) 624 776, 778, 813
——— *v.* Royal Mail Steam Packet Co. (1883), 52 L. J. (Q. B.) 640; 49 L. T. 802; 48 J. P. 230; 5 Asp. M. L. C. 189, C. A. 328
Haille *v.* Smith (1796), 1 Bos. & P. 563 157
Haines *v.* Busk (1814), 5 Taunt. 521 190
Hair, *Re* (1844), 7 Man. & G. 510 814
——, *Re* (1847), 10 Beav. 187; 16 L. J. (CH.) 163; 11 Jur. 139 . . 782, 785
——, *Re* (1848), 11 Beav. 96 808
Hajee Cassim Yoosub *v.* Ajum Goolam Hossen & Co., Ajum Goolam Hossen & Co. *v.* Union Marine Insurance Co. *See* Ajum Goolam Hossen & Co. *v.* Union Marine Insurance Co., Hajee Cassim Yoosub *v.* Ajum Goolam Hossen & Co.
Hale *v.* Bates (1858), E. B. & E. 575; 28 L. J. (Q. B.) 14; 4 Jur. (N. S.) 1106 . 802
Hales, *Ex parte, Re* a Solicitor. *See* Solicitor, a, *Re, Ex parte* Hales.
Halkett, *Ex parte* (1814), 3 Ves. & B. 135; 2 Rose, 194 69
———, *Ex parte, Re* Mayor. *See* Mayor, *Re, Ex parte* Halkett.
Hall, *Re* (1857), 2 Jur. (N. S.) 633; 4 W. R. 686 849
——, *Re, Ex parte* Incorporated Law Society (1893), 69 L. T. 385; 5 R. 525 856
——, *Re,* Dolland *v.* Johnson (1856), 2 Jur. (N. S.) 633; 4 W. R. 686 . . 850
—— *v.* Ashurst (1833), 1 Cr. & M. 714; 2 L. J. (EX.) 295; 3 Tyr. 420 . 830, 832
—— *v.* Bennett (1824), 2 Sim. & St. 78 833
—— *v.* Brown (1814), 2 Dow, 367 89, 142
—— *v.* Cazenove (1804), 4 East, 477 94, 143
—— *v.* Hall, [1891] P. 302; 60 L. J. (P.) 73; 65 L. T. 206, C. A. . . . 821
—— *v.* Janson (1855), 4 E. & B. 500; 24 L. J. (Q. B.) 97; 1 Jur. (N. S.) 571; 3 W. R. 213; 3 C. L. R. 737 140
—— *v.* Jupe (1880), 49 L. J. (Q. B.) 721; 43 L. T. 411; 4 Asp. M. L. C. 328 75
—— *v.* Laver (1842), 1 Hare, 571; 4 Y. & C. Ch. Cas. 218; 5 Jur. 241 . 730, 815, 820
—— and Barker, *Re* (1878), 9 Ch. D. 538; 47 L. J. (CH.) 621; 26 W. R. 501 738, 785
Hallet *v.* Mears (1810), 13 East, 15 836
Hallett, *Re* (1855), 21 Beav. 250 784, 791
——— *v.* Bousfield (1811), 18 Ves. 187 323
——— *v.* Wigram (1850), 9 C. B. 580; 19 L. J. (C. P.) 281 . 222, 223, 249, 250, 317, 318, 321
"Halley," The (1868), L. R. 2 P. C. 193; 37 L. J. (ADM.) 33; 18 L. T. 879; 16 W. R. 998; 5 Moo. P. C. C. (N. S.) 263 530, 619
Halliday *v.* Taffs, [1911] 1 K. B. 594; 80 L. J. (K. B.) 388; 104 L. T. 188; 75 J. P. 165; 27 T. L. R. 186 49, 50
Halsall, *Re* (1848), 11 Beav. 163 782
Hambidge *v.* De la Crouée (1846), 3 C. B. 742 833
"Hamburg," Cargo ex, Duranty *v.* Hart. *See* Duranty *v.* Hart, Cargo ex "Hamburg."
Hamel *v.* Peninsular and Oriental Steam Navigation Co., [1908] 2 K. B. 298; 77 L. J. (K. B.) 637; 98 L. T. 861; 24 T. L. R. 535; 13 Com. Cas. 270 . . 321
Hamer *v.* Giles, Giles *v.* Hamer (1879), 11 Ch. D. 942; 48 L. J. (CH.) 508; 27 W. R. 834 825, 827
Hamilton *v.* Baker, The "Sara" (1889), 14 App. Cas. 209; 58 L. J. (P.) 57; 61 L. T. 26; 38 W. R. 129; 6 Asp. M. L. C. 413 . . . 68, 620
——— *v.* Davis (1771), 5 Burr. 2732 548
——— *v.* Girdleston, [1876] W. N. 202 752
——— *v.* Mackie & Sons (1889), 5 T. L. R. 677, C. A. 176
——— *v.* Stow (1822), 5 B. & Ald. 649; 1 Dow. & Ry. (K. B.) 274 . . 629
———, Fraser & Co. *v.* Pandorf & Co. (1887), 12 App. Cas. 518; 57 L. J. (Q. B.) 24; 57 L. T. 726; 52 J. P. 196; 36 W. R. 369; 6 Asp. M. L. C. 212 . 110, 232, 233, 326
Hammond, *Ex parte, Re* Jackson. *See* Jackson, *Re, Ex parte* Hammond.
——— *v.* Blake (1830), 10 B. & C. 424; 8 L. J. (O. S.) (K. B.) 140; 5 Man. & Ry. (K. B.) 361 600
——— *v.* Rogers, The Christiana (1850), 7 Moo. P. C. C. 160 . . . 531
Hanbury, Whitting and Nicholson, *Re* (1896), 75 L. T. 449 816
Hancock, *Ex parte* (1842), 2 Dowl. (N. S.) 54 716
Hand of Providence, The (1856), Sw. 107 365, 469, 483
Handaysyde *v.* Wilson (1828), 3 C. & P. 528 371, 373

PAGE
Hanley *v.* Cassan (1847), 11 Jur. 1088 847
Hanly, *Ex parte*, *Re* Skegness and St. Leonard's Tramway Co. *See* Skegness and St. Leonard's Tramway Co., *Re*, *Ex parte* Hanly.
Hanna, The (1866), L. R. 1 A. & E. 283; 36 L. J. (ADM.) 1; 15 L. T. 334; 15 W. R. 263 331, 610
Hannaford *v.* Syms (1898), 79 L. T. 30; 14 T. L. R. 530 845
Hannah Park, The, and The Lena (1866), 14 L. T. 675; 2 Mar. L. C. 345 399, 464
Hannibal, The, The Queen (1867), L. R. 2 A. & E. 53; 37 L. J. (ADM.) 12 . 371, 563
Hansa, The (1887), 58 L. T. 530; 6 Asp. M. L. C. 268 538
Hansen *v.* Donaldson & Sons (1874), 1 R. (Ct. of Sess.) 1066; 11 Sc. L. R. 590 121, 125, 266, 272, 273
——— *v.* Dunn (1906), 11 Com. Cas. 100; 22 T. L. R. 458 . 74, 223, 228, 235, 236, 237, 239
——— *v.* Harrold Brothers, [1894] 1 Q. B. 612; 63 L. J. (Q. B.) 744; 70 L. T. 475; 9 R. 315; 7 Asp. M. L. C. 464, C. A. 87, 134, 174, 294
Hanson *v.* Royden (1867), L. R. 3 C. P. 47; 37 L. J. (C. P.) 66; 17 L. T. 214; 16 W. R. 205 51, 59
Hanwell Local Board *v.* Wenham (1892), 36 Sol. Jo. 743 804
Happy Return (1828), 2 Hag. Adm. 198 567, 568
Harben *v.* Gordon (1913), 48 L. J. 703 794, 796
Harberton, The, [1913] P. 149; 108 L. T. 735; 29 T. L. R. 490 . . . 482
Harbin *v.* Masterman, [1896] 1 Ch. 351; 65 L. J. (CH.) 195; 73 L. T. 591; 44 W. R. 421, C. A. 756, 833
Harbley *v.* Gilbert (1843), 13 Sim. 596 833
Harcourt, *Re* (1887), 32 Sol. Jo. 92 793
Harder *v.* Brotherstone (1815), 4 Camp. 254 313
Harding, *Re* (1847), 10 Beav. 250; 16 L. J. (CH.) 288 788, 789
Hardwick, *Re* (1883), 12 Q. B. D. 148; 53 L. J. (Q. B.) 64; 49 L. T. 584; 32 W. R. 191, C. A. 855
Hare, The, [1904] P. 331; 73 L. J. (P.) 47; 90 L. T. 323; 20 T. L. R. 291; 9 Asp. M. L. C. 547 376, 415, 422, 481
Harle, *Re* (1868), 19 L. T. 305; 17 W. R. 21 786, 844
Harley *v.* Harley (1860), 11 I. Ch. R. 451 15
Harman *v.* Clarke (1815), 4 Camp. 159 263, 264
——— *v.* Gandolph (1815), Holt (N. P.), 35 121, 274
——— *v.* Johnson (1853), 2 E. & B. 61; 22 L. J. (Q. B.) 279; 17 Jur. 1096; 3 Car. & Kir. 272 759, 760
——— *v.* Mant (1815), 4 Camp. 161 263
——— & Son, *Re*, [1912] W. N. 111; 132 L. T. Jo. 553 787
Harmer *v.* Bell, The Bold Buccleugh (1851), 7 Moo. P. C. C. 267 . 617, 618, 619, 622, 625, 627
——— *v.* Cornelius (1858), 5 C. B. (N. S.) 236; 28 L. J. (C. P.) 85; 4 Jur. (N. S.) 1110; 6 W. R. 749 754
——— *v.* Harris (1826), 1 Russ. 155 794
Harmonides, The, [1903] P. 1; 72 L. J. (P.) 9; 87 L. T. 448; 51 W. R. 303; 19 T. L. R. 37; 9 Asp. M. L. C. 354 538
Harmonie, The (1841), 1 Wm. Rob. 178 625
Harper, *Ex parte*, *Re* Pooley. *See* Pooley, *Re*, *Ex parte* Harper.
———, *Re* (1847), 10 Beav. 284 785, 787, 790
———, *Re*, *Ex parte* Bayley (1829), 9 B. & C. 691 713 843
——— *v.* Eyjolfsson, [1914] W. N. 23 856
——— *v.* McCarthy (1806), 2 Bos. & P. (N. R.) 258 120, 122, 123
——— *v.* Williams (1843), 4 Q. B. 219; 12 L. J. (Q. B.) 227 832
——— & Co. *v.* Vigers Brothers, [1909] 2 K. B. 549; 76 L. J. (K. B.) 876; 100 L. T. 887; 53 Sol. Jo. 780; 25 T. L. R. 627; 14 Com. Cas. 213 . . . 90
Harper's Ticket Issuing and Recording Machine, Ltd., *Re*, [1912] W. N. 263; 47 Sol. Jo. 78; 29 T. L. R. 63 837
Harrald, *Re*, Wilde *v.* Walford (1884), 53 L. J. (CH.) 505; 51 L. T. 441, C. A. . 821, 822
Harries, *Re* (1844), 13 M. & W. 3; 13 L. J. (EX.) 259; 8 Jur. 453; 1 Dow. & L. 1018 787
——— *v.* Edmonds (1845), 1 Car. & Kir. 686 208, 209
Harriet, The (1861), Lush. 285; 5 L. T. 210 53
——————— (1868), 18 L. T. 804 28
Harrington, The (1888), 13 P. D. 48; 57 L. J. (P.) 45; 59 L. T. 72; 6 Asp. M. L. C. 282 539, 555, 642

PAGE
Harrington *v.* Binns (1863), 3 F. & F. 942 738, 756
Harriot, The (1842), 1 Wm. Rob. 439 566
Harris, *Ex parte*, *Re* Gallard. *See* Gallard, *Re*, *Ex parte* Harris.
——, Powell and Goodale, *Re* (1887), 56 L. T. 477 766
—— *v.* Anderson (1863), 14 C. B. (N. S.) 499 492
—— *v.* Best, Ryley & Co. (1892), 68 L. T. 76; 4 R. 222; 7 Asp. M. L. C. 272, C. A. 120, 200, 202, 206, 207
—— *v.* Carter (1854), 3 E. & B. 559; 23 L. J. (Q. B.) 295; 18 Jur. 1014; 2 W. R. 409; 2 C. L. R. 1582 51
—— *v.* Dreesman (1854), 9 Exch. 485; 23 L. J. (EX.) 210; 2 C. L. R. 498 . 193, 194
—— *v.* Haywood Gas Coal Co. (1877), 14 Sc. L. R. 605; 4 R. (Ct. of Sess.) 714 120, 200
—— *v.* Jacobs (1885), 15 Q. B. D. 247; 54 L. J. (Q. B.) 492; 54 L. T. 61; 5 Asp. M. L. C. 530, C. A. 135, 176, 184 261
—— *v.* Nunn (1886), 21 L. J. N. C. 440 848
—— *v.* Osbourn (1834), 2 Cr. & M. 629; 3 L. J. (EX.) 182; 4 Tyr. 445 . 738, 739
—— *v.* Quine (1869), L. R. 4 Q. B. 653; 10 B. & S. 644; 38 L. J. (Q. B.) 331; 20 L. T. 947; 17 W. R. 967 737
—— *v.* Reynolds (1856), 4 W. R. 278 297
—— *v.* Tremenheere (1808), 15 Ves. 34 747
—— *v.* Watson (1791), Peake, 102 [72] 51
Harrison, *Ex parte* (1875), 44 L. J. (Q. B.) 103; 23 W. R. 635 714
——, *Ex parte*, *Re* Nicholson. *See* Nicholson, *Re*, *Ex parte* Harrison.
——, *Ex parte*, Ward *v.* Royal Exchange Shipping Co. *See* Ward *v.* Royal Exchange Shipping Co., *Ex parte* Harrison.
——, *Re* (1847), 10 Beav. 57; 16 L. J. (CH.) 170; 11 Jur. 197 . . 783, 788, 789
——, *Re* (1886), 33 Ch. D. 52; 55 L. J. (CH.) 768; 55 L. T. 72; 50 J. P. 372; 34 W. R. 645, C. A. 769, 775, 798, 804, 810
—— *v.* Bank of Australasia (1872), L. R. 7 Exch. 39; 41 L. J. (EX.) 36; 25 L. T. 944; 20 W. R. 385; 1 Asp. M. L. C. 198 . 317, 319, 320, 321
—— *v.* Bush (1855), 5 E. & B. 344; 25 L. J. (Q. B.) 99; 2 Jur. (N. S.) 90; 4 W. R. 199 802
—— *v.* Cornwall Minerals Rail. Co. (1884), 53 L. J. (CH.) 596; 50 L. T. 452; 48 J. P. 724; 32 W. R. 748 826
—— *v.* Garthorne (1872), 26 L. T. 508; 20 W. R. 722; 1 Asp. M. L. C. 303 . . 93, 94, 178, 179
—— *v.* Harrison (1888), 13 P. D. 180; 58 L. J. (P.) 28; 60 L. T. 39; 36 W. R. 748, C. A. 823, 825
—— *v.* Huddersfield Steamship Co. (1903), 19 T. L. R. 386 . . 87, 106, 146, 153, 175, 298
—— *v.* Leutner (1881), 16 Ch. D. 559; 50 L. J. (CH.) 264; 44 L. T. 331; 29 W. R. 393, C. A. 768, 769, 805
—— *v.* McSheehan, [1885] W. N. 207 798
—— *v.* Turner (1847), 10 Q. B. 482; 16 L. J. (Q. B.) 295; 11 Jur. 817 . 776
—— *v.* Ward (1835), 4 Dowl. 39; 1 Har. & W. 353 776
—— *v.* Wearing (1879), 11 Ch. D. 206; 48 L. J. (CH.) 365; 41 L. T. 376; 27 W. R. 526. 767
—— *v.* Wright (1811), 13 East, 343 136, 207
Harrowing *v.* Dupré (1902), 18 T. L. R. 594; 7 Com. Cas. 157 . . . 276, 278
—— *v.* Katz & Co. (1895), November 26th, unreported; affirming (1894) 10 T. L. R. 400, C. A. 145
Harrowing S.S. Co. *v.* Thomas, [1912] 3 K. B. 321; 81 L. J. (K. B.) 1221; 107 L. T. 459; 56 Sol. Jo. 798; 28 T. L. R. 558; 17 Com. Cas. 347; affirmed, [1913] 2 K. B. 171; 82 L. J. (K. B.) 636; 108 L. T. 622; 57 Sol. Jo. 426; 29 T. L. R. 365; 18 Com. Cas. 197, C. A. 103, 236, 311
—— *v.* Toohey, [1900] 2 Q. B. 28; 69 L. J. (Q. B.) 547; 82 L. T. 677; 16 T. L. R. 275; 9 Asp. M. L. C. 91 22
Hart, *Ex parte*, *Re* Tovery *v.* Payne. *See* Tovery *v.* Payne, *Re*, *Ex parte* Hart.
—— *v.* Frame (1839), 6 Cl. & Fin. 193; Macl. & Rob. 595; 3 Jur. 547 . 754, 755, 756
—— *v.* Hunter (1906), 5 Adam, 1 350
Hartfort *v.* Jones (1698), 1 Ld. Raym. 393; 2 Salk. 654 579
Hartland *v.* Murrell (1873), L. R. 16 Eq. 285; 43 L. J. (CH.) 94; 28 L. T. 725; 21 W. R. 781 810
Hartley, *Ex parte*, Smith *v.* Winter *See* Smith *v.* Winter, *Ex parte* Hartley.

PAGE
Hartley, *Re* (1856), 2 Jur. (N. S.) 448 808
———, *Re* (1861), 30 Beav. 620 783, 784, 790
——— *v.* Ponsonby (1857), 7 E. & B. 872; 26 L. J. (Q. B.) 322; 3 Jur. (N. S.) 746; 5 W. R. 659 51
Harton, The (1884), 9 P. D. 44; 53 L. J. (P.) 25; 50 L. T. 370; 32 W. R. 597; 5 Asp. M. L. C. 213 459, 483
Hartop, *Ex parte* (1806), 12 Ves. 349 836
Hartopp *v.* Hartopp and Cowley (1904), 20 T. L. R. 216, C. A. 804
Harvest, The (1886), 11 P. D. 14; 55 L. T. 202; 6 Asp. M. L. C. 5, C. A. . 440, 467, 483,
Harvest Home, The, [1904] P. 409; 74 L. J. (P.) 3; 92 L. T. 173; 10 Asp. M. L. C. 19; varied, [1905] P. 177; 74 L. J. (P.) 65; 93 L. T. 395; 76 L. J. (K. B.) 31; 93 L. T. 692, C. A. 371, 486, 516, 521, 566, 569
Harvey, *Re* (1859), 27 Beav. 330 838
——— *v.* Hall (1873), L. R. 16 Eq. 324; 43 L. J. (CH.) 95; 28 L. T. 734; 21 W. R. 783 839
——— *v.* Lyme Regis Corporation (1869), L. R. 4 Exch. 260; 38 L. J. (EX.) 141; 17 W. R. 892 636
——— *v.* Mayhew (1853), 2 W. R. 128 790, 791
Haslam and Hier-Evans, *Re*, [1902] 1 Ch. 765; 71 L. J. (CH.) 374; 86 L. T. 663; 50 W. R. 444; 18 T. L. R. 461, C. A. 736, 747
Hasleham *v.* Young (1844), 5 Q. B. 833; 13 L. J. (Q. B.) 205; 8 Jur. 338; Dav. & Mer. 700 759, 830
Hassan *v.* Runciman & Co. (1904), 91 L. T. 808; 10 Asp. M. L. C. 31; 10 Com. Cas. 19 91, 92, 140, 142
Hassell *v.* Stanley, [1896] 1 Ch. 607; 65 L. J. (CH.) 494; 74 L. T. 375; 44 W. R. 405 795, 806, 822
Hatch *v.* Hatch (1804), 9 Ves. 292 747, 748
——— *v.* Lewis (1861), 2 F. & F. 467; (1861), 7 H. & N. 367; 31 L. J. (EX.) 26; 5 L. T. 254; 7 Jur. (N. S.) 1085; 10 W. R. 58 754, 756
Hathesing *v.* Laing, Laing *v.* Zeden (1873), L. R. 17 Eq. 92; 43 L. J. (CH.) 233; 29 L. T. 734; 2 Asp. M. L. C. 170 140, 152, 153
Havelock *v* Geddes (1809), 10 East, 555 105, 144, 217
——— *v.* Hancill (1789), 3 Term Rep. 277 113
Haversham Grange, The, [1905] P. 307; 74 L. J. (P.) 115; 93 L. T. 733; 53 W. R. 675; 21 T. L. R. 628; 10 Asp. M. L. C. 156, C. A. 539, 540
Havilland, Routh & Co. *v.* Thomson (1864), 3 Macph. (Ct. of Sess.) 313; 37 Sc. Jur. 147 27
Hawke, H.M.S., and The Olympic. *See* Olympic, The, and H.M.S. Hawke.
Hawkes, *Re*, Ackerman *v.* Lockhart, [1898] 2 Ch. 1; 67 L. J. (CH.) 281; 78 L. T. 336; 46 W. R. 445, C. A. 816
——— *v.* Cottrell (1858), 3 H. & N. 243; 27 L. J. (EX.) 369 739
Hawkins *v.* Harwood (1849), 4 Exch. 503; 19 L. J. (EX.) 33; 7 Dow. & L. 181 . 755, 756
——— *v.* Twizell (1856), 5 E. & B. 883; 25 L. J. (Q. B.) 160; 2 Jur. (N. S.) 302; 4 W. R. 242 47
Hawley, *Ex parte*, *Re* May. *See* May, *Re*, *Ex parte* Hawley.
Hawthornbank, The, [1904] P. 120; 73 L. J. (P.) 18; 90 L. T. 293; 9 Asp. M. L. C. 535 387, 388
Haxby *v.* Wood Advertising Agency, Ltd., [1913] W. N. 331 828, 829
Hay *v.* Le Neve (1824), 2 Sh. Sc. App. 395 508, 509, 512
—— *v.* Trinity House Corporation (1895), 65 L. J. (Q. B.) 90; 73 L. T. 471; 44 W. R. 188; 8 Asp. M. L. C. 77 331
Haydon *v.* Cartwright, [1902] W. N. 163; 13 L. T. Jo. 353; 37 L. J. 420, C. A 780
Haylett *v.* Thompson, [1911] 1 K. B. 311; 80 L. J. (K. B.) 267; 103 L. T. 509; 74 J. P. 480; 11 Asp. M. L. C. 512 47, 60
Hayman *v.* Molton (1803), 5 Esp. 65 76
Haymes *v.* Cooper, Cooper *v.* Jenkins (1864), 33 Beav. 431; 33 L. J. (CH.) 488; 10 L. T. 87; 10 Jur. (N. S.) 303; 12 W. R. 539 825
Hayn *v.* Culliford (1878), 3 C. P. D. 410; 47 L. J. (Q. B.) 755; 39 L. T. 288; affirmed (1879), 4 C. P. D. 182; 48 L. J. (Q. B.) 372; 40 L. T. 536; 27 W. R. 541; 4 Asp. M. L. C. 128, C. A. . . 115, 117, 148, 153, 170, 173, 204, 205, 224, 238
Hayne *v.* Burchell (1890), 7 T. L. R. 116, C. A. 712
Haynes, *Re*, *Ex parte* National Mercantile Bank (1880), 15 Ch. D. 42; 49 L. J. (BCY.) 62; 43 L. T. 36; 44 J. P. 780; 28 W. R. 848, C. A. . 757, 828
——— *v.* Halliday (1831), 7 Bing. 587 102

PAGE
Hays *v.* Trotter (1834), 5 B. & Ad. 1106 778
Hayton *v.* Irwin (1879), 5 C. P. D. 130; 41 L. T. 666; 28 W. R. 665; 4 Asp. M. L. C. 212, C. A. 141, 256, 268
Hazelmere, The, [1911] P. 69; 80 L. J. (P.) 25; 103 L. T. 890; 11 Asp. M. L. C. 536, C. A. 442, 459, 470
Heap *v.* Jackson, [1886] W. N. 192 827
Heart of Oak, The (1841), 1 Wm. Rob. 204 73
Heather, *Re* (1870), 5 Ch. App. 694; 39 L. J. (CH.) 781; 18 W. R. 1079 . . 778
Heather Bell, The, [1901] P. 272; 70 L. J. (P.) 57; 84 L. T. 794; 49 W. R. 577; 17 T. L. R. 541; 9 Asp. M. L. C. 192, C. A. 25, 26
Heathfield Steamship Co. *v.* Rodenacher (1896), 2 Com. Cas. 55, C. A. . 102, 209
Hebe, The (1844), 2 Wm. Rob. 246 567
——— (1846), 2 Wm. Rob. 412 72
——— (1847), 2 Wm. Rob. 530 540
"Hebe," Ocean Steamship Co. (Owners) *v.* Apcar & Co., "Arratoon Apcar" (Owners), The "Arratoon Apcar." *See* Ocean Steamship Co., "Hebe" (Owners) *v.* Apcar & Co., "Arratoon Apcar" (Owners), The "Arratoon Apcar."
"Hebe," The, and The "Singapore." *See* "Singapore," The, and The "Hebe."
Hector, The (1883), 8 P. D. 218; 52 L. J. (P.) 47; 48 L. T. 890; 31 W. R. 881; 5 Asp. M. L. C. 101, C. A. 485, 519, 529, 530, 617
Hector *v.* Jolliffe (1842), 6 Jur. 120 819
Hedges *v.* Hooker (1889), 60 L. T. 822; 53 J. P. 613; 37 W. R. 491; 6 Asp. M. L. C. 386 331
——— *v.* London and St. Katharine Docks Co. (1885), 16 Q. B. D. 597; 55 L. J. (M. C.) 46; 54 L. T. 427; 50 J. P. 580; 34 W. R. 503; 5 Asp. M. L. C. 539 634
Hedley *v.* Bainbridge (1842), 3 Q. B. 316; 11 L. J. (Q. B.) 293; 2 Gal. & Dav. 483 759
——— *v.* Lapage (1816), Holt (N. P.), 392 308
——— *v.* Pinkney & Sons Steamship Co., [1894] A. C. 222; 63 L. J. (Q. B.) 419; 70 L. T. 630; 42 W. R. 497; 7 Asp. M. L. C. 135 . 211, 212, 523, 543, 544
Heinrich, The (1871), L. R. 3 A. & E. 424; 24 L. T. 914; 1 Asp. M. L. C. 79 . 96
——— (1872), L. R. 3 A. & E. 505; 41 L. J. (ADM.) 68; 26 L. T. 372; 20 W. R. 759; 1 Asp. M. L. C. 79 624, 625, 825
Heinrich *v.* Sutton (1871), 6 Ch. App. 220; 24 L. T. 530; 19 W. R. 515 . . 741
——— *v.* ———, *Re* Fiddey. *See* Fiddey, *Re*, Heinrich *v.* Sutton.
Heinrich Björn, The, Northcote *v.* The Heinrich Björn (Owners). *See* Northcote *v.* The Heinrich Björn (Owners), The Heinrich Björn.
Helen, The (1865), L. R. 1 A. & E. 1; 35 L. J. (ADM.) 2; 13 L. T. 305; 11 Jur. (N. S.) 1025; 14 W. R. 136 109
Helen and George, The (1858), Sw. 368 571
"Helene," The, Ohrloff *v.* Briscall. *See* Ohrloff *v.* Briscall, The "Helene."
Helgoland, The (1859), Sw. 491; 5 Jur. (N. S.) 1180 70, 71, 72, 623
Hellard and Bewes, *Re*, [1896] 2 Ch. 229; 65 L. J. (CH.) 550; 74 L. T. 457; 44 W. R. 475 762, 808
Hellings *v.* Gregory (1825), 1 C. & P. 627; 10 Moore (C. P.), 337 . . . 729
——— *v.* Jones (1825), 3 Bing. 70; 3 L. J. (O. S.) (C. P.) 164; 10 Moore (C. P.), 360 831
Helme *v.* Smith (1831), 7 Bing. 709; 9 L. J. (O. S.) (C. P.) 206; 5 Moo. & P. 744 34, 35
Helps *v.* Clayton (1864), 17 C. B. (N. S.) 553; 34 L. J. (C. P.) 1; 11 L. T. 476; 10 Jur. (N. S.) 1148; 13 W. R. 161 731
Helvetia, The (1868), 3 Asp. M. L. C. 43, n. 369, 378, 436, 463
——— (1894), 8 Asp. M. L. C. 264, n. 564
Hemming, *Ex parte*, *Re* Bischoff and Coxe. See Bischoff and Coxe, *Re*, *Ex parte* Hemming.
Hemsworth, *Re*, *Ex parte* Underwood (1845), De G. 190; 9 Jur. 632 . . . 818
Henderson *v.* Merthyr Tydfil Urban Council, [1900] 1 Q. B. 434; 69 L. J. (Q. B.) 335; 48 W. R. 332 773
——— *v.* Stevenson (1875), L. R. 2 Sc. & Div. 470; 2 Rettie (House of Lords), 71 327
——— & Co. *v.* Comptoir d'Escompte de Paris (1873), L. R. 5 P. C. 253; 42 L. J. (P. C.) 60; 29 L. T. 192; 21 W. R. 873; 2 Asp. M. L. C. 98 157
——— Brothers *v.* Shankland & Co., [1896] 1 Q. B. 525; 65 L. J. (Q. B.) 340; 74 L. T. 238; 44 W. R. 401; 8 Asp. M. L. C. 136, C. A. . . . 324

PAGE
Henry, The (1810), Edw. 192 558
——— (1851), 15 Jur. 183 571, 572
Henry *v.* Newcastle Trinity House (1858), 8 E. & B. 723; 27 L. J. (M. C.) 57; 4 Jur. (N. S.) 685; 6 W. R. 232 607
Henry Coxon, The (1878), 3 P. D. 156; 47 L. J. (ADM.) 83; 38 L. T. 819; 27 W. R. 263; 4 Asp. M. L. C. 18 550
Henry Morton, The (1874), 31 L. T. 859; 2 Asp. M. L. C. 466 . 463, 469, 470, 483, 498
Henry St. Cyran (1864), 12 W. R. 1014 434
Henshall *v.* Fereday (1873), 27 L. T. 743; 21 W. R. 240; affirmed, 29 L. T. 46; 21 W. R. 570 757
Herbert, *Re* (1887), 34 Ch. D. 504; 56 L. J. (CH.) 719; 56 L. T. 522; 35 W. R. 606 791
——— *v.* Sayer (1844), 5 Q. B. 965; 8 Jur. 812 740
Hereford and South Wales Waggon and Engineering Co., *Re* (1876), 2 Ch. D. 621; 45 L. J. (CH.) 461, C. A. 734
Hereward, The, [1895] P. 284; 64 L. J. (P.) 87; 72 L. T. 903; 11 R. 798 . . 37
Heriot *v.* Nicholas (1864), 12 W. R. 844 84
Heritage, *Re*, *Ex parte* Docker (1878), 3 Q. B. D. 726; 47 L. J. (Q. B.) 509; 38 L. T. 509; 26 W. R. 633 784, 788
Herman *v.* Royal Exchange Shipping Co. and Patton, Junr. & Co. (1884), Cab. & El. 413 87, 106
Hermod, The (1890), 6 Asp. M. L. C. 509; 62 L. T. 670 382, 481
Herne Bay Steamboat Co. *v.* Hutton, [1903] 2 K. B. 683; 72 L. J. (K. B.) 879; 89 L. T. 422; 52 W. R. 183; 19 T. L. R. 680; 9 Asp. M. L. C. 472, C. A. 85
Hero, The (1817), 2 Dods. 139 72
———, [1911] P. 128; 80 L. J. (P.) 66; 105 L. T. 87; 27 T. L. R. 398; 12 Asp. M. L. C. 10, C. A.; reversed, *sub nom.* Hero (Owners) *v.* Commissioners for Executing the Office of Lord High Admiral of the United Kingdom, [1912] A. C. 300; 106 L. T. 82; 56 Sol. Jo. 269; 28 T. L. R. 216; 12 Asp. M. L. C. 108; *sub nom.* The Hero, 81 L. J. (P.) 26 . 449, 474, 476, 509, 512, 514, 515, 533
Herring *v.* Ward (1839), 8 L. J. (Q. B.) 218 180
Hersey (1837), 3 Hag. Adm. 404 70, 623, 625, 626
———, The, Gore *v.* Gardiner. *See* Gore *v.* Gardiner, The Hersey.
"Hesper," The, Horseley *v.* Baxter Brothers & Co. *See* Horseley *v.* Baxter Brothers & Co., The "Hesper."
Hester *v.* Hester (1887), 34 Ch. D. 607; 56 L. J. (CH.) 247; 55 L. T. 862; 51 J. P. 438; 35 W. R. 233, C. A. 761, 796
Hestia, The, [1895] W. N. 100 805
———, [1895] P. 193; 64 L. J. (P.) 82; 72 L. T. 364; 43 W. R. 669; 11 R. 808; 7 Asp. M. L. C. 599 558, 559, 564, 570, 571
Hetling and Merton's Contract, *Re*, [1893] 3 Ch. 269; 62 L. J. (CH.) 783; 69 L. T. 266; 42 W. R. 19; 2 R. 543, C. A. 745
Heugh *v.* Escombe (1861), 4 L. T. 517 84, 135, 207
Heymann *v.* Parish (1809), 2 Camp. 149 112
Hibbert *v.* Carter (1787), 1 Term Rep. 745 157
——— *v.* Owen (1859), 2 F. & F. 502 140
——— *v.* Pigow (1783), 2 Park on Marine Insurance, 7th ed., p. 498 . . 83
Hibbs *v.* Ross (1866), L. R. 1 Q. B. 534; 9 B. & S. 655; 35 L. J. (Q. B.) 193; 15 L. T. 67; 12 Jur. (N. S.) 812; 14 W. R. 914 34, 525, 526
Hibernia, The (1874), 31 L. T. 803; 24 W. R. 60; 2 Asp. M. L. C. 454 . 381, 487
Hibernian, The, [1907] P. 277; 76 L. J. (P.) 122; 97 L. T. 363; 23 T. L. R. 519, C. A. 149, 150, 238, 284
Hibernian S.S. Co., Ltd. *v.* Suttons, Ltd. (1912), 47 I. L. T. 39 . . 132, 274
Hick *v.* Raymond and Reid, [1893] A. C. 22; 62 L. J. (Q. B.) 98; 68 L. T. 175; 41 W. R. 384; 1 R. 125; 7 Asp. M. L. C. 233 . . 121, 125, 265, 274, 275, 276, 277, 278, 279
—— *v.* Rodocanachi, [1891] 2 Q. B. 626; 61 L. J. (Q. B.) 42; 56 J. P. 54; 40 W. R. 161; 7 Asp. M. L. C. 97, C. A.; affirmed, *sub nom.* Hicks *v.* Raymond and Reid, [1893] A. C. 22; 62 L. J. (Q. B.) 98; 68 L. T. 175; 41 W. R. 384; 1 R. 125; 7 Asp. M. L. C. 233 279
—— *v.* Tweedy & Co. (1890), 63 L. T. 765; 6 Asp. M. L. C. 599 . 84, 97, 179, 182, 183, 185
Hickie *v.* Rodocanachi (1859), 4 H. & N. 455; 28 L. J. (EX.) 273; 5 Jur. (N. S.) 550; 7 W. R. 545 301
Hickley and Steward, *Re* (1885), 54 L. J. (CH.) 608; 52 L. T. 89; 33 W. R. 320 . . 761
Hicks *v.* Keate (1839), 3 Jur. 1024 820

PAGE
Hicks *v.* Shield (1857), 7 E. & B. 633; 26 L. J. (Q. B.) 205; 3 Jur. (N. S.) 715; 5 W. R. 536 312, 314
—— *v.* Walker (1856), 4 W. R. 511 51, 59
Higgins *v.* Scott (1831), 2 B. & Ad. 413; 9 L. J. (O. S.) (K. B.) 262 . . . 821
———*v.* Woolcott (1826), 5 B. & C. 760 808
Higgs *v.* Schrader (1878), 3 C. P. D. 252; 47 L. J. (Q. B.) 426; 26 W. R. 831 . 827
Highgate, The (1890), 62 L. T. 841; 6 Asp. M. L. C. 512 448, 451
Highland Chief, The, [1892] P. 76; 61 L. J. (P.) 51; 66 L. T. 468; 40 W. R. 416; 7 Asp. M. L. C. 176 40, 50
Highlander, The (1843), 2 Wm. Rob. 109 25
"Hilda," The (Owners) *v.* The "Australia" (Owners) (1884), 12 R. (Ct. of Sess.) 76; 22 Sc. L. R. 70 463
Hiles *v.* Moore (1848), 17 L. J. (CH.) 385 751
Hill, *Ex parte*, Goodwin *v.* Gosnell. *See* Goodwin *v.* Gosnell, *Ex parte* Hill.
——, *Re* (1868), L. R. 3 Q. B. 543; 9 B. & S. 481; 37 L. J. (Q. B.) 295; 18 L. T. 564; 16 W. R. 1061 849, 850
——, *Re* (1886), 33 Ch. D. 266; 55 L. T. 104, C. A. 784, 796, 824
—— *v.* Andus (1855), 1 K. & J. 263; 24 L. J. (CH.) 229; 3 Eq. Rep. 422; 3 W. R. 230 616
—— *v.* Finney (1865), 4 F. & F. 616 755
—— *v.* Fletcher (1850), 5 Exch. 470; 19 L. J. (EX.) 320; 1 L. M. & P. 518 . 831
—— *v.* Hart-Davis (1884), 26 Ch. D. 470; 53 L. J. (CH.) 1012; 51 L. T. 279, C. A. 806, 833
—— *v.* Idle (1815), 4 Camp. 327 274, 278
—— *v.* Kitching (1845), 3 C. B. 299; 15 L. J. (C. P.) 251 137
—— *v.* Scott, [1895] 2 Q. B. 371, 713; 65 L. J. (Q. B.) 87; 73 L. T. 458, C. A. . 107, 325, 326
—— *v.* Spurgeon, *Re* Love. *See* Love, *Re*, Hill *v.* Spurgeon.
—— *v.* Wilson (1879), 4 C. P. D. 329; 48 L. J. (Q. B.) 764; 41 L. T. 412; 4 Asp. M. L. C. 198 221, 223, 235, 237, 248, 254, 305, 315, 323, 324
Hilliard, *Re* (1845), 2 Dow. & L. 919; 14 L. J. (Q. B.) 225; 9 Jur. 664 . . . 830
———, *Re, Ex parte* Arthur & Co. (1891), 35 Sol. Jo. 698 792
Hills *v.* Reeves (1882), 31 W. R. 209, C. A. 759
—— *v* Sughrue (1846), 15 M. & W. 253 191
Hillstrom *v.* Gibson and Clark (1870), 8 Macph. (Ct. of Sess.) 463; 42 Sc. Jur. 217 258
Hilton *v.* Woods (1867), L. R. 4 Eq. 432; 36 L. J. (CH.) 491; 16 L. T. 736; 15 W. R. 1105 772
Hincks, *Re*, [1867] W. N. 291 729
Hindson *v.* Weatherill (1854), 5 De G. M. & G. 301; 23 L. J. (CH.) 820; 18 Jur. 499; 2 W. R. 507, C. A. 752
Hine Brothers *v.* Free, Rodwell & Co., Ltd. (1897), 2 Com. Cas. 149 . . 145, 155
Hingston *v.* Wendt (1876), 1 Q. B. D. 367; 45 L. J. (Q. B.) 440; 34 L. T. 181; 24 W. R. 664; 3 Asp. M. L. C. 126 229, 231, 247, 288, 587
Hinton, *Re* (1852), 15 Beav. 192 790
———, *Re*, Tylee *v.* Webb (1851), 14 Beav. 14; 15 Jur. 1023 . . . 837, 838
Hirondelle, The (1905), 22 T. L. R. 146, C. A. 384, 385, 403, 502
Hirst *v.* Tolson (1850), 2 Mac. & G. 134; 19 L. J. (CH.) 411; 2 H. & Tw. 359; 14 Jur. 559 712
—— and Capes, *Re*, Hirst and Capes *v.* Fox, [1908] 1 K. B. 982; 77 L. J. (K. B.) 930; 52 Sol. Jo. 684; affirmed, [1908] A. C. 416; 77 L. J. (K. B.) 938, C. A. 783
Hitchcock *v.* Stretton, [1892] 2 Ch. 343; 61 L. J. (CH.) 529 788
Hjemmett, The (1880), 5 P. D. 227; 49 L. J. (P.) 66; 42 L. T. 514; 4 Asp. M. L. C. 14 357
H.M. Hayes, The, The Annapolis, The Golden Light. *See* Annapolis, The, The Golden Light, The H.M. Hayes.
Hoare *v.* Dresser (1859), 7 H. L. Cas. 290; 28 L. J. (CH.) 611; 5 Jur. (N. S.) 371; 7 W. R. 374 161
Hobson *v.* Shearwood (1845), 8 Beav. 486 822
Hoby *v.* Built (1832), 3 B. & Ad. 350; 1 L. J. (K. B.) 121 739
"Hochung," The, The "Lapwing," China Merchants' Steam Navigation Co. *v.* Bignold. *See* China Merchants' Steam Navigation Co. *v.* Bignold, The "Hochung," The "Lapwing."
Hocquard *v.* R., The "Newport" (1858), 6 W. R. 310; Sw. 335 . 109, 198, 307, 314
Hoddinott *v.* Biggs, Biggs *v.* Hoddinott. *See* Biggs *v.* Hoddinott, Hoddinott *v.* Biggs.

PAGE
Hodge *v.* Bird (1844), 6 Man. & G. 1020; 13 L. J. (C. P.) 87; 8 Jur. 317; 7 Scott (N. R.), 993; 1 Dow. & L. 956 808
Hodgens *v.* Kelly (1826), 1 Hog. 388 821
Hodgkin, *Ex parte*, *Re* Softley. *See* Softley, *Re*, *Ex parte* Hodgkin.
Hodgkinson *v.* Fernie (1857), 2 C. B. (N. S.) 415; 26 L. J. (C. P.) 217; 3 Jur. (N. S.) 818 502, 526
Hodson *v.* Terrall (1833), 2 Dowl. 264; 2 L. J. (EX.) 282; 1 Cr. & M. 797; 3 Tyr. 393 839
Hoek van Holland Maatschappij *v.* Clyde Shipping Co. (1902), 5 F. (Ct. of Sess.) 227; 40 Sc. L. R. 194; 10 Scots Law Times, 612 504
Hogan's Estate, *Re*, [1894] 1 I. R. 503 764
Hogarth *v.* Miller Brothers & Co., [1891] A. C. 48; 60 L. J. (P. C.) 1; 64 L. T. 205; 7 Asp. M. L. C. 1 105, 187, 211, 215
——— *v.* Walker, [1900] 2 Q. B. 283; 69 L. J. (Q. B.) 634; 82 L. T. 744; 48 W. R. 545; 16 T. L. R. 410; 5 Com. Cas. 292; 9 Asp. M. L. C. 84, C. A. 203
——— & Sons *v.* Leith Cotton Seed Oil Co., [1909] S. C. 955; 46 Sc. L. R. 593; 1 Scots Law Times, 332 270, 271
Hoggart's Settlement, *Re* (1912), 56 Sol. Jo. 415 772, 774
Hoghton (1833), 3 Hag. Adm. 100 60
Hohenzollern, The, [1906] P. 339; 76 L. J. (P.) 17; 95 L. T. 585; 22 T. L. R. 778; 10 Asp. M. L. C. 296 587
Holderness *v.* Barkworth (1838), 3 M. & W. 341; 7 L. J. (EX.) 107; 2 Jur. 490; 6 Dowl. 392; 1 Horn & H. 21 808
——— *v.* Lamport (1861), 29 Beav. 129; 30 L. J. (CH.) 489; 7 Jur. (N. S.) 564; 9 W. R. 327 24
——— *v.* Shackels (1828), 8 B. & C. 612; 7 L. J. (O. S.) (K. B.) 80; 3 Man. & Ry. (K. B.) 25 35
Holdsworth, *Ex parte* (1838), 4 Bing. (N. C.) 386 841
Holl *v.* Pinsent (1821), 6 Moore (C. P.), 228 136
Holland, *Re* (1854), 19 Beav. 314 791
———, *Re* (1872), L. R. 7 Q. B. 297; 41 L. J. (Q. B.) 141; 26 L. T. 289; 20 W. R. 756 713
——— *v.* Gwynne, *Re* Byrch. *See* Byrch, *Re*, Holland *v.* Gwynne.
——— & Co. *v.* Pritchard & Co. (1896), 12 T. L. R. 480 104
Hollings *v.* Booth (1860), 2 F. & F. 220 737
Hollington, *Ex parte*, *Re* Commonwealth Land, Building, Estate and Auction Co. *See* Commonwealth Land, Building, Estate and Auction Co., *Re*, *Ex parte* Hollington.
Hollingworth *v.* Brodrick (1837), 7 Ad. & El. 40; 8 L. J. (Q. B.) 80; 1 Jur. 430; 2 Nev. & P. (Q. B.) 608 213, 215
——— *v.* Palmer (1849), 4 Exch. 267; 18 L. J. (EX.) 409 53
Hollinside, The, [1898] P. 131; 67 L. J. (P.) 45; 46 W. R. 639; 14 T. L. R. 258; 3 Com. Cas. 100 310
Hollis *v.* Claridge (1813), 4 Taunt. 807 817
Holloway, *Re*, *Ex parte* Pallister, [1894] 2 Q. B. 163; 63 L. J. (Q. B.) 672; 70 L. T. 615; 42 W. R. 433; 9 R. 384, C. A. 840
Holman *v.* Loynes (1854), 4 De G. M. & G. 270; 23 L. J. (CH.) 529; 18 Jur. 839; 2 W. R. 205, C. A. 748, 749
——— *v.* Wade (1877), *Times*, May 11th 141, 268
——— & Sons *v.* Dasnières (1886), 2 T. L. R. 607, C. A. . 99, 198, 199, 202
——— *v.* Peruvian Nitrate Co. (1878), 5 R. (Ct. of Sess.) 657; 15 Sc. L. R. 349 65, 120, 123, 262, 274, 277
Holmes' Estate, *Re*, Woodward *v.* Humpage, Bevan's Case (1861), 3 Giff. 337; 5 L. T. 378; 8 Jur. (N. S.) 252 747
Holroyde and Smith, *Re* (1881), 43 L. T. 722; 45 J. P. 437; 29 W. R. 599 . 778
Honor, Cargo ex (1866), L. R. 1 A. & E. 87; 35 L. J. (ADM.) 113; 15 L. T. 677; 12 Jur. (N. S.) 773; 15 W. R. 10 568
Hood *v.* Phillips (1842), 6 Beav. 176 837
——— Barrs *v.* Cathcart, [1894] 3 Ch. 376; 63 L. J. (CH.) 793; 71 L. T. 11; 7 R. 411, C. A. 731
——— *v.* Crossman and Prichard, [1897] A. C. 172; 66 L. J. (Q. B.) 357; 76 L. T. 297; 45 W. R. 465 832
——— *v.* Heriot, [1896] 2 Q. B. 375; 65 L. J. (Q. B.) 624; 45 W. R. 17, C. A. 855
Hook, *Re* (1861), 5 L. T. 502; 10 W. R. 116; 8 Jur. (N. S.) 875; 3 Giff. 372 . 786
———, *Re*, Cook *v.* Rosslyn (Earl) (1861), 3 Giff. 175 835

PAGE
Hooper *v.* Cooke (1856), 25 L. J. (CH.) 467; 2 Jur. (N. S.) 527 811
——— *v.* Gumm (1862), 2 John. & H. 602; 6 L. T. 891; 10 W. R. 644 . . 28
——— *v.* ———, McLellan *v.* Gumm (1867), 2 Ch. App. 282; 36 L. J. (CH.) 605; 16 L. T. 107; 15 W. R. 464 15, 24
——— *v.* Lusby (1814), 4 Camp. 66 35, 36
——— *v.* Till (1779), 1 Doug. (K. B.) 198 781
Hope, *Re* (1872), 7 Ch. App. 523; 41 L. J. (CH.) 797; 26 L. T. 814; 20 W. R. 694 835
——, *Re* (1872), 7 Ch. App. 766; 27 L. T. 670; 20 W. R. 1026 . . 720, 723
Hope (1838), 3 Hag. Adm. 423 583
——, The (1840), 1 Wm. Rob. 154 367
——— (1843), 2 Wm. Rob. 8 370, 497
——— (1873), 28 L. T. 287; 1 Asp. M. L. C. 563 622, 623
——— (1883), 8 P. D. 144; 52 L. J. (P.) 63; 49 L. T. 148; 32 W. R. 269; 5 Asp. M. L. C. 126, C. A. 823
Hopkins *v.* M'Bride (1901), 50 W. R. 255 51
Hopper *v.* Burness (1876), 1 C. P. D. 137; 45 L. J. (Q. B.) 377; 34 L. T. 528; 24 W. R. 612; 3 Asp. M. L. C. 149 . . . 72, 77, 249, 250, 305, 306, 314, 315, 318, 589
Horan *v.* MacMahon (1886), 17 L. R. Ir. 641, C. A. 757
Horlock, The (1877), 2 P. D. 243; 47 L. J. (P.) 5; 36 L. T. 622; 3 Asp. M. L. C. 421 17, 37
Horlock *v.* Smith (1837), 2 My. & Cr. 495; 6 L. J. (CH.) 236; 1 Jur. 302 . . 788
Horn *v.* Bensusan (1841), 9 C. & P. 709; 2 Mood. & R. 326 125
—— and Francis, *Re*, [1896] 2 Ch. 797; 66 L. J. (CH.) 15; 75 L. T. 370; 45 W. R. 72 763
Hornby, *Ex parte*, *Re* Tarleton. *See* Tarleton, *Re*, *Ex parte* Hornby.
Horncastle *v.* Farran (1820), 3 B. & Ald. 497; 2 Stark. 590 288
Horne (W. C.) & Sons, Ltd., *Re*, Horne *v.* Horne (W. C.) & Sons, Ltd., [1906] 1 Ch. 271; 75 L. J. (CH.) 206; 54 W. R. 278; 13 Mans. 165 . . . 825
Hornet, The, [1892] P. 361; 68 L. T. 236; 1 R. 549; 7 Asp. M. L. C. 262 . 495, 511, 519
Horseley *v.* Baxter Brothers & Co., The "Hesper" (1893), 20 R. (Ct. of Sess.) 333; 30 Sc. L. R. 387 115, 203, 225
Horsfall, *Ex parte* (1827), 7 B. & C. 528; 6 L. J. (O. S.) (K. B.) 48; 1 Man. & Ry. (K. B.) 306 840
Horsley *v.* Price (1882), 11 Q. B. D. 244; 52 L. J. (Q. B.) 603; 49 L. T. 101; 31 W. R. 786; 5 Asp. M. L. C. 106 181, 260
——— *v.* Rush (1788), cited 7 Term Rep. 209 89
Horsley Line, Ltd. *v.* Roechling Brothers, [1908] S. C. 866; 45 Sc. L. R. 691; 16 Scots Law Times, 83 120, 131, 182, 260, 263, 273
Horst (E. Clemens) Co. *v.* Biddell Brothers, [1912] A. C. 18; 81 L. J. (K. B.) 42; 105 L. T. 563; 56 Sol. Jo. 50; 12 Asp. M. L. C. 80; 17 Com. Cas. 55; 49 Sc. L. R. 680 159, 161
Horton, *Re* (1881), 8 Q. B. D. 434; 51 L. J. (Q. B.) 309; 45 L. T. 451; 46 J. P. 293; 30 W. R. 102 844
Hoskins *v.* Phillips (1847), 16 L. J. (Q. B.) 339 834
——— *v.* Slayton (1737), Lee *temp.* Hard. 376 67, 68
Hotham *v.* East India Co. (1779), 1 Doug. (K. B.) 272 306, 308
Hough *v.* Athya & Son (1879), 6 R. (Ct. of Sess.) 961; 16 Sc. L. R. 553 . . 122, 123, 182
——— *v.* Edwards (1856), 1 H. & N. 171; 26 L J. (EX.) 54; 2 Jur. (N. S.) 814...822
——— *v.* Manzanos (1879), 4 Ex. D. 104; 48 L. J. (Q. B.) 398; 27 W. R. 536 . 90
——— & Co. *v.* Head (1885), 54 L. J. (Q. B.) 294; 52 L. T. 861; 33 W. R. 458; 5 Asp. M. L. C. 447; affirmed (1886), 55 L. J. (Q. B.) 43; 53 L. T. 809; 34 W. R. 160; 5 Asp. M. L. C. 505, C. A. 105
Houlder *v.* General Steam Navigation Co. (1862), 3 F. & F. 170 . . 263, 266
——— *v.* Weir, [1905] 2 K. B. 267; 74 L. J. (K. B.) 729; 92 L. T. 861; 21 T. L. R. 503; 10 Com. Cas. 228; 10 Asp. M. L. C. 81 . . 120, 122, 272, 273
——— Brothers & Co., Ltd. *v.* Public Works Commissioner. Public Works Commissioner *v.* Houlder Brothers & Co., Ltd., [1908] A. C. 276; 77 L. J. (P. C.) 58; 98 L. T. 684. 286
House Property Co. of London *v.* Whiteman, [1913] 2 K. B. 382; 82 L. J. (K. B.) 887; 109 L. T. 43; 77 J. P. 319 807
Houston & Co. *v.* Sansinena & Co. (1891), 68 L. T. 567; 1 R. 203; 7 Asp. M. L. C. 311 169
Hovill *v.* Stephenson (1830), 4 C. & P. 469. 198, 206

PAGE
How *v.* Kirchner (1857), 11 Moo. P. C. C. 21; 6 W. R. 198 . . . 135, 283
—— *v.* Winterton (Earl) (No. 4) (1905), 91 L. T. 763 801
Howard *v.* Patent Ivory Manufacturing Co., *Re* Patent Ivory Manufacturing Co. *See* Patent Ivory Manufacturing Co., *Re*, Howard *v.* Patent Ivory Manufacturing Co.
——— *v.* Shepherd (1850), 9 C. B. 297; 19 L. J. (C. P.) 249 . . . 265, 279
——— *v.* Tucker (1831), 1 B. & Ad. 712 284
——— *v.* Woodward (1864), 34 L. J. (CH.) 47; 11 L. T. 414; 13 W. R. 132; 10 Jur. (N. S.) 1123; 5 New Rep. 8 712
——— and Dollman's Case, *Re* Phœnix Life Assurance Co. *See* Phœnix Life Assurance Co., *Re*, Howard and Dollman's Case.
——— Smith *v.* Wilson, [1896] A. C. 579; 65 L. J. (P. C.) 66; 75 L. T. 81; 8 Asp. M. L. C. 197 642
Howden, *Ex parte*, *Re* Litherland. *See* Litherland, *Re*, *Ex parte* Howden.
——— & Co. *v.* Steamship Nutfield Co., Ltd. (1898), 14 T. L. R. 172; 3 Com. Cas. 56. 321
Howe, *Re*, *Ex parte* Brett (1871), 6 Ch. App. 838; 40 L. J. (BCY.) 54; 25 L. T. 252; 19 W. R. 1101. 162
—— *v.* Robinson (1890), *Times*, July 7th. 736
Howell, *Re*, *Ex parte* Howell (1812), 1 Rose, 312 776, 813
——— *v.* Edmunds (1827), 6 L. J. (O. S.) (CH.) 29; 4 Russ. 67 791
Howes *v.* Ball (1827), 7 B. & C. 481; 6 L. J. (O. S.) (K. B.) 106; 1 Man. & Ry. (K. B.) 288 162
——— *v.* Barber (1852), 18 Q. B. 588; 21 L. J. (Q. B.) 254; 16 Jur. 614 . . 802
Howitt *v.* Paul, Sword & Co. (1877), 5 R. (Ct. of Sess.) 321; 15 Sc. L. R. 223 . 311
Hoyland & Co. *v.* Graham & Co. (1896), 1 Com. Cas. 274 170, 298
Hoyle, *Ex parte*, Shipley *v.* Hoyle, *Re* Dickinson, Bute (Marquis) *v.* Walker. *See* Dickinson, *Re*, Bute (Marquis) *v.* Walker, *Ex parte* Hoyle, Shipley *v.* Hoyle.
Hubbard, *Re* (1852), 15 Beav. 251 789
Hubbersty *v.* Ward (1853), 8 Exch. 330; 22 L. J. (EX.) 113 . . . 145, 155
Huddersfield and Manchester Rail. and Canal Co., *Ex parte*, *Re* Bagshawe. *See* Bagshawe, *Re*, *Ex parte* Huddersfield and Manchester Rail. and Canal Co.
Hudson, *Re*, [1904] W. N. 32; 39 L. J. 97 785
——— *v.* Bilton (1856), 6 E. & B. 565; 26 L. J. (Q. B.) 27; 2 Jur. (N. S.) 784 218, 219, 220, 312
——— *v.* British and Foreign Marine Insurance Co. (1902), 8 Com. Cas. 6 . 318
——— *v.* Clementson (1856), 18 C. B. 213; 25 L. J. (C. P.) 234 . 128, 193, 201
——— *v.* Ede (1867) L. R. 2 Q. B. 566; 36 L. J. (Q. B.) 273; 16 L. T. 698; 15 W. R. 1111 130
——— *v.* —— (1868), L. R. 3 Q. B. 412; 8 B. & S. 640; 37 L. J. (Q. B.) 166; 18 L. T. 764; 16 W. R. 940 120, 192, 193, 194
——— *v.* Hill (1874), 43 L. J. (C. P.) 273; 30 L. T. 555; 2 Asp. M. L. C. 278 . 92, 93, 97, 178, 208
——— *v.* Swiftsure (Owners), The Swiftsure (1900), 82 L. T. 389; 16 T. L. R. 275; 9 Asp. M. L. C. 65 25
Hughes, *Ex parte* (1822), 5 B. & Ald. 482 832
——— *v.* Mayre (1789), 3 Term Rep. 275 841
——— *v.* Murray (1863), 9 L. T. 93 786
——— *v.* Sutherland (1881), 7 Q. B. D. 160; 50 L. J. (Q. B.) 567; 45 L. T. 287; 46 J. P. 6; 29 W. R. 867; 4 Asp. M. L. C. 459 43
——— *v.* Twisden (1886), 55 L. J. (CH.) 481; 54 L. T. 570; 34 W. R. 498 . 759, 760
Hulbert and Crowe, *Re* (1894), 71 L. T. 748; 13 R. 442 784
————————, *Re* (1894), 39 Sol. Jo. 83 791
Hull Steam Shipping Co. *v.* Lamport and Holt (1907), 23 T. L. R. 445 . 261, 262
Hulm and Lewis, *Re*, [1892] 2 Q. B. 261; 61 L. J. (Q. B.) 502; 66 L. T. 683 . 838, 856
Hulthen *v.* Stewart & Co., [1903] A. C. 389; 72 L. J. (K. B.) 917; 88 L. T. 702; 19 T. L. R. 513; 8 Com. Cas. 297 125, 274, 276, 277, 278
Humble *v.* Hunter (1848), 12 Q. B. 310; 17 L. J. (Q. B.) 350 . . . 89, 90
Humby *v.* Moody, Gardener *v.* Ennor. *See* Gardener *v.* Ennor, Humby *v.* Moody.
Humphrey, *Ex parte*, *Re* Bayly's Estate. *See* Bayly's Estate, *Re*, *Ex parte* Humphrey.
Humphreys, *Re*, *Ex parte* Lloyd-George and George, [1898] 1 Q. B. 520; 67 L. J. (Q. B.) 412; 78 L. T. 182; 46 W. R. 322; 14 T. L. R. 263; 5 Mans. 11, C. A. 824
————————, *Re*, *Ex parte* Roberts (1897), 77 L. T. 501; 4 Mans. 239 . . 824
————————— *v.* Jones (1885), 31 Ch. D. 30; 55 L. J. (CH.) 1; 53 L. T. 482; 34 W. R. 1, C. A. 756

PAGE
Hunt *v.* Austin (1882), 9 Q. B. D. 598; 51 L. J. (Q. B.) 455; 47 L. T. 300, C. A. 825, 826
—— *v.* Fineburg (1889), 22 Q. B. D. 259; 58 L. J. (Q. B.) 167; 60 L. T. 855; 37 W. R. 314, C. A. 742
Huntcliff, The (1829), 2 Hag. Adm. 281 73
Hunter *v.* Caldwell (1847), 10 Q. B. 69; 16 L. J. (Q. B.) 274; 11 Jur. 770; affirmed, 10 Q. B. 83; 12 Jur. 285 754, 756
—— *v.* Fry (1819), 2 B. & Ald. 421 92, 102, 142, 191
—— *v.* Liddell (1851), 16 Q. B. 402; 20 L. J. (Q. B.) 200; 15 Jur. 426 . . 802
—— *v.* Northern Marine Insurance Co. (1888), 13 App. Cas. 717 . . . 220
—— *v.* Parker (1840), 7 M. & W. 322; 10 L. J. (EX.) 281 . . . 75, 76
—— *v.* Prinsep (1808), 10 East, 378 . 76, 89, 236, 237, 247, 248, 249, 254, 304, 305, 306, 307, 315, 589
—— & Co. *v.* M'Gown (1819), 1 Bli. 573 112
Huntley, The (1860), Lush. 24 73
Huntley *v.* Sanderson (1833), 1 Cr. & M. 467; 2 L. J. (EX.) 204; 3 Tyr. 469 67
Huntsman, The, [1894] P. 214; 70 L. T. 386; 7 Asp. M. L. C. 431; 6 R. 698 35
—— (1911), 11 Asp. M. L. C. 606 450
Hurst *v.* Usborne (1856), 18 C. B. 144; 25 L. J. (C. P.) 209; 4 W. R. 458 . 92, 177, 178
—— and Middleton, Ltd., *Re*, Middleton *v.* The Co., [1912] W. N. 149; 28 T. L. R. 465; 56 Sol. Jo. 520; reversed, [1912] 2 Ch. 520; 107 L. T. 502; 28 T. L. R. 500; 56 Sol. Jo. 652, C. A. 838, 856
Hussey *v.* Christie (1808), 9 East, 426 68, 222, 244
Hutchinson *v.* Guion (1858), 5 C. B. (N. S.) 149; 28 L. J. (C. P.) 63; 4 Jur. (N. S.) 1149; 6 W. R. 757 101, 206
—— *v.* Joyce (1836), 2 Jo. Ex. Ir. 122 817
—— *v.* Norwood (2) (1886), 54 L. T. 842. 818
—— *v.* Tatham (1873), L. R. 8 C. P. 482; 42 L. J. (C. P.) 260; 29 L. T. 103; 22 W. R. 18 89, 140
Huth *v.* Clarke (1890), 25 Q. B. D. 391; 59 L. J. (M. C.) 120; 63 L. T. 348; 55 J. P. 86; 38 W. R. 655 675
—— *v.* Lamport (1886), 16 Q. B. D. 735; 55 L. J. (Q. B.) 239; 54 L. T. 663; 34 W. R. 386; 5 Asp. M. L. C. 593, C. A. 323, 325
Hutton *v.* Bragg (1816), 7 Taunt. 14 85, 283
Hyde *v.* Willis (1812), 3 Camp. 202 106
Hyndman *v.* Ward (1899), 15 T. L. R. 182 836

I.

IBBERSON *v.* Neck (1886), 2 T. L. R. 427 771
Ida, The (1860), Lush. 6; 1 L. T. 417 503, 525, 619
—— (1872), L. R. 3 A. & E. 542; 41 L. J. (ADM.) 85; 27 L. T. 457; 21 W. R. 39 248
—— (1875), 32 L. T. 541; 2 Asp. M. L. C. 551 157, 203, 226
—— (1886), 55 L. T. 59; 6 Asp. M. L. C. 21 35
—— (1886), 11 P. D. 37; 55 L. J. (ADM.) 15; 54 L. T. 497; 34 W. R. 628; 6 Asp. M. L. C. 57 595
—— *v.* Wasa of Nicolaistadt, The (1866), 15 L. T. 103 . . . 452, 492
Idas, The (1863), Brown. & Lush. 65 37
Idle *v.* Royal Exchange Assurance Co. (1819), 8 Taunt. 755 252
Ilderton, *Re* (1863), 33 Beav. 201 791
Ilos, The (1856), Sw. 100 542
Imbro, The (1889), 14 P. D. 73; 58 L. J. (ADM.) 49; 60 L. T. 936; 37 W. R. 559; 6 Asp. M. L. C. 392 382, 400, 461
Immacolata Concezione, The (1883), 9 P. D 37; 53 L. J. (ADM.) 19; 50 L. T. 539; 32 W. R. 705; 5 Asp. M. L. C. 208 623, 624, 625
Immaganda Sara Clasina, The (1850), 7 Notes of Cases, 582; reversed, *sub nom.* Vaux *v.* Sheffer, The Immaganda Sara Clasina (1852), 8 Moo. P. C. C. 87 . 367, 368, 370, 472
Immanuel (Owners) *v.* Denholm & Co. (1887), 15 R. (Ct. of Sess.) 152; 25 Sc. L. R. 112 308
Imperial Loan Co. *v.* Stone, [1892] 1 Q. B. 599; 61 L. J. (Q. B.) 449; 66 L. T. 556; 56 J. P. 436, C. A. 732

PAGE
Imperial Ottoman Bank *v.* Cowan (1874), 31 L. T. 336 161
Imperial Royal Privileged Danubian Steam Navigation Co. *v.* Greek and Oriental Steam Navigation Co., The "Smyrna" (1864), 2 Moo. P. C. C. (N. S.) 435 . 478, 479, 481
Inchmaree, The, [1899] P. 111; 68 L. J. (P.) 30; 80 L. T. 201; 8 Asp. M. L. C. 486 557, 573
Incorporated Law Society, *Ex parte, Re* Crowdy. *See* Crowdy, *Re, Ex parte* Incorporated Law Society.
———, *Ex parte, Re* Four Solicitors. *See* Four Solicitors, *Re, Ex parte* Incorporated Law Society.
———, *Ex parte, Re* Gray (W. R.). *See* Gray (W. R.), *Re, Ex parte* Incorporated Law Society.
———, *Ex parte, Re* Hall. *See* Hall, *Re, Ex parte* Incorporated Law Society.
———, *Ex parte, Re* Louis. *See* Louis, *Re, Ex parte* Incorporated Law Society.
———, *Ex parte, Re* a Solicitor. *See* Solicitor, a, *Re, Ex parte* Incorporated Law Society.
———, *Ex parte, Re* Two Solicitors and an Unqualified Person. *See* Two Solicitors and an Unqualified Person, *Re, Ex parte* Incorporated Law Society.
——— *v.* Bedford (1885), 49 J. P. 215 856
Ind, Coope & Co. *v.* Kidd (1894), 63 L. J (Q. B.) 726; 71 L. T. 203; 10 R. 258 745
Independence, The, The Arthur Gordon and. *See* Arthur Gordon, The, and The Independence.
———, Maddox *v.* Fisher. *See* Maddox *v.* Fisher, The Independence.
Inderwick, *Re* (1883), 25 Ch. D. 279; 54 L. J. (CH.) 72; 50 L. T. 221; 32 W. R. 541, C. A. 774, 775, 791
India, The (1863), 32 L. J. (P. M. & A.) 185; 9 L. T. 234; 9 Jur. (N. S.) 417; 11 W. R. 536 246
Indian, The *v.* The Jessie (1865), 2 Mar. L. C. 217 490
Indian Chief, The (1888), 14 P. D. 24; 58 L. J. (P.) 25; 60 L. T. 240; 6 Asp. M. L. C. 363 378, 383, 389, 404, 482, 497
Indomitable, The (1859), Sw. 446; 5 Jur. (N. S.) 632 71
Indus, The (1886), 12 P. D. 46; 56 L. J. (P.) 88; 56 L. T. 376; 35 W. R. 490; 6 Asp. M. L. C. 105, C. A. 501, 530, 536
Industrie, The (1871), L. R. 3 A. & E. 303; 40 L. J. (ADM.) 26; 19 W. R. 728; 1 Asp. M. L C. 17 383, 406, 498, 506
———, [1894] P. 58; 63 L. J. (P.) 84; 70 L. T. 791; 42 W. R. 280; 7 Asp. M. L. C. 457; 6 R. 681, C. A. 141, 242, 329
Industry (1835), 3 Hag. Adm. 203 575
Inflexible, H.M.S. (1856), Sw. 32 427
——— (1857), Sw. 200 539, 547
Ingle, *Re* (1855), 21 Beav. 275; 25 L. J. (CH.) 169; 1 Jur. (N. S.) 1059 . 770, 788, 790
——— *v.* M'Cutchan (1884), 12 Q. B. D. 518; 53 L. J. (Q. B.) 311 777
Ingram and Royle, Ltd. *v.* Services Maritimes du Tréport, Ltd., [1913] 1 K. B. 538; 82 L. J. (K. B.) 374; 108 L. T. 304; 29 T. L. R. 274; 18 Com. Cas. 109; 12 Asp. M. L. C. 295; reversed, [1913] W. N. 326; 109 L. T. 733; 58 Sol. Jo. 172; 30 T. L. R. 79, C. A. 110, 112, 139, 214
Inman *v.* Reck, The "City of Antwerp" and The "Friedrich" (1868), L. R. 2 P. C. 25; 37 L. J. (ADM.) 25 443, 504
Inman Steamship Co. *v.* Bischoff (1882), 7 App. Cas. 670; 52 L. J. (Q. B.) 169; 47 L. T. 581; 31 W. R. 141; 5 Asp. M. L. C. 6 105
Innisfail, The, The Secret (1876), 35 L. T. 819; 3 Asp. M. L. C. 337 . . . 489
Innisfallen, The (1866), L. R. 1 A. & E. 72; 35 L. J. (ADM.) 110; 12 Jur. (N. S.) 653 15, 24, 25, 37
Internationale Guano en Superphosphaatwerken *v.* Macandrew (Robert) & Co., [1909] 2 K. B. 360; 78 L. J. (K. B.) 691; 100 L. T. 850; 25 T. L. R. 529; 53 Sol. Jo. 504; 14 Com. Cas. 194 83, 94, 291, 326, 327
Iodine, The (1844), 3 Notes of Cases, 140 569
Iona, The (1867), L. R. 1 P. C. 426; 4 Moo. P. C. C. (N. S.) 336; 16 L. T. 158. 531
———, London and Edinburgh Shipping Co. *v.* Eaton. *See* London and Edinburgh Shipping Co. *v.* Eaton, The Iona.
Ionides *v.* Pender (1874), L. R. 9 Q. B. 531; 43 L. J. (Q. B.) 227; 30 L. T. 547; 22 W. R. 884; 2 Asp. M. L. C. 266 112

PAGE

Iredale *v.* China Traders' Insurance Co., [1899] 2 Q. B. 356; 68 L. J. (Q. B.) 1021; 81 L. T. 231; 48 W. R. 48; 15 T. L. R. 460; 4 Com. Cas. 256; affirmed, [1900] 2 Q. B. 515; 69 L. J. (Q. B.) 783; 83 L. T. 299; 49 W. R. 107; 16 T. L. R. 484; 9 Asp. M. L. C. 119, C. A. 317, 318, 319
Ireland *v.* Thomson (1847), 4 C. B. 149; 17 L. J. (C. P.) 241 . . . 75, 76
Ireson *v.* Pearman (1825), 3 B. & C. 799; 3 L. J. (O. S.) (K. B.) 119; 5 Dow. & Ry. (K. B.) 687 755
Irishman, The (1858), 4 Ir. Jur. (N. S.) 24 366
Iron Duke, The (1845), 4 Notes of Cases, 94 379, 486
Iron-Master, The (1859), Sw. 441 538
Irrawaddy, The (1887), cited in The Campania 417, 418
Irvin *v.* Sanger (1888), 58 L. J. (Q. B.) 64; 59 L. T. 894 720
Irving *v.* Clegg (1834), 1 Bing. (N. C.) 53; 3 L. J. (C. P.) 265; 4 Moo. & S. 572 . 100, 101, 197
——— *v.* Viana (1827), 2 Y. & J. 70 819, 821
Irwine *v.* Reddish (1822), 5 B. & Ald. 796; 1 Dow. & Ry. (K. B.) 413 . . 807
Isaac, *Re*, Cronbach *v.* Isaac, [1897] 1 Ch. 251; 66 L. J. (CH.) 160; 75 L. T. 638; 45 W. R. 262, C. A. 801
Isberg *v.* Bowden (1853), 8 Exch. 852; 22 L. J. (EX.) 322; 1 C. L. R. 722 . 297
Isca, The (1886), 12 P. D. 34; 56 L. J. (P.) 47; 55 L. T. 779; 35 W. R. 382; 6 Asp. M. L. C. 63 358, 491
Isis (Steamship) Co. *v.* Bahr, [1900] A. C. 340; 69 L. J. (Q. B.) 660; 82 L. T. 571; 16 T. L. R. 381; 5 Com. Cas. 277; 9 Asp. M. L. C. 109 . . 99, 103
Ismay, Imrie & Co. *v.* Blake (1892), 66 L. T. 530; 56 J. P. 486; 7 Asp. M. L. C. 189 189
Istok S.S. (Owners) and Drughorn, *Re* (1902), 18 T. L. R. 603; 7 Com. Cas. 190, C. A. 99
Itinerant, The (1844), 2 Wm. Rob. 236 419
Iveson *v.* Conington (1823), 1 B. & C. 160; 1 L. J. (O. S.) (K. B.) 71; 2 Dow. & Ry. (K. B.) 307 830, 832
Ivimey *v.* Marks (1847), 16 M. & W. 843; 17 L. J. (EX.) 165; 11 Jur. 355; 4 Dow. & L. 109 776

J.

JABET, *Ex parte*, *Re* Leah. *See* Leah, *Re*, *Ex parte* Jabet.
Jacks *v.* Bell (1828), 3 C. & P. 316 756
Jackson, *Re*, *Ex parte* Hammond (1839), 4 Deac. 48; 8 L. J. (BCY.) 26; Mont. & Ch. 136 808
———, *Re*, *Re* Cottrell, Boughton-Leigh *v.* Boughton-Leigh (1889), 40 Ch. D. 495; 58 L. J. (CH.) 387; 60 L. T. 589; 37 W. R. 282 . . 784, 790
——— *v.* Charnock (1800), 8 Term Rep. 509 322
——— *v.* Collins, Collins *v.* Jackson. *See* Collins *v.* Jackson, Jackson *v.* Collins.
——— *v.* Galloway (1838), 5 Bing. (N. C.) 71; 8 L. J. (C. P.) 29; 6 Scott, 786 180, 200
——— *v.* Isaacs (1858), 3 H. & N. 405; 27 L. J. (EX.) 392 314
——— *v.* Margrett (1893), 68 L. T. 91; 41 W. R. 267; 5 R. 181 . . . 847
——— *v.* Smith, *Ex parte* Digby (1884), 53 L. J. (CH.) 972; 51 L. T. 72. 825, 826
——— *v.* Union Marine Insurance Co. (1874), L. R. 10 C. P. 125; 44 L. J. (C. P.) 27; 31 L. T. 789; 23 W. R. 169; 2 Asp. M. L. C. 435 . 83, 93, 144, 177, 178, 179, 258
——— *v.* Vernon (1789), 1 Hy. Bl. 114 25
——— and Wood, *Re* (1823), 1 B. & C. 270; 1 L. J. (O. S.) (K. B.) 115 . . 856
——— (Sir John), Ltd. *v.* Blanche S.S. (Owners), [1908] A. C. 126; 77 L. J. (P.) 84; 98 L. T. 464; 24 T. L. R. 384; 52 Sol. Jo. 334 . . . 85, 86, 612
Jacob, The (1802), 4 Ch. Rob. 245 69, 627
——— (1860), 5 Ir. Jur. (N. S.) 379 490
Jacob *v.* Magnay (1842), 12 L. J. (Q. B.) 93 831
Jaederen, The, [1892] P. 351; 61 L. J. (P.) 89; 68 L. T. 266; 1 R. 545; 7 Asp. M. L. C. 260 121, 265, 266, 276, 277
James, The (1856), Sw. 60 433, 493
———, *Ex parte* (1803), 8 Ves. 337 750
———, *Re* (1885), 33 W. R. 654 718
———, *Re*, *Ex parte* Quilter (1850), 4 De G. & Sm. 183 780, 785
——— *v.* Couchman (1885), 29 Ch. D. 212; 54 L. J. (CH.) 838; 52 L. T. 344; 33 W. R. 452 757

PAGE

James (Lady) *v.* East India Co. (1789), cited in Abbott on Shipping, 5th ed., p. 279; 14th ed., p. 679 101
——— *v.* Jones (1799), 3 Esp. 27 174
——— *v.* Ricknell (1887), 20 Q. B. D. 164; 57 L. J. (Q. B.) 113; 58 L. T. 278; 36 W. R. 280 741, 743
——— (Frank) & Sons, *Re*, [1903] W. N. 99 777
James Armstrong, The (1875), L. R. 4 A. & E. 380; 33 L. T. 390; 3 Asp. M. L. C. 46 573, 579, 589
"James C. Stevenson," The, and The "Bougainville," Beal *v.* Marchais. *See* Beal *v.* Marchais, The "Bougainville" and The "James C. Stevenson"
"James Joicey," The *v.* The "Kostrena," Cory & Son, Ltd. *v.* Kopajtic. *See* Cory & Son, Ltd. *v.* Kopajtic, The "James Joicey" *v.* The "Kostrena."
James Seddon, The (1866), L. R. 1 A. & E. 62; 35 L. J. (ADM.) 117; 12 Jur. (N. S.) 609; 14 W. R. 973 67
James Watt, The (1844), 2 Wm. Rob. 270 429, 458, 504
Jameson *v.* Brick and Stone Co., Ltd. (1878), 4 Q. B. D. 208; 48 L. J. (Q. B.) 249; 39 L. T. 594; 27 W. R. 221, C. A. 740
——— *v.* Drinkald (1826), 5 L. J. (O. S.) (C. P.) 30 372
Jamieson *v.* Trevelyan (1855), 10 Exch. 748; 24 L. J. (EX.) 74; 1 Jur. (N. S.) 334; 3 W. R. 172; 3 C. L. R. 702 807
——— & Co. *v.* Laurie (1796), 6 Bro. Parl. Cas. 474 126, 196
Jane, The (1814), 1 Dods. 461 70
Jane (1831), 2 Hag. Adm. 338 582
Jane and Matilda (1823), 1 Hag. Adm. 187 15
Jane Bacon, The (1878), 27 W. R. 35, C. A. . . . 358, 371, 383, 486, 490, 491
Janentzky *v.* Langridge (Henry) & Co. (1895), 1 Com. Cas. 90 298
Janet Court, The, [1897] P. 59; 66 L. J. (P.) 34; 76 L. T. 172; 8 Asp. M. L. C. 223 557, 576
Janet Wilson, The (1857), 6 W. R. 329 626
Japp *v.* Campbell (1887), 57 L. J. (Q. B.) 79 25, 28, 299
Jaques & Co. *v.* Wilson (1890), 7 T. L. R. 119 184, 261
Jaquess *v.* Thomas, *Re* Thomas. *See* Thomas, *Re*, Jaquess *v.* Thomas.
Jardine, Matheson & Co. *v.* Clyde Shipping Co., [1910] 1 K. B. 627; 79 L. J. (K. B.) 634; 102 L. T. 462; 26 T. L. R. 301; 15 Com. Cas. 193; 11 Asp. M. L. C. 384 91, 101, 102, 205
Jared *v.* Clements, [1903] 1 Ch. 428; 72 L. J. (CH.) 291; 88 L. T. 97; 51 W. R. 401; 19 T. L. R. 219, C. A. 745
——— *v.* Walker (1902), 18 T. L. R. 569 745
Jarman, *Ex parte* (1877), 4 Ch. D. 835; 46 L. J. (CH.) 485 792, 841
Jassy, The, [1906] P. 270; 75 L. J. (P.) 93; 95 L. T. 363; 10 Asp. M. L. C. 278 533, 618
Jeff Davis, The (1865), L. R. 2 A. & E. 1; 17 L. T. 151 825
Jefferies, *Ex parte* (1829), 6 Bing. 195; 7 L. J. (O. S.) (C. P.) 263; 3 Moo. & P. 450 . . . 726
———, *Ex parte*, *Re* Browne. *See* Browne, *Re*, *Ex parte* Jefferies.
——— *v.* Legendra (1692), Carth. 216; 1 Show. 320; 3 Lev. 320; 4 Mod. Rep. 58; 1 Salk. 443; Holt (K. B.), 465 83
Jefferson *v.* Warrington (1840), 7 M. & W. 137; 10 L. J. (EX.) 79; 8 Dowl. 880 808
Jeffreys *v.* Evans (1845), 14 M. & W. 210; 14 L. J. (EX.) 363; 3 Dow. & L. 52 776
Jenkins *v.* Davies, *Re* Davies. *See* Davies, *Re*, Jenkins *v.* Davies.
——— *v.* Fereday (1872), L. R. 7 C. P. 358; 41 L. J. (C. P.) 152; 27 L. T. 37; 20 W. R. 781 833, 834
——— *v.* Great Central Rail. Co. (1912), *Shipping Gazette*, January 13th, C. A. 614
——— *v.* ——— Railway, [1912] 1 K. B. 1; 81 L. J. (K. B.) 24; 106 L. T. 565; 28 T. L. R. 61; 12 Asp. M. L. C. 154; 17 Com. Cas. 32 325
——— *v.* Hutchinson (1849), 13 Q. B. 744; 18 L. J. (Q. B.) 274 90
Jenkyns *v.* Brown (1850), 14 Q. B. 496; 19 L. J. (Q. B.) 286; 14 Jur. 505 . 162
——— *v.* Usborne (1844), 7 Man. & G. 678; 13 L. J. (C. P.) 196; 8 Jur. 1139; 8 Scott (N. R.), 505 160, 163
Jenner *v.* Morris, Webster *v.* Jenner (1863), 11 W. R. 943 810, 822
Jennett *v.* Meek (1861), 3 L. T. 817 183, 184
Jennie S. Barker, The, The Spindrift (1875), 3 Asp. M. L. C. 42 . 370, 378, 436, 443
Jennings *v.* Johnson (1873), L. R. 8 C. P. 425 771
Jenny Lind, The (1872), L. R. 3 A. & E. 529; 41 L. J. (ADM.) 63; 26 L. T. 591; 20 W. R. 895; 1 Asp. M. L. C. 294 624

PAGE
Jerdein *v.* Bright (1862), 6 L. T. 279; 10 W. R. 380 833
Jerome, *Re*, [1907] 2 Ch. 145; 76 L. J. (CH.) 432; 96 L. T. 866, C. A. . . . 796
"Jesmond," The, and The "Earl of Elgin" (1871), L. R. 4 P. C. 1; 8 Moo. P. C. C. (N. S.) 179; 25 L. T. 514; 1 Asp. M. L. C. 150 . 425, 427, 435, 455, 457, 461, 507
Jessel *v.* Bath (1867), L. R. 2 Exch. 267; 36 L. J. (EX.) 149; 15 W. R. 1041 . 145, 156
Jesson *v.* Solly (1811), 4 Taunt. 52 164, 264
Jessop, *Re* (1863), 32 Beav. 406 783
Jewitt, *Re* (No. 2) (1864), 34 Beav. 22 841
Jeyes *v.* Jeyes (1876), 45 L. J. (CH.) 245; 34 L. T. 167 845
Job *v.* Langton (1857), 6 E. & B. 779; 26 L. J. (Q. B.) 97; 3 Jur. (N. S.) 109; 4 W. R. 641 316, 320
Johan and Siegmund, The (1810), Edw. 242 37
Johanna Stoll, The, The Annapolis. *See* Annapolis, The, The Johanna Stoll.
Johannesburg, The, [1907] P. 65; 76 L. J. (P.) 67; 96 L. T. 464 . . . 648
John, The (1846), Pritchard's Admiralty Digest, 3rd ed., Vol. II., p. 1890 . 574
John *v.* Bacon (1870), L. R. 5 C. P. 437; 39 L. J. (C. P.) 365; 22 L. T. 477; 18 W. R. 894 327
John and Jane, The (1802), 4 Ch. Rob. 216 560
John Brotherick, The (1844), 8 Jur. 276 431
"John Buddle," The (1847), 5 Notes of Cases, 387 367, 488
John Fenwick, The (1872), L. R. 3 A. & E. 500; 41 L. J. (ADM.) 38; 26 L. T. 322; 1 Asp. M. L. C. 249 383, 401, 407, 482, 484
John Harley, The *v.* The William Tell (1865), 2 Mar. L. C. 290 501
John Hollway, The, [1900] P. 37; 69 L. J. (P.) 15; 81 L. T. 726; 48 W. R. 416; 9 Asp. M. L. C. 36 483
John McIntyre, The (1881), 6 P. D. 200; 50 L. J. (P.) 76; 30 W. R. 276 . 615
——— (1884), 9 P. D. 135; 53 L. J. (P.) 115; 51 L. T. 185; 33 W. R. 190; 5 Asp. M. L. C. 278, C. A. 424
John Munn, The (1848), Stuart's Vice-Admiralty Court Cases, Lower Canada, 265 463
John O'Scott, The, [1897] P. 64; 66 L. J. (P.) 47; 76 L. T. 222; 8 Asp. M. L. C. 235, C. A. 483
Johns *v.* Simons (1842), 2 Q. B. 425 67
Johnson, *Ex parte* (1838), 1 Will. Woll. & H. 504; 2 Jur. 966 714
———, *Re* (1855), 1 Jur. (N. S.) 1140; 4 W. R. 89 792
———, *Re* (1887), 20 Q. B. D. 68; 57 L. J. (Q. B.) 1; 58 L. T. 160; 52 J. P. 230; 36 W. R. 51, C. A. 828
———, *Re*, *Ex parte* Edwards (1881), 8 Q. B. D. 262; 51 L. J. (Q. B.) 108; 45 L. T. 578, C. A. 838, 840, 846
——— *v.* Black, The "Two Ellens" (1872), L. R. 4 P. C. 161; 41 L. J. (ADM.) 33; 26 L. T. 1; 20 W. R. 592; 1 Asp. M. L. C. 208; 8 Moo. P. C. C. (N. S.) 398 300
——— *v.* Chapman (1865), 19 C. B. (N. S.) 563; 35 L. J. (C. P.) 23; 15 L. T. 70; 14 W. R. 264 157, 205, 316, 317, 318
——— *v.* Fesemeyer (1858), 3 De G. & J. 13 751
——— *v.* Greaves (1810), 2 Taunt. 344 139, 190
——— *v.* Marriott (1833), 2 Cr. & M. 183; 3 L. J. (EX.) 40; 4 Tyr. 78; 2 Dowl. 343 735
——— *v.* Royal Mail Steam Packet Co. (1867), L. R. 3 C. P. 38; 37 L. J. (C. P.) 33; 17 L. T. 445 26
——— *v.* Shippen (1703), 2 Ld. Raym. 982; 6 Mod. Rep. 79; 11 Mod. Rep. 30; Holt (K. B.), 48; 1 Salk. 35 69
——— *v.* Telford (1827), 3 Russ. 477 798, 799
——— and Weatherall, *Re* (1888), 37 Ch. D. 433; 57 L. J. (CH.) 306, C. A.; affirmed, *sub nom.* Storer & Co. *v.* Johnson (1890), 15 App. Cas. 203; 60 L. J. (CH.) 31; 62 L. T. 710; 38 W. R. 756. 780
Johnston, *Re*, Mills *v.* Johnston, [1904] 1 Ch. 132; 73 L. J. (CH.) 17; 89 L. T. 497 769, 796, 807
——— *v.* Benson (1819), 1 Brod. & Bing. 454; 4 Moore (C. P.), 90 . . 110
——— *v.* Mackenzie, [1911] 2 I. R. 118; 45 I. L. T. 49. 822, 825
——— Brothers *v.* Saxon Queen Steamship Co. (1913), 108 L. T. 564; 12 Asp. M. L. C. 305 255, 256
Jolly *v.* Young (1794), 1 Esp. 186 104
Jonathan Goodhue, The (1859), Sw. 524 53, 73, 244
Jones, *Ex parte* (1816), 4 M. & S. 450 34
——, *Ex parte* (1833), 2 Dowl. 161 845

PAGE
Jones, *Ex parte* (1870), 22 L. T. 300 711
——, *Ex parte*, *Re* Burton, *Ex parte* Scallan. *See* Burton, *Re*, *Ex parte* Scallan, *Ex parte* Jones.
——, *Re* (1845), 8 Beav. 479 783, 789
——, *Re* (1869), L. R. 9 Eq. 63; 39 L. J. (CH.) 83; 21 L. T. 482; 18 W. R. 159..720
——, *Re* (1870), 6 Ch. App. 497; 40 L. J. (CH.) 113; 23 L. T. 655; 19 W. R. 361. 834, 835
——, *Re* (1872), L. R. 13 Eq. 336; 41 L. J. (CH.) 367; 20 W. R. 395 . . 781
——, *Re* (1887), 36 Ch. D. 105; 56 L. J. (CH.) 720; 57 L. T. 26; 35 W. R. 649 791
——, *Re*, [1896] 1 Ch. 222; 65 L. J. (CH.) 191; 73 L. T. 543; 60 J. P. 7; 44 W. R. 146, C. A. 770, 771, 773
——, *Re*, *Ex parte* King (1885), 54 L. T. 648 778
—— *v.* Adamson (1876), 1 Ex. D. 60; 45 L. J. (Q. B.) 64; 35 L. T. 287; 3 Asp. M. L. C. 253 127, 200
—— *v.* Frost, *Re* Fiddey. *See* Fiddey, *Re*, Jones *v.* Frost.
—— *v.* Holm (1867), L. R. 2 Exch. 335; 36 L. J. (EX.) 192; 16 L. T. 794; 16 W. R. 62 199, 201
—— *v.* Hope, [1880] W. N. 69 734
—— *v.* Hough (1879), 5 Ex. D. 115; 49 L. J. (Q. B.) 211; 42 L. T. 108; 4 Asp. M. L. C. 248, C. A. 106, 125, 152, 174, 175
—— *v.* James (1839), 1 Beav. 307; 3 Jur. 310 794
—— *v.* Linton (1881), 44 L. T. 601 751
—— *v.* Mersey Docks and Harbour Board (1913), 108 L. T. 722; 29 T. L. R. 468; 18 Com. Cas. 163 . . 642
—— *v.* ——————————, Mersey Docks and Harbour Board *v.* Cameron. *See* Mersey Docks and Harbour Board *v.* Cameron, Jones *v.* Mersey Docks and Harbour Board.
—— *v.* Nicholson (1854), 10 Exch. 28; 23 L. J. (EX.) 330; 2 C. L. R. 1236 . 112
—— *v.* Owen, *Re* Griffiths. *See* Griffiths, *Re*, Jones *v.* Owen.
—— *v.* Phillips (1851), 7 Exch. 85; 21 L. J. (EX.) 6 636
—— *v.* Reade (1836), 5 Ad. & El. 529; 6 L. J. (K. B.) 9; 5 Dowl. 216; 1 Nev. & P. (K. B.) 18; 2 Har. & W. 382 771
—— *v.* Roberts (1837), 8 Sim. 397; 7 L. J. (CH.) 156; 2 Jur. 30 . . 781, 847
—— *v.* ——— (1846), 9 Beav. 419 811
—— *v.* Tripp (1821), Jac. 322 811
—— *v.* Turnbull (1837), 2 M. & W. 601; 6 L. J. (EX.) 166; 1 Jur. 638; 5 Dowl. 591; Murp. & H. 106 821
—— and Everett, *Re*, [1904] 2 Ch. 363; 73 L. J. (CH.) 706; 91 L. T. 286; 53 W. R. 59 783, 784
—— and Roberts, *Re*, [1905] 2 Ch. 219; 92 L. T. 562; 53 W. R. 444; 21 T. L. R. 352, C. A. 846
——, Ltd. *v.* Green & Co., [1904] 2 K. B. 275; 73 L. J. (K. B.) 601; 90 L. T. 768; 9 Asp. M. L. C. 600; 9 Com. Cas. 275, C. A. 193, 194
Jonge Andries, The (1857), Sw. 226; affirmed, Sw. 303 567, 571
Jonge Bastiaan, The (1804), 5 Ch. Rob. 322 564, 586
Jordan *v.* Hunt (1855), 3 Dowl. 666; 1 Gale, 159 823
Jörgensen *v.* Neptune Steam Fishing Co. (1902), 4 F. (Ct. of Sess.) 992; 39 Sc. L. R. 765; 10 Scots Law Times, 206 561
Joseph, The (1888), 4 T. L. R. 693 89
Joseph *v.* Knox (1813), 3 Camp. 320 264
Joseph Harvey, The, (1799), 1 Ch. Rob. 306 567
Josephine, The (1856), Sw. 152; 2 Jur. (N. S.) 148 44
Joyce, *Ex parte* (1877), 4 Ch. D. 596; 46 L. J. (CH.) 295; 25 W. R. 340 . . 715
——, *Ex parte*, *Re* Merrick. *See* Merrick, *Re*, *Ex parte* Joyce.
—— *v.* Capel (1838), 8 C. & P. 370 525
—— *v.* Swann (1864), 17 C. B. (N. S.) 84 160
J. R. Hinde, The, [1892] P. 231; 61 L. J. (P.) 91; 67 L. T. 832; 7 Asp. M. L. C. 257 482
Julia, The (1861), Lush. 224; 14 Moo. P. C. C. 210 358, 527, 530
"Julindur," The (1853), 1 Ecc. & Ad. 71 26
Julius *v.* Oxford (Lord Bishop) (1880), 5 App. Cas. 214; 49 L. J. (Q. B.) 577; 42 L. T. 546; 44 J. P. 600; 28 W. R. 726 677
Juno, The (1894), 71 L. T. 341; 11 R. 679; 7 Asp. M. L. C. 506 . 383, 482, 485, 497
Jupiter (1836), 3 Hag. Adm. 320 373
Justitia, The (1887), 12 P. D. 145; 56 L. J. (P.) 111; 57 L. T. 816; 6 Asp. M. L. C. 198 52

K.

PAGE

KAISER Wilhelm der Grosse, The, [1907] P. 36; 76 L. J. (P.) 97; 96 L. T. 239; 10 Asp. M. L. C. 361; affirmed, [1907] P. 259; 76 L. J. (P.) 138; 97 L. T. 366; 23 T. L. R. 554, C. A. 427, 440, 460, 461, 466, 467, 468, 470
Kalamazoo, The (1851), 15 Jur. 885 625
Kammerhevie Rosenkrants (1822), 1 Hag. Adm. 62 625
Karnak, The (1868), L. R. 2 A. & E. 289; 37 L. J. (ADM.) 41; 18 L. T. 661; 17 W. R. 56; 3 Mar. L. C. 103 71
————, Droege *v.* Suart. *See* Droege *v.* Suart, The Karnak.
Karo, The (1887), 13 P. D. 24; 57 L. J. (P.) 78; 58 L. T. 188; 6 Asp. M. L. C. 245 616
Karpeles *v.* Friedlander, *Re* a Solicitor. *See* Solicitor, a, *Re*, Karpeles *v.* Friedlander.
Kate, The, [1899] P. 165; 68 L. J. (P.) 41; 80 L. T. 423; 47 W. R. 669; 15 T. L. R. 309; 8 Asp. M. L. C. 539 538
Kate B. Jones, The, [1892] P. 366; 69 L. T. 197; 7 Asp. M. L. C. 332 . 568, 575
Katherine, The (1913), 30 T. L. R. 52 218
Kathleen, The (1874), L. R. 4 A. & E. 269; 43 L. J. (ADM.) 39; 31 L. T. 204; 23 W. R. 350; 2 Asp. M. L. C. 367 236, 247, 306, 589
Katy, The, [1895] P. 56; 64 L. J. (P.) 49; 71 L. T. 709; 43 W. R. 290; 11 R. 683; 7 Asp. M. L. C. 527, C. A. 123
Kauss, The (1904), 20 T. L. R. 326. 614
Kay *v.* Field (1882), 10 Q. B. D. 241; 52 L. J. (Q. B.) 17; 47 L. T. 423; 31 W. R. 332; 4 Asp. M. L. C. 588, C. A. . . 120, 130, 132, 191, 192, 194, 201
—— *v.* Wheeler (1867), L. R. 2 C. P. 302; 36 L. J. (C. P.) 180; 16 L. T. 66; 15 W. R. 495 111, 214, 224, 232
Keane, *Re*, Lumley *v.* Desborough (1871), L. R. 12 Eq. 115; 40 L. J. (CH.) 617; 24 L. T. 780; 19 W. R. 1025 731, 826
Kearns, *Re* (1847), 11 Jur. 521 830
Kearon *v.* Pearson (1861), 7 H. & N. 386; 31 L. J. (EX.) 1; 10 W. R. 12. . 119, 120, 192
——— *v.* Radford & Co. (1895), 11 T. L. R. 226 141, 267
Keay *v.* Fenwick (1876), 1 C. P. D. 745, C. A. 35
Keddle, *Ex parte* (1865), 4 B. & S. 993; 34 L. J. (Q. B.) 136; 11 L. T. 625; 11 Jur. (N. S.) 503; 13 W. R. 290 714
Keenan *v.* Armstrong (1891), 27 L. R. Ir. 371 826
Keene *v.* Ward (1849), 13 Q. B. 515; 19 L. J. (Q. B.) 46; 7 Dow. & L. 334; 14 Jur. 65 776
Keeping and Gloag, *Re* (1888), 58 L. T. 679 766
Keeson *v.* Luxmore (1889), 61 L. T. 199 825
Keighley, Maxsted & Co. *v.* Durant, [1901] A. C. 240; 70 L. J. (K. B.) 662; 84 L. T. 777; 17 T. L. R. 527. 90
Keith *v.* Burrows (1877), 2 App. Cas. 636; 46 L. J. (Q. B.) 801; 37 L. T. 291; 25 W. R. 831; 3 Asp. M. L. C. 481 25, 26, 299, 300, 301, 308, 309
Kell *v.* Anderson (1842), 10 M. & W. 498; 12 L. J. (EX.) 101 . 121, 127, 182, 259, 260
—— *v.* Nainby (1829), 10 B. & C. 20; 8 L. J. (O. S.) (K. B.) 99; 5 Man. & Ry. (K. B.) 76 812
Kellett *v.* Kelly (1842), 5 I. Eq. R. 34 818
Kellock, *Re* (1887), 56 L. T. 887; 35 W. R. 695 778, 779, 790, 792
Kelly, *Re*, [1895] 1 Q. B. 180; 64 L. J. (Q. B.) 129; 71 L. T. 843; 43 W. R. 191; 15 R. 106 849
Kelner *v.* Baxter (1866), L. R. 2 C. P. 174; 36 L. J. (C. P.) 94; 15 L. T. 213; 12 Jur. (N. S.) 1016; 15 W. R. 278 734
Kemp *v.* Burt (1833), 4 B. & Ad. 424; 2 L. J. (K. B.) 69; 1 Nev. & M. (K. B.) 262 . 755
——— *v.* Canavan (1864), 15 I. C. L. R. 216 160
——— *v.* Clark (1848), 12 Q. B. 647; 17 L. J. (Q. B.) 305; 12 Jur. 676 . . 295
——— *v.* Falk (1882), 7 App. Cas. 573; 52 L. J. (CH.) 167; 47 L. T. 454; 31 W. R. 125; 5 Asp. M. L. C. 1 147, 160, 163
——— *v.* Halliday (1866), L. R. 1 Q. B. 520; 6 B. & S. 723; 35 L. J. (Q. B.) 156; 14 L. T. 762; 12 Jur. (N. S.) 582; 14 W. R. 697 320
——— *v.* Ismay, Imrie & Co. (1909), 100 L. T. 996; 14 Com. Cas. 202 . . 160
Kennedy *v.* Cowie, [1891] 1 Q. B. 771; 60 L. J. (M. C.) 170; 64 L. T. 598; 55 J. P. 680; 39 W. R. 686; 17 Cox, C. C. 320 61
———— *v.* Gouveia (1823), 3 Dow. & Ry. (K. B.) 503 292, 295
———— *v.* Sarmatian (1880), 2 Federal Reporter, 911 530
Kennersley Castle (1833), 3 Hag. Adm. 1 40, 69
Kennet, The, [1912] P. 114; 81 L. J. (P.) 82; 105 L. T. 880; 12 Asp. M. L. C. 120 471, 483, 496

PAGE
Kent, The (1862), Lush. 495 36
Kent *v.* Ward (1894), 70 L. T. 612; 9 R. 593, C. A. 720
Kent Tramways Co., *Re* (1879), 12 Ch. D. 312; 40 L. T. 393, C. A. . . . 733
Kepler, The (1875), 2 P. D. 40, n. 495
Ker, *Re* (1850), 12 Beav. 390, C. A. 779
Kerford *v.* Mondel (1849), 28 L. J. (EX.) 303 287
Kerly, Son and Verden, *Re*, [1901] 1 Ch. 467; 70 L. J. (CH.) 189; 83 L. T. 699; 49 W. R. 211; 17 T. L. R. 189, C. A. 831
Kern *v.* Deslandes (1861), 10 C. B. (N. S.) 205; 30 L. J. (C. P.) 297; 5 L. T. 349; 8 Jur. (N. S.) 194 84, 148, 173, 286
Kernaghan *v.* Wadeson (1855), 3 C. L. R. 764 774
Keroula, The (1886), 11 P. D. 92; 55 L. J. (P.) 45; 55 L. T. 61; 35 W. R. 60; 6 Asp. M. L. C. 23 37
Kerswill *v.* Bishop (1832), 2 Cr. & J. 529; 1 L. J. (EX.) 227; 2 Tyr. 602 . . 299
Keslake *v.* Board of Trade, [1903] 2 K. B. 453; 72 L. J. (K. B.) 829; 89 L. T. 534; 67 J. P. 356; 19 T. L. R. 583; 52 W. R. 127; 9 Asp. M. L. C. 491 47
Kestrel, The (1866), L. R. 1 A. & E. 78; 12 Jur. (N. S.) 713 25
——— (1881), 6 P. D. 182; 45 L. T. 111; 30 W. R. 182; 4 Asp. M. L. C. 433 594, 595
"Kestrel," The, Morton *v.* Hutchinson, The "Frankland." *See* Morton *v.* Hutchinson, The "Frankland" and The "Kestrel."
Kettlewell *v.* Barstow (1872), 20 W. R. 621 818
Key *v.* Cotesworth (1852), 7 Exch. 595; 22 L. J. (EX.) 4 160, 161
Kiddle *v.* Kidston (1884), 14 L. R. Ir. 1 331
Kidston *v.* M'Arthur (1878), 5 R. (Ct. of Sess.) 936; 15 Sc. L. R. 631 . . 406
Kienran *v.* Brereton (1866), 17 I. C. L. R. 203; 11 Ir. Jur. (N. S.) 417 . . 778
Kilkenny Corporation, *Re*, *Ex parte* Shortal, [1904] 1 I. R. 570; 39 I. L. T. 5 . 764
Killeena, The (1881), 6 P. D. 193; 51 L. J. (P.) 11; 45 L. T. 621; 30 W. R. 339; 4 Asp. M. L. C. 472 563
Kilmaho, The (1900), 16 T. L. R. 155, C. A. 572
Kimpton *v.* Eve (1813), 2 Ves. & B. 349 850
King, The (1911), 27 T. L. R. 524 412, 420, 437, 455
King, *Ex parte*, *Re* Jones. *See* Jones, *Re*, *Ex parte* King.
——, *Re* (1846), 8 Q. B. 129; 15 L. J. (Q. B.) 2; 10 Jur. 7 849
——, *Re* (1910), 74 J. P. 445 788
—— *v.* Franklin (1858), 1 F. & F. 360 329
—— *v.* Hinde (1883), 12 L. R. Ir. 113 128, 194, 201
—— *v.* Savery (1856), 8 De G. M. & G. 311; 2 Jur. (N. S.) 431; 4 W. R. 471, C. A. 794
—— *v.* Smith, [1900] 2 Ch. 425; 69 L. J. (CH.) 598; 83 L. T. 815; 16 T. L. R. 410 744, 745
King Alfred, H.M.S. (1913), 109 L. T. 956; 30 T. L. R. 102 449
King's County, The (1904), 20 T. L. R. 202 397, 463
"Kingalock," The (1854), 1 Ecc. & Ad. 263 562, 568, 571
Kingdon and Wilson, *Re*, [1902] 2 Ch. 242; 71 L. J. (CH.) 604; 86 L. T. 639; 50 W. R. 533; 18 T. L. R. 588, C. A. 775, 776
Kingsland, The, [1911] P. 17; 80 L. J. (P.) 33; 105 L. T. 143; 27 T. L. R. 75; *sub nom.* Davies-Evans *v.* Ladoga, Ltd. (The "Kingsland"), 16 Com. Cas. 18. 276, 277, 646
Kingston-by-Sea, The (1850), 3 Wm. Rob. 152 444, 488, 492, 493
Kinneir, *Re*, *Ex parte* Price (1858), 7 W. R. 175; 5 Jur. (N. S.) 423 . . . 789
Kirby *v.* "Scindia" (Owners), The "Scindia" (1866), L. R. 1 P. C. 241; 12 Jur. (N. S.) 534; 4 Moo. P. C. C. (N. S.) 84 586
Kirby Hall, The (1883), 8 P. D. 71; 22 L. J. (P.) 31; 48 L. T. 797; 31 W. R. 448; 5 Asp. M. L. C. 90 417, 423, 424
Kirchner *v.* Venus (1859), 12 Moo. P. C. C. 361; 5 Jur. (N. S.) 395; 7 W. R. 455 135, 283, 284, 296, 303, 304, 312
Kirk *v.* Gibbs (1857), 1 H. & N. 810; 26 L. J. (EX.) 209 . . . 186, 191, 192, 200
Kirkwood *v.* Webster (1878), 9 Ch. D. 239; 47 L. J. (CH.) 880; 26 W. R. 812 . 804
Kish *v.* Cory (1875), L. R. 10 Q. B. 553; 44 L. J. (Q. B.) 205; 32 L. T. 670; 23 W. R. 880; 2 Asp. M. L. C. 593 126, 134, 135
—— *v.* Taylor, [1911] 1 K. B. 625; 80 L. J. (K. B.) 601; 103 L. T. 785; 27 T. L. R. 174; 16 Com. Cas. 59; 11 Asp. M. L. C. 544, C. A.; reversed, [1912] A. C. 604; 81 L. J. (K. B.) 1027; 106 L. T. 900; 56 Sol. Jo. 518; 28 T. L. R. 425; 17 Com. Cas. 355; 49 Sc. L. R. 1046 . 83, 94, 95, 96, 97, 135, 143, 209, 218, 221, 227, 285, 286, 290, 326

PAGE
Kite *v.* Mileman (1833), 2 Moo. & S. 616 832
Kiteley *v.* Scofield (1842), 6 Jur. 1059 778
Kitts *v.* Atlantic Transport Co. (1902), 18 T. L. R. 739; 7 Com. Cas. 227 . . 150
Kjobenhavn, The (1874), 30 L. T. 136; 2 Asp. M. L. C. 213 . . 369, 381, 439, 498, 536
Klein *v.* Lindsay, [1911] A. C. 194; 80 L. J. (P. C.) 161; 104 L. T. 261; 48 Sc. L. R. 326 77, 212
Kleinwort, Cohen & Co. *v.* Cassa Marittima of Genoa (1877), 2 App. Cas. 156; 36 L. T. 118; 25 W. R. 608; 3 Asp. M. L. C. 358 . . 230, 231, 242, 243, 244, 245, 253
Knaresbro, The (1900), [1907] P. 38, n.; *Shipping Gazette*, November 10th, 1900 440, 466, 467
Knarwater, The (1894), 63 L. J. (P.) 65; 6 R. 784, C. A. 420, 492
Knight, *Re*, Knight *v.* Gardner, [1892] 2 Ch. 368; 61 L. J. (CH.) 399; 66 L. T. 646; 40 W. R. 460 819, 824
——— *v.* Bowyer (1858), 2 De G. & J. 421; 27 L. J. (CH.) 520; 4 Jur. (N. S.) 569; 6 W. R. 565, C. A.. 772
——— *v.* Cambridge (1724), 8 Mod. Rep. 230 112
——— *v.* Faith (1850), 15 Q. B. 649; 19 L. J. (Q. B.) 509; 14 Jur. 1114 . 75
Knight Errant, The, Comet (Owners) *v.* W. H. No. 1 (Owners) The, The W. H. No. 1. *See* Comet (Owners) *v.* W. H. No. 1 (Owners), The, The W. H. No. 1 and the Knight Errant.
Knight Steamship Co. *v.* Fleming, Douglas & Co. (1898), 25 R. (Ct. of Sess.) 1070; 35 Sc. L. R. 834; 6 Scots Law Times, 95 266, 268
Knill *v.* Hooper (1856), 2 H. & N. 277; 26 L. J. (EX.) 377; 5 W. R. 791 . . 216
Knox, *Re*, *Ex parte* Baker (1837), 1 Jur. 894 845
Knutsford S.S., Ltd. *v.* Tillmans & Co., [1908] A. C. 406; 77 L. J. (K. B.) 977; 99 L. T. 399; 24 T. L. R. 786; 13 Com. Cas. 334 . . . 132, 139, 259
Kolpino, The (1904), 73 L. J. (P.) 29 571
Kong Magnus, The, [1891] P. 223; 63 L. T. 715; 6 Asp. M. L. C. 583 . 538, 545, 627
Koning Willem I., The, [1903] P. 114; 72 L. J. (P.) 28; 88 L. T. 807; 9 Asp. M. L. C. 425 13, 420
Koning Willem II., The, [1908] P. 125; 77 L. J. (P.) 65; 98 L. T. 13; 10 Asp. M. L. C. 591, C. A. 451
Kopitoff *v.* Wilson (1876), 1 Q. B. D. 377; 45 L. J. (Q. B.) 436; 34 L. T. 677; 24 W. R. 706; 3 Asp. M. L. C. 163 187, 214, 216
Kostroma (Owners) *v.* Chittagong (Owners), The Chittagong. *See* Chittagong, The, Kostroma (Owners) *v.* Chittagong (Owners).
Krall *v.* Burnett (1877), 25 W. R. 305 141
Kreeft *v.* Thompson, Gabarron *v.* Kreeft. *See* Gabarron *v.* Kreeft, Kreeft *v.* Thompson.
Krog & Co. *v.* Burns and Lindemann (1903), 5 F. (Ct. of Sess.) 1189; 40 Sc. L. R. 874; 11 Scots Law Times, 267 193
"Kronprinz," The (Owners of Cargo) *v.* The "Kronprinz" (Owners), The "Ardandhu" (1887), 12 App. Cas. 256; 56 L. J. (P.) 49; 56 L. T. 345; 35 W. R. 783; 6 Asp. M. L. C. 124 616
Kruger & Co., Ltd. *v.* Moel Tryvan Ship Co., Ltd., [1907] A. C. 272; 76 L. J. (K. B.) 985; 97 L. T. 143; 23 T. L. R. 677 87, 174, 175
Kruuse *v.* Drynan & Co. (1891), 18 R. (Ct. of Sess.) 1110; 28 Sc. L. R. 958 . 121, 277
"Kwang Tung" (Owner) *v.* "Ngapoota" (Owners), The "Ngapoota," [1897] A. C. 391; 66 L. J. (P. C.) 88 457, 504
Kynaston *v.* Nicholson (1863), 1 Mar. L. C. 350 137

L.

LA "BOURGOGNE," Compagnie Générale Transatlantique *v.* Law (Thomas) & Co. *See* Compagnie Générale Transatlantique *v.* Law (Thomas) & Co., La "Bourgogne."
Lacey & Son, *Re* (1883), 25 Ch. D. 301; 53 L. J. (CH.) 287; 49 L. T. 755; 32 W. R. 233, C. A. 766, 789
Lack *v.* Seward (1829), 4 C. & P. 106 489, 495, 512, 513, 514, 516
Lacon *v.* Liffen (1862), 4 Giff. 75; 32 L. J. (CH.) 25; 7 L. T. 411; 9 Jur. (N. S.) 13; 11 W. R. 135; affirmed (1863), 32 L. J. (CH.) 315; 7 L. T. 774; 9 Jur. (N. S.) 477; 11 W. R. 474 24
La Cour *v.* Donaldson & Son (1874), 1 R. (Ct. of Sess.) 912; 11 Sc. L. R. 524 . 260
Lady Anne, The (1850), 15 Jur. 18 367, 452, 493

PAGE
Lady Downshire, The (1878), 4 P. D. 26; 48 L. J. (P.) 41; 39 L. T. 236; 27 W. R. 648; 4 Asp. M. L. C. 25 481
Lady of the Lake, The (1870), L. R. 3 A. & E. 29; 39 L. J. (ADM.) 40; 21 L. T. 683; 18 W. R. 528 37
Lady Wodehouse, The (1886), 2 T. L. R. 252, C. A. 483
"Lady Worsley," The (1855), 2 Ecc. & Ad. 253 580
Ladywell Mining Co. *v.* Huggons, [1885] W. N. 55 834
Laertes, Cargo ex (1887), 12 P. D. 187; 56 L. J. (P.) 108; 57 L. T. 502; 36 W. R. 111; 6 Asp. M. L. C. 174 107, 115, 190, 216, 217, 565
Laffitte (Charles) & Co., Ltd., *Re*, Laffitte's Claim (1875), L. R. 20 Eq. 650; 44 L. J. (CH.) 633; 33 L. T. 91; 24 W. R. 7 802
Lagos *v.* Grunwaldt, [1910] 1 K. B. 41; 79 L. J. (K. B.) 85; 101 L. T. 620; 54 Sol. Jo. 216; 26 T. L. R. 69, C. A. 812
Laidler *v.* Elliott (1825), 3 B. & C. 738 755
Laing *v.* Hollway (1878), 3 Q. B. D. 437; 47 L. J. (Q. B.) 512; 26 W. R. 769, C. A. 122, 123, 128, 129
—— *v.* Zeden, Hathesing *v.* Laing. *See* Hathesing *v.* Laing, Laing *v.* Zeden.
—— (Sir James) & Sons, Ltd. *v.* Barclay, Curle & Co., Ltd., [1908] A. C. 35; [1908] S. C. (House of Lords) 1; 37 L. J. (P. C.) 33; 97 L. T. 816; 10 Asp. M. L. C. 583. 15
Laird *v.* Brownlie, The Ulster (1862), 1 Moo. P. C. C. (N. S.) 31; 6 L. T. 736 . 499
Lamb, *Re* (1889), 23 Q. B. D. 5; 58 L. J. (Q. B.) 455; 37 W. R. 506 . . 775
——, *Re* (1889), 23 Q. B. D. 477; 58 L. J. (Q. B.) 450; 61 L. T. 374; 37 W. R. 665, C. A. 849
—— *v.* Kaselach, Alsen & Co. (1882), 9 R. (Ct. of Sess.) 482; 19 Sc. L. R. 336 . . 274, 284
Lambert *v.* Still, *Re* Webb. *See* Webb, *Re*, Lambert *v.* Still.
Laming & Co. *v.* Seater (1889), 15 R. (Ct. of Sess.) 828; 26 Sc. L. R. 500 . . 25
Lancashire, The (1874), L. R. 4 A. & E. 198; 29 L. T. 927; 2 Asp. M. L. C. 202 417, 498
Lancaster, The (1883), 9 P. D. 14; 49 L. T. 705; 36 W. R. 608; 5 Asp. M. L. C. 58, C. A. 581
Landauer & Co. *v.* Craven and Speeding Brothers, [1912] 2 K. B. 94; 81 L. J. (K. B.) 650; 106 L. T. 298; 56 Sol. Jo. 274; 17 Com. Cas. 193 . . 149, 161
Landor, *Re*, [1899] 1 Ch. 818; 68 L. J. (CH.) 373; 80 L. T. 643; 47 W. R. 457 779
Lane *v.* Glenny (1837), 7 Ad. & El. 83; 6 L. J. (K. B.) 218; 1 Jur. 475; 2 Nev. & P. (K. B.) 258; 1 Will. Woll. & H. 479 774, 813
—— *v.* Nixon (1866), L. R. 1 C. P. 412; 35 L. J. (C. P.) 243; 12 Jur. (N. S.) 392; 14 W. R. 641 213
Langdale, The (1907), 76 L. J. (P.) 154; 23 T. L. R. 683 612
Langdon *v.* Godfrey (1865), 4 F. & F. 445 757
Langford (Lady) *v.* Mahony (1843), 4 Dr. & War. 81; 5 I. Eq. R. 569; 2 Con. & Law. 317 782
———— *v.* ———— (1845), 3 Jo. & Lat. 97 798
———— *v.* Nott (1820), 1 Jac. & W. 291 784
Langford, S.S. (Owners) *v.* Canadian Forwarding and Export Co. (1907), 96 L. T. 559 99
Langham Steamship Co., Ltd. *v.* Gallagher, [1911] 2 I. R. 348; 12 Asp. M. L. C. 109 131, 265, 266
Langley, *Ex parte*, *Ex parte* Smith, *Re* Bishop. *See* Bishop, *Re*, *Ex parte* Langley, *Ex parte* Smith.
Langridge *v.* Lynch (1876), 34 L. T. 695 836
Langstaffe *v.* Taylor (1807), 14 Ves. 262 785
Langton, The, Nelson *v.* Fawcett, The Resolution. *See* Nelson *v.* Fawcett, The Resolution, The Langton.
Langton *v.* Horton (1842), 5 Beav. 9; 11 L. J. (CH.) 233; 6 Jur. 357 . 22, 24
Lann *v.* Church (1820), 4 Madd. 391 820
Lannoy *v.* Werry (1717), 4 Bro. Parl. Cas. 630 126
Lanphier *v.* Phipos (1854), 8 C. & P. 475 754
La Plata, The (1857), Sw. 220; reversed (1857), Sw. 298 . . 468, 492, 494, 496
"Lapwing," The, China Merchants' Steam Navigation Co. *v.* Bignold, The "Hochung." *See* China Merchants' Steam Navigation Co. *v.* Bignold, The "Hochung," The "Lapwing."
Larnax, The, The C. M. Palmer. *See* C. M. Palmer, The, The Larnax.
Larsen *v.* Hart (1900), 37 Sc. L. R. 924; 2 Fraser (Justiciary Cases), 54; 8 Scots Law Times, 146; 3 Adam, 183 81

PAGE
Larsen *v.* Sylvester & Co., [1908] A. C. 295; 77 L. J. (K. B.) 993; 99 L. T. 94; 24 T. L. R. 640; 13 Com. Cas. 328 132, 139, 201
Latham *v.* Chartered Bank of India (1874), L. R. 17 Eq. 205; 43 L. J. (CH.) 612; 29 L. T. 795; 2 Asp. M. L. C. 178 162
——— *v.* Hide (1832), 1 Dowl. 594; 2 L. J. (EX.) 72; 1 Cr. & M. 128; 3 Tyr. 143 816
Latimer, Clarke, Muirhead & Co., Ltd., *Ex parte, Re* Morse. *See* Morse, *Re, Ex parte* Latimer, Clarke, Muirhead & Co., Ltd.
Latuch *v.* Pasherant (1796), 1 Salk. 86 744
Laurel, The (1863), Brown. & Lush. 191; 33 L. J. (P. M. & A.) 17; 9 L. T. 457...71, 73
Laurie *v.* Douglas (1846), 15 M. &. W. 746 110, 115, 225, 326
Lauritzen *v.* Carr (1894), 72 L. T. 56 159
Laveroni *v.* Drury (1852), 8 Exch. 166; 22 L. J. (EX.) 2; 16 Jur. 1024; 1 W. R. 55 111, 195, 214, 224, 232
Law *v.* Hollingsworth (1797), 7 Term Rep. 160 213, 215
—— and Gould, *Re* (1856), 21 Beav. 481 791
Law Guarantee and Trust Society *v.* Russian Bank for Foreign Trade, [1905] 1 K. B. 815; 74 L. J. (K. B.) 577; 92 L. T. 435; 21 T. L. R. 383; 10 Com. Cas. 159; 10 Asp. M. L. C. 41, C. A. 25, 26, 85, 299
Law Society, *Ex parte, Re* D. *See* D., *Re, Ex parte* Law Society.
———, *Ex parte, Re* a Solicitor. *See* Solicitor, a, *Re, Ex parte* Law Society.
——— *v.* Waterlow, Same *v.* Skinner (1883), 8 App. Cas. 407; 52 L. J. (Q. B.) 674; 49 L. T. 141; 31 W. R. 754 857
Lawford *v.* Spicer (1856), 2 Jur. (N. S.) 564; 4 W. R. 497 831
Lawrance, *Re*, Bowker *v.* Austin, [1894] 1 Ch. 556; 63 L. J. (CH.) 205; 70 L. T. 91; 42 W. R. 265; 8 R. 102 817
Lawrence *v.* Aberdein (1821), 5 B. & Ald. 107 110
——— *v.* Campbell (1859), 4 Drew. 485; 28 L. J. (CH.) 780; 5 Jur. (N. S.) 1071; 7 W. R. 336 726
——— *v.* Fletcher (1879), 12 Ch. D. 858; 27 W. R. 937 846
——— *v.* Harrison (1654), Sty. 426 735, 738
——— *v.* Potts (1834), 6 C. & P. 428 739
———, Crowdy and Bowlby, *Re, Ex parte* Burdon (1854), 2 Sm. & G. 367; 23 L. J. (CH.) 791; 18 Jur. 742; 2 W. R. 680; 2 Eq. Rep. 931 759, 838, 840
———, *Re*, Chater *v.* Maclean (1855), 3 Eq. Rep. 375 . 838
Lawson *v.* Burness (1862), 1 H. & C. 396; 10 W. R. 733 . . . 102, 127, 128, 200
——— *v.* Dumlin (1850), 9 C. B. 54 525
Lawton *v.* Elwes, *Re* Corsellis. *See* Corsellis, *Re*, Lawton *v.* Elwes.
Layton, Steele & Co., *Re*, [1890] W. N. 112 786
———, *Re* (1890), 38 W. R. 652 778, 789
Leach & Co. *v.* Royal Mail Steam Packet Co. (1910), 104 L. T. 319; 16 Com. Cas. 143 266
Leadbitter, *Re* (1878), 10 Ch. D. 388; 48 L. J. (CH.) 242; 39 L. T. 286; 27 W. R. 267, C. A. 782, 784
Leah, *Re, Ex parte* Jabet (1860), 2 L. T. 72; 6 Jur. (N. S.) 387, C. A. . . 818
Learoyd *v.* Alston, [1913] A. C. 529; 57 Sol. Jo. 684 . . . 736, 753, 757
——— *v.* Brooke, [1891] 1 Q. B. 431; 60 L. J. (Q. B.) 373; 64 L. T. 458; 55 J. P. 265; 39 W. R. 480 713
Leary *v.* Lloyd (1860), 3 E. & E. 178; 29 L. J. (M. C.) 194; 6 Jur. (N. S.) 1246 . 61
Leask *v.* Scott (1877), 2 Q. B. D. 376; 46 L. J. (Q. B.) 576; 36 L. T. 784; 25 W. R. 654; 3 Asp. M. L. C. 469, C. A. 147, 163
Leather *v.* Simpson (1871), L. R. 11 Eq. 398; 40 L. J. (CH.) 177; 24 L. T. 286; 19 W. R. 431; 1 Asp. M. L. C. 5 162
"Lebanon" (Owners) *v.* "Ceto" (Owners), The "Ceto" (1889), 14 App. Cas. 670; 62 L. T. 1; 6 Asp. M. L. C. 479 420, 424, 455, 456, 457, 458, 460
Lebeau *v.* General Steam Navigation Co. (1872), L. R. 8 C. P. 88; 42 L. J. (C. P.) 1; 27 L. T. 447; 21 W. R. 146; 1 Asp. M. L. C. 435 . . 99, 155, 197
Le Blanch *v.* Granger (1866), 35 Beav. 187 84
Le Brasseur and Oakley, *Re*, [1896] 2 Ch. 487; 65 L. J. (CH.) 763; 74 L. T. 717; 45 W. R. 87, C. A. 794, 796
Le Cheminant *v.* Pearson (1812), 4 Taunt. 367 211
Le Doulcet's Mortgage, *Re, Re* Blanchard. *See* Blanchard, *Re, Re* Le Doulcet's Mortgage.
Leduc *v.* Ward (1888), 20 Q. B. D. 475; 57 L. J. (Q. B.) 379; 58 L. T. 908; 36 W. R. 537; 6 Asp. M. L. C. 290, C. A. . . 74, 94, 95, 96, 97, 140, 145, 148, 153, 166, 172

PAGE
Lee, *Ex parte* (1860), 8 W. R. 541 714
—— *v.* Barne, *Re* Barne. *See* Barne, *Re*, Lee *v.* Barne.
—— *v.* Dixon (1863), 3 F. & F. 744 755, 756
—— *v.* Everest (1857), 2 H. & N. 285; 26 L. J. (EX.) 334; 5 W. R. 759 . . 836
—— *v.* Sankey (1873), L. R. 15 Eq. 204; 27 L. T. 809; 21 W. R. 286 . . 734
Leech *v.* Glynn & Son (1890), 6 T. L. R. 306 149
Leedham *v.* Baxter (1856), 4 W. R. 241 830, 831
Leeds Forge Co., Ltd. *v.* Deighton's Patent Flue and Tube Co., Ltd., [1903] 1 Ch. 475; 72 L. J. (CH.) 294; 87 L. T. 711; 51 W. R. 380; 20 R. P. C. 185 . 800
Leer *v.* Yates (1811), 3 Taunt. 387 121, 271, 274
Lees, *Re* (1844), 5 Beav. 410; 13 L. J. (CH.) 151 781, 783
—— *v.* Nuttall (1834), 2 My. & K. 284; 4 L. J. (CH.) 124 . . . 781, 791
—— *v.* Reffitt (1835), 3 Ad. & El. 707 822
Leete *v.* Leete (1879), 48 L. J. (P.) 61; 40 L. T. 788; 27 W. R. 921 . . . 817
Leeuw, *Re*, Rein *v.* Wrathall (1892), 93 L. T. Jo. 333 768
Legatus, The (1856), Sw. 168; 5 W. R. 154 539, 547
———— *v.* The Emily (1865), Holt (ADM.), 217 371
Leggatts and Carruthers, *Re* (1908), 53 Sol. Jo. 84 788
Leidemann *v.* Schultz (1853), 14 C. B. 38; 23 L. J. (C. P.) 17; 18 Jur. 42; 2 C. L. R. 87 128, 140, 201
Leith, The (1849), 7 Notes of Cases, 137 465
Leith, Hull and Hamburg Steam Packet Co. *v.* Lord Advocate (1873), 11 Macph. (Ct. of Sess.) 597 19
Leitrim, The, [1902] P. 256; 71 L. J. (P.) 108; 87 L. T. 240; 51 W. R. 158; 18 T. L. R. 819; 8 Com. Cas. 6; 9 Asp. M. L. C. 317 321
Le Jonet, The (1872), L. R. 3 A. & E. 556; 41 L. J. (ADM.) 95; 27 L. T. 387; 21 W. R. 83; 1 Asp. M. L. C. 438 557, 567, 579
Lemington, The (1874), 32 L. T. 69; 23 W. R. 421; 2 Asp. M. L. C. 475 . 527, 619
Lena, The, The Hannah Park. *See* Hannah Park, The, and The Lena.
Lennard *v.* Robinson (1855), 5 E. & B. 125; 24 L. J. (Q. B.) 275; 1 Jur. (N. S.) 853; 3 C. L. R. 1363 90
Leo, The (1862), Lush. 444; 31 L. J. (P. M. & A.) 78; 6 L. T. 58 . 303, 545, 619
Leon. The (1881), 6 P. D. 148; 50 L. J. (P.) 59; 44 L. T. 613; 29 W. R. 916; 4 Asp. M. L. C. 404 502
Leonard *v.* Leyland & Co. (1902), 18 T. L. R. 727 212
Leonhardt *v.* Kalle, [1895] W. N. 97 802
Leonidas, The (1841), Stuart's Vice-Admiralty Court Cases, Lower Canada, 226...493
Leonis Steamship Co., Ltd. *v.* Rank, Ltd., [1908] 1 K. B. 499; 77 L. J. (K. B.) 224; 24 T. L. R. 128; 53 Sol. Jo. 621; 13 Com. Cas. 136, C. A. . 127, 182, 183, 184, 260, 261, 262
———————— *v.* ———— (No. 2) (1908), 24 T. L. R. 280; 13 Com. Cas. 161; affirmed (1908), 99 L. T. 513; 24 T. L. R. 749; 13 Com. Cas. 295, C. A. 124, 132
Lepanto, The, [1892] P. 122; 66 L. T. 623; 7 Asp. M. L. C. 192 . 560, 564, 575
Leptir, The (1885), 52 L. T. 768; 5 Asp. M. L. C. 411 236, 314
Leslie, *Ex parte*, *Re* Drury and Hudson. *See* Drury and Hudson, *Re*, *Ex parte* Leslie.
—— *v.* Guthrie (1835), 1 Bing. (N. C.) 697; 1 Scott, 683; 4 L. J. (C. P.) 227 . 302
—— *v.* Wilson (1821), 3 Brod. & Bing. 171; 6 Moore (C. P.), 415 . . . 89
Letchford *v.* Oldham (1880), 5 Q. B. D. 538; 49 L. J. (Q. B.) 458; 28 W. R. 789, C. A. 110, 114
Lethulier's Case (1692), 2 Salk. 443 83
Letricheux and David *v.* Dunlop & Co., The Abertawe (1891), 19 R. (Ct. of Sess.) 209; 29 Sc. L. R. 182 121, 131, 278
Lett, *Re* (1862), 31 Beav. 488; 32 L. J. (CH.) 100; 7 L. T. 303; 8 Jur. (N. S.) 1119; 11 W. R. 15; 1 New Rep. 8 789, 792
————, *Ex parte* Parry (1861), 5 L. T. 416; 10 W. R. 6 795
Leuw *v.* Dudgeon (1867), L. R. 3 P. C. 17, n.; 37 L. J. (C. P.) 5, n.; 17 L. T. 145; 16 W. R. 80 111, 116, 212, 225
Leverington, The (1886), 11 P. D. 117; 55 L. J. (P.) 78; 55 L. T. 386; 6 Asp. M. L. C. 7, C. A. 376, 426, 441, 454, 466
Levetus *v.* Newton (1883), 28 Sol. Jo. 166 805
Levy *v.* Barnard (1818), 8 Taunt. 149 287
—— *v.* Costerton (1816), 4 Camp. 389 81, 213
—— *v.* Pyne (1842), Car. & M. 453 759
—— *v.* Walker (1879), 10 Ch. D. 436; 48 L. J. (CH.) 273; 39 L. T. 654; 27 W. R. 370, C. A. 843

PAGE
Lewes *v.* Morgan (1817), 5 Price, 42 788, 838, 840
Lewin, *Re* (1853), 16 Beav. 608; 1 W. R. 269 791
Lewis, *Ex parte* (1844), 13 L. J. (Q. B.) 261; 2 Dan. & Ll. 130; 8 Jur. 539 . 716
——, *Ex parte*, *Re* Bassett. *See* Bassett, *Re*, *Ex parte* Lewis.
——, *Re*, *Ex parte* Munro (1876), 1 Q. B. D. 724; 45 L. J. (Q. B.) 816; 35 L. T. 857; 24 W. R. 1017 771
—— *v.* Collard (1853), 14 C. B. 208; 23 L. J. (C. P.) 32; 2 W. R. 105; 2 C. L. R. 1345 755
—— *v.* Cory, [1906] W. N. 95; 121 L. T. Jo. 39, C. A. 834
—— *v.* Gray (1876), 1 C. P. D. 452; 45 L. J. (Q. B.) 720; 34 L. T. 421; 3 Asp. M. L. C. 136 81
—— *v.* Hillman (1852), 3 H. L. Cas. 607. 749
—— *v.* Jewhurst (1866), 15 L. T. 275 5 5
—— *v.* M'Kee (1868), L. R. 4 Exch. 58; 38 L. J. (EX.) 62; 19 L. T. 522; 17 W. R. 325 148, 157, 166, 292
—— *v.* Marshall (1844), 7 Man. & G. 729; 8 Scott (N. R.), 729; 13 L. J. (C. P.) 193; 8 Jur. 848 100, 141, 191
—— *v.* Nicholson (1852), 18 Q. B. D. 503; 21 L. J. (Q. B.) 311; 16 Jur. 1041. . 830
—— *v.* Powell, [1897] 1 Ch. 678; 66 L. J. (CH.) 463; 76 L. T. 282; 45 W. R. 438 816
—— *v.* Primrose (1844), 6 Q. B. 265; 13 L. J. (Q. B.) 269; 8 Jur. 982 . . 776
—— *v.* Rochester Corporation (1860), 9 C. B. (N. S.) 401; 30 L. J. (C. P.) 169; 3 L. T. 300; 7 Jur. (N. S.) 680; 9 W. R. 100 732
—— *v.* Samuel (1846), 8 Q. B. 685; 15 L. J. (Q. B.) 218; 10 Jur. 429 . . 754
—— and Davies *v.* Burrell (1897), 77 L. T. 626 813
Leycester *v.* Logan (1857), 3 K. & J. 446; 26 L. J. (CH.) 306; 5 W. R. 334. 614, 616
Libra, The (1881), 6 P. D. 139; 45 L. T. 161; 4 Asp. M. L. C. 429, C. A. . 361, 427, 460, 483
Lickbarrow *v.* Mason (1794), 5 Term Rep. 683; 1 Smith, L. C., 11th ed., p. 693...146, 147, 157, 158, 167
Liddard *v.* Lopes (1809), 10 East, 526 . . 236, 239, 258, 305, 306, 314, 315
Lidgett *v.* Perrin (1861), 11 C. B. (N. S.) 362; 2 F. & F. 763 . . . 292, 312
—— *v.* Williams (1845), 4 Hare, 456; 14 L. J. (CH.) 459 . . 84, 138, 209
Lidskjalf, The (1856), Sw. 117 490
Liffey, The (1887), 58 L. T. 351; 6 Asp. M. L. C. 255 . . . 551, 556, 558
Lighter, The (No. 3) (1902), 18 T. L. R. 322 374, 380, 389, 494
Lightfoot *v.* Keane (1836), 1 M. & W. 745; 5 L. J. (EX.) 257; 2 Gale, 138 . 816
Ligo (1831), 2 Hag. Adm. 356 500
Liles *v.* Terry, [1895] 2 Q. B. 679; 65 L. J. (Q. B.) 34; 73 L. T. 428; 44 W. R. 116, C. A. 747, 748
Lilley, *Re*, [1892] 1 Q. B. 759; 61 L. J. (Q. B.) 311; 66 L. T. 271; 40 W. R. 321, C. A. 855
—— *v.* Moore, *Re* Shuttleworth. *See* Shuttleworth, *Re*, Lilley *v.* Moore.
—— *v.* Roney (1892), 61 L. J. (Q. B.) 727 852
Lilly *v.* Ewer (1779), 1 Doug. (K. B.) 72 83
—— & Co. *v.* Stevenson & Co. (1895), 22 R. (Ct. of Sess.) 278; 32 Sc. L. R. 212; 2 Scots Law Times, 434 120, 125, 126, 130, 131, 195, 201
——, Wilson & Co. *v.* Smales, Eeles & Co., [1892] 1 Q. B. 456; 40 W. R. 544, C. A. 90, 140
Lima (1837), 3 Hag. Adm. 346 59
Limerick, The (1876), 1 P. D. 411; 34 L. T. 708; 3 Asp. M. L. C. 206, C. A. . 29
Limland *v.* Stephens (1801), 3 Esp. 269 61
Linda, The (1857), Sw. 306 538, 547
Linda Flor, The (1857), Sw. 309; 4 Jur. (N. S.) 172; 6 W. R. 197 . . 622, 624
Lindsay *v.* Gibbs (1856), 22 Beav. 522; 2 Jur. (N. S.) 1039; 4 W. R. 788 . 299, 302, 303
——— *v.* —— (1859), 3 De G. & J. 690; 28 L. J. (CH.) 692; 5 Jur. (N. S.) 376; 7 W. R. 320, C. A. 36
——— *v.* Klein, The Tatjana, [1911] A. C. 194; 80 L. J. (C. P.) 161; 104 L. T. 261; 48 Sc. L. R. 326 218
——— *v.* Leathley (1863), 3 F. & F. 902; 11 L. T. 194 75
——— & Son *v.* Scholefield (1897), 24 R. (Ct. of Sess.) 530; 33 Sc. L. R. 404; 4 Scots Law Times, 291 88, 115, 325
"Linn o' Dee," The, Granite City Steamship Co. *v.* Ireland & Son. *See* Granite City Steamship Co. *v.* Ireland & Son, The "Linn o' Dee."
"Lion," The (1869), L. R. 2 P. C. 525; 38 L. J. (ADM.) 51; 21 L. T. 41; 6 Moo. P. C. C. (N. S.) 163; 17 W. R. 993 331, 610
Lippard *v.* Ricketts (1872), L. R. 14 Eq. 291; 41 L. J. (CH.) 595; 20 W. R. 898. 810

PAGE
Lipson *v.* Harrison (1853), 2 W. R. 10 579
Lipton *v.* Jescott Steamers (1895), 1 Com. Cas. 32, C. A. 147, 148
Lishman *v.* Christie (1887), 19 Q. B. D. 333; 56 L. J. (Q. B.) 538; 57 L. T. 552; 35 W. R. 744; 6 Asp. M. L. C. 186, C. A. 145, 146, 154
Lister *v.* Van Haansbergen (1876), 1 Q. B. D. 269; 45 L. J. (Q. B.) 495; 34 L. T. 446; 24 W. R. 395; 3 Asp. M. L. C. 145 133, 135
Litchfield *v.* Jones (1887), 36 Ch. D. 530; 57 L. J. (CH.) 100; 58 L. T. 20; 36 W. R. 397 838, 845
Litherland, *Re*, *Ex parte* Howden (1842), 2 Mont. D. & De G. 574; 11 L. J. (BCY.) 19 26
Little *v.* Burns (1881), 9 R. (Ct. of Sess.) 118; 19 Sc. L. R. 105 . 376, 418, 435, 481
——— *v.* Kingswood Collieries Co. (1882), 20 Ch. D. 733; 52 L. J. (CH.) 56; 47 L. T. 323; 31 W. R. 178, C. A. 735
——— *v.* Spreadbury, [1910] 2 K. B. 658; 79 L. J. (K. B.) 1119; 102 L. T. 829; 26 T. L. R. 552; 54 Sol. Jo. 618 744
——— *v.* Stevenson & Co., [1896] A. C. 108; 65 L. J. (P. C.) 69; 74 L. T. 529; 8 Asp. M. L. C. 162 98, 183, 184, 192, 193, 201
Little Joe, The (1860), Lush. 88; 2 L. T. 473; 6 Jur. (N. S.) 783 558
Lively, The (1848), 3 Wm. Rob. 64 568
Liver Alkali Co. *v.* Johnson (1874), L. R. 9 Exch. 338; 43 L. J. (EX.) 216; 31 L. T. 95; 2 Asp. M. L. C. 332 107, 196, 325, 326
Liverpool, The, [1893] P. 154; 68 L. T. 719; 1 R. 601; 7 Asp. M. L. C. 340 . 568
Liverpool Borough Bank *v.* Turner (1860), 1 John. & H. 159; 29 L. J. (CH.) 827; 6 Jur. (N. S.) 935; 8 W. R. 730; affirmed (1861), 2 De G. F. & J. 502; 30 L. J. (CH.) 379; 3 L. T. 494; 9 W. R. 292 16, 30
Liverpool, Brazil, and River Plate Steam Navigation Co. *v.* Campanhia Bahiana de Navegacio a Vapor, The Memnon (1889), 6 Asp. M. L. C. 488 . 446, 455
Liverpool Household Stores Association, *Re*, [1889] W. N. 48 . . . 780
Liverpool Marine Credit Co. *v.* Hunter (1868), 3 Ch. App. 479; 37 L. J. (CH.) 386; 18 L. T. 749; 16 W. R. 1090 29
——— *v.* Wilson (1872), 7 Ch. App. 507; 41 L. J. (CH.) 798; 26 L. T. 717; 20 W. R. 665 27, 28, 29, 301, 302, 303
Livia, The (1872), 25 L. T. 887; 1 Asp. M. L. C. 204 531
Livietta, The (1883), 8 P. D. 24; 48 L. T. 799; 31 W. R. 643; 5 Asp. M. L. C. 132 576
——— (1883), 8 P. D. 209; 52 L. J. (P.) 81; 49 L. T. 411; 5 Asp. M. L. C. 451 625, 825
Livingstone, The (1859), Sw. 519 390
Lizzie, The (1868), L. R. 2 A. & E. 254; 19 L. T. 71 230, 245
Llanelly, The (1913), 30 T. L. R. 154; [1914] P. 40 442
Llanover *v.* Homfray, [1884] W. N. 134 804
Llewellin, *Re*, [1891] 3 Ch. 145; 60 L. J. (CH.) 732; 65 L. T. 249; 39 W. R. 713 817
Lloyd, *Re*, Allen *v.* Lloyd (1879), 12 Ch. D. 447; 41 L. T. 171; 28 W. R. 8, C. A. 742
——— *v.* General Iron Screw Collier Co. (1864), 3 H. & C. 284; 33 L. J. (EX.) 269; 10 L. T. 586; 10 Jur. (N. S.) 661; 12 W. R. 882 . . 111, 114, 115, 216, 224, 233, 511
——— *v.* Gough, *Re* Gough. *See* Gough, *Re*, Lloyd *v.* Gough.
——— *v.* Grace, Smith & Co., [1912] A. C. 716; 81 L. J. (K. B.) 1140; 107 L. T. 531; 28 T. L. R. 547; 56 Sol. Jo. 723 746, 758, 759
——— *v.* Guibert (1865), L. R. 1 Q. B. 115; 6 B. & S. 100; 35 L. J. (Q. B.) 74; 13 L. T. 602 77, 141, 240, 242, 329
——— *v.* Iron (1865), 4 F. & F. 1011 648
——— *v.* Jones (1879), 40 L. T. 514; 27 W. R. 655 822, 826, 827
——— *v.* Mansell (1853), 22 L. J. (Q. B.) 110; Bail Ct. Cas. 130. . . . 823
——— *v.* Mason (1845), 4 Hare, 132; 14 L. J. (CH.) 257; 9 Jur. 772 . 818, 820, 821
——— *v.* Sheen (1905), 93 L. T. 174; 10 Asp. M. L. C. 75 47, 49, 60
Lloyd-George and George, *Ex parte, Re* Humphreys. *See* Humphreys, *Re, Ex parte* Lloyd-George and George.
Lochiel, The (1843), 2 Wm. Rob. 34 70
Lochlibo, The (1850), 3 Wm. Rob. 310; on appeal, *sub nom.* Pollok *v.* McAlpin, The Lochlibo (1851), 7 Moo. P. C. C. 427 488, 531, 532, 535
Lockhart *v.* Falk (1875), L. R. 10 Exch. 135; 44 L. J. (EX.) 105; 33 L. T. 96; 23 W. R. 753; 3 Asp. M. L. C. 8 . 125, 126, 133, 134, 135, 285
——— *v.* Hardy (1841), 4 Beav. 224 782
Lockie and Craggs & Sons, *Re* (1901), 86 L. T. 388; 7 Com. Cas. 7; 9 Asp. M. L. C. 296 130, 139

PAGE
Lockwoods, The (1845), 9 Jur. 1017 577
Lohden & Co. *v.* Calder & Co. (1898), 14 T. L. R. 311 146
Lohnes *v.* S.S. Barcelona (1884), 10 Quebec Law Reports, 305 412
Lomas *v.* Joseph (1909), 53 Sol. Jo. 271 766
London, H.M.S. (1913), 109 L. T. 950 ; 30 T. L. R. 196 537
London, The, [1904] P. 355 ; 73 L. J. (P.) 125 ; 91 L. T. 327 . . 361, 395, 411
London and Edinburgh Shipping Co. *v.* Eaton, The Iona (1867), 2 Mar. L. C. 479 485
London and Midland Bank *v.* Neilson (1895), 1 Com. Cas. 18 72, 73
London and Northern Steamship Co., Ltd. *v.* Central Argentine Rail. Co. (1913), 108 L. T. 527 132, 273
London and South Western Rail. Co. *v.* James (1872), 8 Ch. App. 241 ; 42 L. J. (CH.) 337 ; 28 L. T. 48 ; 21 W. R. 151 ; 1 Asp. M. L. C. 526 . . 613, 616
London Association of Shipowners and Brokers *v.* London and India Docks Joint Committee, [1892] 3 Ch. 242 ; 67 L. T. 238 ; 7 Asp. M. L. C. 195, C. A. 646
London, Brighton and South Coast Rail. Co., *Re*, *Re* Faithful. *See* Faithfull, *Re*, *Re* London, Brighton and South Coast Rail. Co.
London Corporation, *Ex parte* (1887), 34 Ch. D. 452 ; 56 L. J. (CH.) 308 ; 56 L. T. 13 ; 35 W. R. 210 762
——— *v.* Hunt (1681), 3 Lev. 37 638
London Joint Stock Bank *v.* British Amsterdam Maritime Agency (1910), 104 L. T. 143 ; 11 Asp. M. L. C. 571 ; 16 Com. Cas. 102 162, 164, 264, 265
——— *v.* Wightman, *Re* Caudery. *See* Caudery, *Re*, London Joint Stock Bank *v.* Wightman.
London Merchant (1837), 3 Hag. Adm. 394 570, 575, 576
London Metallurgical Co., *Re*, [1897] 2 Ch. 262 ; 66 L. J. (CH.) 635 ; 76 L. T. 829 ; 45 W. R. 601 ; 4 Mans. 172 735
London Steamship Owners' Insurance Co. *v.* Grampian Steamship Co. (1890), 24 Q. B. D. 663 ; 59 L. J. (Q. B.) 549 ; 62 L. T. 784 ; 38 W. R. 651 ; 6 Asp. M. L. C. 506, C. A. 520, 521
London Traders Shipping Co., Ltd. *v.* General Mercantile Shipping Co., Ltd. (1913), 29 T. L. R. 504 185
London Transport Co., Ltd. *v.* Bessler, Waechter & Co., Ltd. (1908), 24 T. L. R. 531 ; 52 Sol. Jo. 442 218
——— *v.* Trechmann Brothers, [1904] 1 K. B. 635 ; 73 L. J. (K. B.) 253 ; 90 L. T. 132 ; 9 Com. Cas. 133 ; 9 Asp. M. L. C. 518, C. A. . 142, 294, 303, 310
Londonderry (Owners) *v.* Dolbadarn Castle (Owners) (1845), 4 Notes of Cases, Supplement, xxxi. 379, 486
Lonergan *v.* Royal Exchange Assurance (1831), 7 Bing. 729 ; 1 Dowl. 233 ; 5 Moo. & P. 805 802
Long, *Re*, *Ex parte* Fuller (1881), 16 Ch. D. 617 ; 50 L. J. (CH.) 448 ; 44 L. T. 63 ; 29 W. R. 448 816
Longbottam & Sons, *Re*, [1904] 2 Ch. 152 ; 73 L. J. (CH.) 681 ; 90 L. T. 801, C. A. 783
Longford, The (1881). 6 P. D. 60 ; 50 L. J. (P.) 28 ; 29 W. R. 491 ; 4 Asp. M. L. C. 385 586
——— (1889), 14 P. D. 34 ; 58 L. J. (P.) 33 ; 60 L. T. 373 ; 37 W. R. 372 ; 6 Asp. M. L. C. 371, C. A. 545
Longnewton. The (1888). 6 Asp. M. L. C. 302 ; 59 L. T. 260 . . . 445, 483
Lopes *v.* de Tastet (1822), 7 Moore (C. P.), 120 ; 3 Brod. & Bing. 292 . . 802
Lord *v.* Kellett (1833). 2 My. & K. 1 741
Lord Advocate *v.* Clyde Steam Navigation Co. (1875). L. R. 2 Sc. & Div. 409 ; 32 L. T. 287 ; 2 Rettie (House of Lords), 23 ; 2 Asp. M. L. C. 502 19
——— *v.* Stewart (No. 2) (1899), 63 J. P. 473 804
Lord Bangor. The, [1896] P. 28 ; 65 L. J. (P.) 6 ; 73 L. T. 414 ; 11 R. 822 ; 8 Asp. M. L. C. 217 492
Lord Byron, The (1879), cited in 1 Maude and Pollock, Law of Merchant Shipping, 4th ed., p. 607, note (k) 408
Lord Cochrane, The (1842). 1 Wm. Rob. 312 ; (1844), 2 Wm. Rob. 320 . 245, 246
Lord Nelson (1809), Edw. 79 561
Lord Saumarez, The (1848). 6 Notes of Cases, 600 415, 419
Loughborough, *Re* (1857), 23 Beav. 439 789
Loughborough, The (1904), *Shipping Gazette*, December 20th 37
Louis. *Re*, *Ex parte* Incorporated Law Society, [1891] 1 Q. B. 649 ; 60 L. J. (Q. B.) 500 ; 64 L. T. 565 ; 39 W. R. 511 857
Louisa (1813), 1 Dods. 317 569

PAGE
Louisa, The (1843), 2 Wm. Rob. 22 573, 582
——— (1848), 3 Wm. Rob. 99 624, 626
———, [1906] P. 145; 75 L. J. (P.) 76; 94 L. T. 558; 10 Asp. M. L. C. 256 . 575
——— *v.* The City of Paris (1864) Holt (ADM.), 15 385, 403
Louise, The (1902), 18 T. L. R. 19 503
Love, *Ex parte*, *Re* Williams. *See* Williams, *Re*, *Ex parte* Love.
——-, *Re*, Hill *v.* Spurgeon (1885), 29 Ch. D. 348; 54 L. J. (CH) 816; 52 L T. 398; 33 W. R. 449, C. A. 798
——-, *Re*, —— *v.* ——— (1889), 40 Ch. D. 637; 58 L. J. (CH.) 272; 60 L. T. 254; 37 W. R. 475 761
—— *v.* Hills, *Re* Miller, *Re* French. *See* Miller, *Re*, *Re* French, Love *v.* Hills.
Love Bird, The (1881), 6 P. D. 80; 44 L. T. 650; 4 Asp. M. L. C. 427 . 363, 369, 412, 502
Loveridge *v.* Botham (1797), 1 Bos. & P. 49 778
Lovesy *v.* Smith (1880), 15 Ch. D. 655; 49 L. J. (CH.) 809; 43 L. T. 240; 28 W. R. 979 752
Lovett, *Ex parte*, *Re* Nicholas. *See* Nicholas, *Re*, *Ex parte* Lovett.
Lowe, *Re* (1807), 8 East, 237 840
—— *v.* —— (1818), 3 Madd. 277 167
Lowless & Son, *Re* (1848), 6 C. B. 123; 18 L. J. (C. P.) 793 . . . 812, 814
Lowry *v.* Guilford (1832), 5 C. & P. 234 758
Lowther Castle (1825), 1 Hag. Adm. 384 60
Luard *v.* Butcher (1846), 2 Car. & Kir. 29 284, 304
Lucas *v.* Nockells (1828), 4 Bing. 729; 1 Moo. & P. 783; 2 Y. & J. 304; 1 Cl. & Fin. 438 86, 264, 284
—— *v.* Peacock (1846), 9 Beav. 177 821
—— and Chesterfield Gas and Water Board, *Re*, [1909] 1 K. B. 16; 77 L. J. (K. B.) 1009; 99 L. T. 767; 72 J. P. 437; 24 T. L. R. 858; 6 L. G. R. 1106, C. A. 685
Lucia Jantina, The *v.* The Mexican (1864), Holt (ADM.), 130 . . . 368, 434
Luddy's Trustee *v.* Peard (1886), 33 Ch. D. 500; 55 L. J. (CH.) 884; 55 L. T. 137; 35 W. R. 44 749
Luke *v.* Lyde (1759), 2 Burr. 882; 1 Wm. Bl. 190 237, 306, 314
—— *v.* South Kensington Hotel Co. (1879), 11 Ch. D. 121; 48 L. J. (CH.) 361; 40 L. T. 638; 27 W R. 514, C. A. 734
Lumley, *Re* (1892), 37 Sol. Jo. 83 819
——— *v.* Brooks (1889), 41 Ch. D. 323; 58 L. J. (CH.) 494; 61 L. T. 172; 37 W. R. 454, C. A. 812
——— *v.* Desborough, *Re* Keane. *See* Keane, *Re*, Lumley *v.* Desborough.
Lumsden *v.* Shipcote Land Co., [1906] 2 K. B. 433; 75 L. J. (K. B.) 665; 95 L. T. 17; 54 W. R. 461; 22 T. L. R. 559, C. A. . . 778, 779, 780, 785, 808
Lund *v.* Thames and Mersey Marine Insurance Co., Ltd. (1901), 17 T. L. R. 566 188, 189
Lutscher *v.* Comptoir d'Escompte de Paris (1876), 1 Q. B. D. 709; 34 L. T. 798; 3 Asp. M. L. C. 209 161
Lutwidge *v.* Grey (1733), cited in Luke *v.* Lyde, and noted in Abbott on Shipping, 5th ed., p. 307; 14th ed. p. 717 237, 238, 306, 314
Luxford *v.* Large (1833), 5 C. & P. 421 488
Luxmore *v.* Lethbridge (1822), 5 B. & Ald. 898; 1 Dow. & Ry. (K. B.) 511 . 781
Lyall *v.* Hicks (1859), 27 Beav. 616 71
Lyddon *v.* Moss (1859), 4 De G. & J. 104; 5 Jur. (N. S.) 637; 7 W. R. 433, C. A. . 749, 809
"Lyderhorn" Sailing Ship Co., Ltd. *v.* Duncan, Fox & Co., [1909] 2 K. B. 929; 101 L. T. 295; 25 T. L. R. 739; 14 Com. Cas. 293, C. A. 185
Lyle Steamship Co. *v.* Cardiff Corporation (1899), 5 Com. Cas. 87; 69 L. J. (Q. B.) 93; 81 L. T. 642; 16 T. L. R. 66; 9 Asp. M. L. C. 23; affirmed, [1900] 2 Q. B. 638; 69 L. J. (Q. B.) 889; 83 L. T. 329; 49 W. R. 85; 16 T. L. R. 536; 5 Com. Cas. 397; 9 Asp. M. L. C. 128, C. A. . . 121, 272, 273, 275, 276, 277, 278, 283
Lyn, The (1883), Pritchard's Admiralty Digest, 3rd ed., p. 291 490
Lynch to Chance (1892), 30 L. R. Ir. 278, C. A. 798, 801
Lyon *v.* Mells (1804), 5 East, 428 189, 211, 212, 217, 326
Lyons, The (1887), 57 L. T 818; 6 Asp. M. L. C. 199 626

M.

M., *Re* (1878), 1 L. R. Ir. 188, C A. 840
Maasdam, The (1893), 69 L. T. 659; 7 Asp. M. L. C 400; 6 R. 716. . 564, 586

PAGE

Mac, The (1882), 7 P. D. 126; 51 L. J. (P.) 81; 46 L. T. 907; 4 Asp. M. L. C. 555, C. A. 14, 331, 374
M'Aleavey *v.* M'Aleavey (1882), 9 L. R. Ir. 165 824
M'Andrew *v.* Adams (1834), 1 Bing. (N. C.) 29; 3 L. J. (C. P.) 236; 4 Moo. & S. 517 83, 94, 97, 98, 177, 178, 179
MacAndrew *v.* Chapple (1866), L. R. 1 C. P 643; 35 L. J. (C. P.) 281; 14 L. T. 556; 14 W. R. 891 93, 97, 178, 192
Macaulay *v.* Polley, [1897] 2 Q. B. 122; 66 L. J. (Q. B.) 665; 76 L. T. 643; 45 W. R. 681, C. A. 743
Macbeath *v.* Cooke (1828), 1 Moo. & P. 513; 12 Moore (C. P.), 122 . . . 743
MacBeth *v.* Wild & Co. (1900), 16 T. L. R. 497. 182
Macbeth & Co. *v.* Chislett, [1910] A. C. 220; 79 L. J. (K. B.) 376; 102 L. T. 82; 26 T. L. R. 268; 54 Sol. Jo. 268; 47 Sc. L. R. 623. . . . 524, 544
M'Bride *v.* Clarke (1839), 1 I. Eq. R. 203 820, 821
McCall & Co. *v.* Houlder & Co. (1897), 66 L. J. (Q. B.) 408; 76 L. T. 469; 13 T. L. R. 280; 8 Asp. M. L. C. 252 316, 317, 318, 319
M'Calmont *v.* Rankin (1850), 8 Hare, 1; 19 L. J. (CH.) 215; 14 Jur. 475 . . 28
M'Cormack *v.* Ross, [1894] 2 I. R. 545; 28 I. L. T. 105 822
M'Cowan *v.* Baine, The "Niobe," [1891] A. C. 401; 65 L. T. 502; 7 Asp. M. L. C. 89 360, 529
MacDougall *v.* Knight, [1887] W. N. 68, C. A 836
M'Elroy *v.* Murphy (1874), 22 W. R. 501 754
McFadden *v.* Blue Star Line, [1905] 1 K. B. 697; 74 L. J. (K. B.) 423; 93 L. T. 52; 53 W. R. 576; 21 T. L. R. 345; 10 Com. Cas. 123; 10 Asp. M. L. C. 55 110, 187, 188, 189, 190, 216, 217
Macfarlane *v.* Lister (1887), 37 Ch. D. 88; 57 L. J. (CH.) 92; 58 L. T. 201, C. A. 824, 845
McGarel, *Re*, [1897] 1 Ch. 400; 66 L. J. (CH.) 185; 76 L. T. 70; 45 W. R. 321, C. A. 763
M'Gee *v.* Anderson (1895), 22 R. (Ct. of Sess.) 274; 32 Sc. L. R. 207; 2 Scots Law Times, 433 503
Macgowan, *Re*, Macgowan *v.* Murray, [1891] 1 Ch. 105; 60 L. J. (CH.) 118; 63 L. T. 793; 39 W. R. 227, C. A. 764, 766
Macgregor *v.* Keily (1849), 3 Exch. 794; 18 L. J. (EX.) 391; 2 Dan. & Ll. 635 778
Macgregor Laird, The, [1867] W. N. 308 572, 573
MacGuare *v.* Milligan, [1903] 1 Ch. 145; 72 L. J. (CH.) 87; 87 L. T. 676; 19 T. L. R. 44 806
McIntosh *v.* Sinclair (1877), 11 I. R. C. L. 456 262
Macintosh and Thomas, *Re*, [1903] 2 Ch. 394; 72 L. J. (CH.) 609; 88 L. T. 820; 51 W. R. 659, C. A. 793, 794
McIver & Co., Ltd. *v.* Tate Steamers, Ltd., [1902] 2 K. B. 184; 71 L. J. (K. B.) 717; 87 L. T. 320; 50 W. R. 642; 18 T. L R. 653, C. A. . 768, 769, 797, 800, 803
——— (David), Sons & Co., Ltd. *v.* Tate Steamers, Ltd., [1903] 1 K. B. 362; 72 L. J. (K. B.) 253; 88 L. T. 182; 51 W. R. 393; 19 T. L. R. 217; 9 Asp. M. L. C. 362; 8 Com. Cas. 124, C. A. 212, 214, 215
Mackendrick *v.* National Union of Dock Labourers (1910), 48 Sc. L. R. 17; [1911] S. C. 83; (1910) 2 Scots Law Times, 215 772
Mackenzie, *Re*, *Ex parte* Short (1894), 69 L. T. 751; 41 W. R. 530; 2 R. 478, C. A. 809
——— *v.* Liddell (1883), 10 R. (Ct. of Sess.) 705; 20 Sc. L. R. 451 . . 98
——— *v.* Mackintosh (1891), 64 L. T. 706; 7 Asp. M. L. C. 53, C. A. . . 820
——— *v.* Pooley (1856), 11 Exch. 638; 25 L. J. (EX.) 124; 4 W. R. 462 67
——— *v.* Rowe (1810), 2 Camp. 482 198
Mackill *v.* Wright, Brothers & Co. (1888), 14 App. Cas. 106 . 91, 103, 197, 204
Mackintosh *v.* Mitcheson (1849), 4 Exch. 175; 18 L. J. (EX.) 385 . . . 69
Mackley *v.* Chillingworth (1877), 2 C. P. D. 273; 46 L. J. (Q. B.) 484; 36 L. T. 514; 25 W. R. 650 802
M'Knight *v.* Currie (1895), 22 R. (Ct. of Sess.) 607; 32 Sc. L. R. 520 . . 503
Mackrell *v.* Simond and Hankey (1776), 2 Chit. 666; cited in Abbott on Shipping, 5th ed., p. 332; 14th ed., p. 743 105, 305, 307
M'Kune *v.* Joynson (1858), 5 C. B. (N. S.) 218; 28 L. J. (C. P.) 133; 4 Jur. (N. S.) 760; 6 W. R. 658 51
McLaren, *Re*, *Ex parte* Cooper (1879), 11 Ch. D. 68; 48 L. J. (BCY.) 49; 40 L. T. 105; 27 W. R. 518; 4 Asp. M. L. C. 63, C. A. 160

PAGE

Maclaren *v.* Compagnie Française de Navigation à Vapeur (1884), 9 App. Cas. 640; 53 L. J. (P.) 43; 50 L. T. 372; 32 W. R. 880; 5 Asp. M. L. C. 216 361, 454

M'Larnon *v.* Carrickfergus Urban District Council, [1904] 2 I. R. 44 . . . 825

Maclay *v.* Spillers and Baker (1902), 17 T. L. R. 391; 6 Com. Cas. 217, C. A. . 277

McLean and Hope *v.* Fleming (1871), L. R. 2 Sc. & Div. 128; 9 Macpherson (House of Lords), 38; 43 Sc. Jur. 365 135, 145, 164, 209, 285, 286, 287

M'Lean and Hope *v.* Munck (1867), 5 Macph. (Ct. of Sess.) 893; 39 Sc. Jur. 504 155

McLellan *v.* Gumm, Hooper *v.* Gumm. *See* Hooper *v.* Gumm, McLellan *v.* Gumm.

Macleod *v.* Jones (1883), 24 Ch. D. 289; 53 L. J. (CH.) 145; 49 L. T. 321; 32 W. R. 43, C. A. 751

——— *v.* Thrupp (1892), 37 Sol. Jo. 31 805

M'Manus *v.* Crickett (1800), 1 East, 106 526

McMurdo, *Re*, Penfield *v.* McMurdo, [1897] 1 Ch. 119; 66 L. J. (CH.) 67; 75 L. T. 576; 45 W. R. 244 809

McNally *v.* Knox (1861), 5 L. T. 186 834

M'Pherson *v.* Allsop (1839), 8 L. J. (EX.) 262 823

McPherson *v.* Watt (1877), 3 App. Cas. 254 748, 749, 750

Maddock *Re*, Butt *v.* Wright, [1899] 2 Ch. 588; 68 L. J. (CH.) 655; 81 L. T. 320; 47 W. R. 684 796

Maddox *v.* Fisher, The Independence (1861), 14 Moo. P. C. C. 103; Lush. 270; 4 L. T. 563; 9 W. R. 582 396, 492, 504

Madonna D'Idra, The (1811), 1 Dods. 37 620, 623, 624

Madras, The, [1898] P. 90; 67 L. J. (P.) 53; 78 L. T. 325; 8 Asp. M. L. C. 397 358, 557

Maeburn *v.* Leckie (1822), cited in Abbott on Shipping, 5th ed., p. 7; 14th ed., p. 15 75

Magalhaens *v.* Busher, Sanderson *v.* Busher (1814), 4 Camp. 54 83

Magdalen, The (1861), 31 L. J. (P. M. & A.) 22; 5 L. T. 807 . . . 577, 586

Magellan Pirates, The (1853), 1 Ecc. & Ad. 81 113

Maggie Armstrong, The *v.* The Blue Bell (1865), 2 Mar. L. C. 318 . . . 490

Magna Charta, The (1871), 25 L. T. 512; 1 Asp. M. L. C. 153 418

Magnet, The (1875), L. R. 4 A. & E. 417; 32 L. T. 129; 2 Asp. M. L. C. 478 . 385, 534

Magneta, The (1890), 15 P. D. 101; 59 L. J. (P.) 55; 63 L. T. 114; 6 Asp. M. L. C. 531 481

Magnus *v.* Buttermer (1852), 11 C. B. 876; 21 L. J. (C. P.) 119; 16 Jur. 480 . 114

Magrath *v.* Muskerry (Lord) (1787), 1 Ridg. Parl. Rep. 469 818

Mahon, *Re*, [1893] 1 Ch. 507; 62 L. J. (CH.) 448; 68 L. T. 189; 41 W. R. 257; 2 R. 337, C. A. 765, 795, 801

Maile *v.* Mann (1848), 2 Exch. 608; 17 L. J. (EX.) 336; 6 Dow. & L. 42 . . . 836

Main, The (1886), 11 P. D. 132; 55 L. J. (P.) 70; 55 L. T. 15; 34 W. R. 678; 6 Asp. M. L. C. 37, C. A. 379, 399, 400, 401, 402, 462, 463

Major *v.* White (1835), 7 C. & P. 41 206

——— and Field *v.* Grant (1902), 18 T. L. R. 742; 7 Com. Cas. 231 . . 263, 279

Malcomson *v.* General Steam Navigation Co., The "Ranger," and The "Cologne" (1872), L. R. 4 P. C. 519; 27 L. T. 769; 21 W. R. 273; 9 Moo. P. C. C. (N. S.) 352; 1 Asp. M. L. C. 484 . 376, 438

——— *v.* Meeson, "The Malvina" (1863), 1 Moo. P. C. C. (N. S.) 357; 8 L. T. 403; 9 Jur. (N. S.) 527; 11 W. R. 576; Brown. & Lush. 57; Lush. 493 469

Malins *v.* Greenway (1847), 10 Beav. 564; 17 L. J. (CH.) 26; 12 Jur. 66 . 833, 848

Malley *v.* Shepley (1892), 62 L. J. (Q. B.) 31; 68 L. T. 294; 4 W. R. 63; 5 R. 78 847

"Malvina," The, Malcomson *v.* Meeson. *See* Malcomson *v.* Meeson, The "Malvina."

Mammoth, The (1884), 9 P. D. 126; 53 L. J. (P.) 70; 51 L. T. 549; 33 W. R. 172; 5 Asp. M. L. C. 289 804

Manby and Hawksford, *Re*, *Ex parte* Bittleston, Norton *v.* Cooper. *See* Norton *v.* Cooper, *Re* Manby and Hawksford, *Ex parte* Bittleston.

Manchester and Leeds Rail. Co., *Ex parte*, *Re* Barber. *See* Barber, *Re*, *Ex parte* Manchester and Leeds Rail. Co.

Manchester Corporation *v.* Sugden, Gresham Life Assurance Society *v.* Bishop, [1903] 2 K. B. 171; 72 L. J. (K. B.) 746; 88 L. T. 679; 67 J. P. 317; 51 W. R. 627; 19 T. L. R. 473, C. A. 768, 800

PAGE
Manchester, Middleton and District Tramways Co., *Re*, [1893] 2 Ch. 638; 62 L. J. (CH.) 78; 67 L. T. 647; 41 W. R. 170; 3 R. 118 . . . 733, 734
Manchester Trust *v.* Furness, Withy & Co., [1895] 2 Q. B. 539; 64 L. J. (Q. B.) 766; 73 L. T. 110; 44 W. R. 178; 8 Asp. M. L. C. 57; 14 R. 739, C. A. . 34, 66, 154, 170, 171, 175, 176
Manfield *v.* Maitland (1821), 4 B. & Ald. 582 313
Mangan *v.* Metropolitan Electric Supply Co., [1891] 2 Ch. 551; 65 L. T. 202, C. A. 796
Mangerton, The (1856), Sw. 120 365, 425, 427, App. iv.
Manley *v.* Palache (1895), 73 L. T. 98; 11 R. 566 756
Mann, MacNeal & Co. *v.* Ellerman Lines (1904), 7 F. (Ct. of Sess.) 213; 42 Sc. L. R. 159; 12 Scots Law Times, 481 531
Manners *v.* Raeburn and Verel (1884), 11 R. (Ct. of Sess.) 899; 21 Sc. L. R. 723 . 135
Manning *v.* Gist (1782), Marshall on Marine Insurance, 4th ed., p. 291 . . 83
——— *v.* Glyn and Sheehan (1835), 1 Jo. Ex. Ir. 513; 4 Law Recorder (N. S.), 94 777
Manor, The, [1907] P. 339; 96 L. T. 871, C. A. 25
Mant, *Re* (1861), 5 L. T. 254; 10 W. R. 13 851
——— *v.* Smith (1859), 4 H. & N. 324; 28 L. J. (EX.) 234 778
Maori King, The, [1909] A. C. 562; 78 L. J. (P. C.) 138; 100 L. T. 787; 25 T. L. R. 545; 53 Sol. Jo. 519; 11 Asp. M. L. C. 248 33
"Maori King" (Cargo Owners) *v.* Hughes, [1895] 2 Q. B. 550; 65 L. J. (Q. B.) 168; 73 L. T. 141; 44 W. R. 2; 14 R. 646; 8 Asp. M. L. C. 65, C. A. . 107, 115, 189, 217
Mara *v.* Browne, [1896] 1 Ch. 199; 65 L. J. (CH.) 225; 73 L. T. 638; 44 W. R. 330, C. A. 760
Marathon, The (1879), 48 L. J. (P.) 17; 40 L. T. 163; 4 Asp. M. L. C. 75 . . 189, 203, 211
Marchant, *Re*, [1908] 1 K. B. 998; 77 L. J. (K. B.) 695; 98 L. T. 823; 52 Sol. Jo. 314; 24 T. L. R. 375, C. A. 828, 829
Marco Polo, The (1871), 24 L. T. 804; 1 Asp. M. L. C. 54 625
Maréchal Suchet, The, [1911] P. 1; 80 L. J. (P.) 51; 103 L. T. 848; 26 T. L. R. 660; 11 Asp. M. L. C. 553 357, 358, 527, 568
Margaret (1855), 3 Hag. Adm. 238 620
———, The (1881), 6 P. D. 76; 50 L. J. (P.) 67; 44 L. T. 291; 29 W. R. 533; 4 Asp. M. L. C. 375, C. A. . 359, 361, 482, 485, 500, 510, 519
——— (1884) 9 P. D. 47; 53 L. J. (P.) 17; 50 L. T. 447; 32 W. R. 564; 5 Asp. M. L. C. 204, C. A.; *sub nom.* Cayzer *v.* Carron Co. (1884), 9 App. Cas. 873; 54 L. J. (P.) 18; 52 L. T. 361; 33 W. R. 281; 5 Asp. M. L. C. 371 483
——— *v.* The Tuscar (1866), 15 L. T. 86 390, 487
Margaret Mitchell, The (1858), Sw. 382; 4 Jur. (N. S.) 1193 75, 76
Margerum *v.* Sandiford (1791), 3 Bro. C. C. 233 782
Margery, The, [1902] P. 157; 71 L. J. (P.) 83; 96 L. T. 863; 50 W. R. 654; 9 Asp. M. L. C. 304 573
Margetson and Jones, *Re*, [1897] 2 Ch. 314; 66 L. J. (CH.) 619; 76 L. T. 805; 45 W. R. 645 823
Margetts, *Re*, [1896] 2 Ch. 263; 65 L. J. (CH.) 479; 74 L. T. 309; 44 W. R. 462 762, 793, 816
——— and Ocean Accident and Guarantee Corporation, *Re*, [1901] 2 K. B. 792; 70 L. J. (K. B.) 762; 85 L. T. 94; 59 W. R. 669; 17 T. L. R. 538; 9 Asp. M. L. C. 217 360
Marguerite Molinos, The, [1903] P. 160; 72 L. J. (P.) 56; 89 L. T. 192; 9 Asp. M. L. C. 424 557, 570
Maria (1809), Edw. 175 585
——— The (1839), 1 Wm. Rob. 95 530, 610
Maria Jane, The (1850), 14 Jur. 857 565, 566
Marianne, The, [1891] P. 180; 60 L. J. (P.) 39; 64 L. T. 539; 7 Asp. M. L. C. 34 69
Marie, The (1882), 7 P. D. 203; 47 L. T. 737; 5 Asp. M. L. C. 27 . . . 577
Marie Gartz, The (1913), 29 T. L. R. 321; reversed (1913), 30 T. L. R. 88, C. A. . 470, 478, 482
"Marie Joseph," The, Pease *v.* Gloahec. *See* Pease *v.* Gloahec, The "Marie Joseph."
Marine Insurance Co. *v.* China Transpacific Steamship Co. (1886), 11 App. Cas. 573; 56 L. J. (Q. B.) 100; 55 L. T. 491; 35 W. R. 169; 6 Asp. M. L. C. 68 . 539
Marion, The (1884), 10 P. D. 4; 54 L. J. (P.) 8; 51 L. T. 906; 33 W. R. 432; 5 Asp. M. L. C. 339 37

PAGE
Mariposa, The, [1896] P. 273; 65 L. J. (P.) 104; 75 L. T. 54; 45 W. R. 191; 8 Asp. M. L. C. 159 560, 572
Mark Lane, The (1890), 15 P. D. 135; 63 L. T. 468; 39 W. R. 47; 6 Asp. M. L. C. 540 571, 572
Markby, *Re* (1864), 11 L. T. 250. 815
Marmion, The (1872), 27 L. T. 255; 1 Asp. M. L. C. 412 451
——— (1913), 29 T. L. R. 646 490
"Marpesia," The (1872), L. R. 4 P. C. 212; 8 Moo. P. C. C. (N. S.) 468; 26 L. T. 338; 1 Asp. M. L. C. 261 411, 493, 535, 536
Marpessa, The, [1891] P. 403; 61 L. J. (P.) 9; 66 L. T. 356; 40 W. R. 239; 7 Asp. M. L. C. 155 317, 541
Marquand *v.* Banner (1856), 6 E. & B. 232; 25 L. J. (Q. B.) 313; 2 Jur. (N. S.) 708 170, 171, 283, 297, 298
Marquis of Huntly (1835), 3 Hag. Adm. 246 560, 561, 574, 619
Marriott *v.* Anchor Reversionary Co. (1861), 3 De G. F. & J. 177; 30 L. J. (CH.) 571; 4 L. T. 590; 7 Jur. (N. S.) 713; 9 W. R. 726, C. A. . . . 27
——— *v.* Cobbett (1894), 38 Sol. Jo. 620 768
——— *v.* Yeoward Brothers, [1909] 2 K. B. 987; 101 L. T. 394; 53 Sol. Jo. 790; 25 T. L. R. 755; 14 Com. Cas. 279 116
Marsden's Estate, *Re*, Withington *v.* Neumann (1889), 40 Ch. D. 475; 58 L. J. (CH.) 260; 60 L. T. 696; 37 W. R. 525 809, 810
Marseilles Extension Rail. and Land Co., *Re*, *Ex parte* Evans (1870), L. R. 11 Eq. 151; 40 L. J. (CH.) 197; 23 L. T. 647; 19 W. R. 379 . . . 780, 785
Marsh, *Re*, *Ex parte* Marsh (1885), 15 Q. B. D. 340; 54 L. J. (Q. B.) 557; 53 L. T. 418; 34 W. R. 620; 2 Morr. 232, C. A. 783, 808
——— *v.* Bathoe (1744), Ridg. *temp.* H. 256 817
——— *v.* Joseph, [1897] 1 Ch. 213; 66 L. J. (CH.) 128; 75 L. T. 558; 45 W. R. 209, C. A. 723, 759, 835
——— *v.* Pedder (1815), 4 Camp. 257 293, 307
Marshall, *Ex parte* (1874), 22 W. R. 754 714
———, *Re* (1857), 5 W. R. 200 838
——— *v.* Bolckow (1881), 6 Q. B. D. 231; 29 W. R. 792 . . . 122, 126
——— *v.* De la Torre (1795), 1 Esp. 367 124, 125, 271
——— *v.* Moran, The "Ocean Wave" (1870), L. R. 3 P. C. 205; 23 L. T. 218; 6 Moo. P. C. C. (N. S.) 492 529, 530, 531, 532
——— *v.* Nicholls (1852), 18 Q. B. 882; 21 L. J. (Q. B.) 343; 16 Jur. 1155 App. ii.
——— *v.* Oxford (1832), 5 Sim. 456 779
Martha, The (1859), Sw. 489 577
Martin, *In the Goods of* (1883), 13 L. R. Ir. 312, C. A. 815
———, *Re* (1843), 6 Beav. 337 852
———, *Re* (1875), 24 W. R. 111 854
———, *Re* (1889), 41 Ch. D. 381; 58 L. J. (CH.) 478; 60 L. T. 555; 37 W. R. 497, C. A. 762, 763
———, *Re*, *Ex parte* Van Sandau (1844), 1 Ph. 445; 1 De G. 55; 15 L. J (BCY.) 13; 14 L. J. (BCY.) 9; 8 Jur. 193 828
——— *v.* Crokatt (1811), 14 East, 465 114
——— *v.* London, Chatham and Dover Rail. Co. (1866), 1 Ch. App. 501; 35 L. J. (CH.) 795; 14 L. T. 814; 12 Jur. (N. S.) 775; 14 W. R. 880 681
——— *v.* Temperley (1843), 4 Q. B. 298; 12 L. J. (Q. B.) 129; 7 Jur. 150; 3 Gal. & Dav. 497 503
Martin Luther, The (1857), Sw. 287 578, 583
Martindale *v.* Faulkner (1846), 2 C. B. 706; 15 L. J. (C. P.) 91; 10 Jur. 161; 2 Dow. & L. 600 776
——— *v.* Lawson (1838), Coop. Pr. Cas. 83 833
Martineaus, Ltd. *v.* Royal Mail Steam Packet Co., Ltd. (1912), 106 L. T. 638; 56 Sol. Jo. 445; 28 T. L. R. 364; 17 Com. Cas. 176 . . . 155, 156, 165, 291
Martinson *v.* Clowes (1882), 21 Ch. D. 857; 51 L. J. (CH.) 594; 46 L. T. 882; 30 W. R. 795 750
——— *v.* ——— (1885), 52 L. T. 706; 33 W. R. 555, C. A. 834
Marwick, *Ex parte*, *Re* Story. *See* Story, *Re*, *Ex parte* Marwick.
Marwood *v.* Taylor (1901), 17 T. L. R. 565; 6 Com. Cas. 178, C. A. . . . 140, 310
Mary, The (1843), 1 Wm. Rob. 448 562
——— (1879), 5 P. D. 14; 48 L. J. (P.) 66; 41 L. T. 351; 28 W. R. 95; 4 Asp. M. L. C. 183 491, 529
Mary Ann (1823) 1 Hag. Adm. 158 584
———, (1846), 4 Notes of Cases, 376 70

PAGE
Mary Ann, The (1865), L. R. 1 A. & E. 8; 35 L. J. (ADM.) 6; 13 L. T. 384; 12 Jur. (N. S.) 31; 14 W. R. 136 619
——— (1865), L. R. 1 A. & E. 13 29
Mary Hounsell, The (1879), 4 P. D. 204; 48 L. J. (P.) 54; 40 L. T. 368; 4 Asp. M. L. C. 101 382, 389, 393
Mary Lohden, The (1887), 58 L. T. 461; 6 Asp. M. L. C. 262, C. A. . . 470, 482
Mary Pleasants, The (1857), Sw. 224 587, 619
Mary Stewart, The (1844), 2 Wm. Rob. 244 500
"Mary" Tug Co. *v.* British India Steam Navigation Co., The "Meanatchy," [1897] A. C. 351; 66 L. J. (P. C.) 92, C. A. 489, 504
Marzetti *v.* Smith & Son (1883), 49 L. T. 580; 5 Asp. M. L. C. 166, C. A. . 140, 267, 268, 269, 270, 276, 279, 280, 281
Mash, *Re* (1851), 15 Beav. 83 789
Mashiter *v.* Buller (1807), 1 Camp. 84 313
Mason *v.* Grigg, [1909] 2 K. B. 341; 78 L. J. (K. B.) 819; 101 L. T. 217, C. A. . 742
——— *v.* Whitehorne (1838), 4 Bing. (N. C.) 692; 7 L. J. (C. P.) 295; 6 Scott, 575; 6 Dowl. 602 743
——— and Taylor, *Re* (1878), 10 Ch. D. 729; 48 L. J. (CH.) 193; 27 W. R. 311. .816
Massachusetts, The (1842), 1 Wm. Rob. 371 502
Massey, *Ex parte*, *Re* Freehold Land and Brickmaking Co. *See* Freehold Land and Brickmaking Co., *Re*, *Ex parte* Massey.
———, *Re* (1845), 8 Beav. 458 783, 784, 787
———, *Re*, [1909] W. N. 211; 101 L. T. 517; 54 Sol. Jo. 50; 26 T. L. R. 68 789
——— and Carey, *Re* (1884), 26 Ch. D. 459; 53 L. J. (CH.) 705; 51 L. T. 390; 32 W. R. 1008, C. A. 754, 798 806
Masters, *Ex parte*, *Re* Charlwood. *See* Charlwood, *Re*, *Ex parte* Masters.
———, *Re* (1835), 4 Dowl. 18; 1 Har. & W. 348 783
Mathilda, The, The Fanny. *See* Fanny, The, The Mathilda.
Matiana, The (1908), 25 T. L. R. 51 413
Matpen, The (1913), *Times*, May 23rd 387
Matthews, *Ex parte* (1830), 1 B. & Ad. 160 714
——— *v.* Gibbs (1860), 3 E. & E. 282; 30 L. J. (Q. B.) 55; 3 L. T. 551; 7 Jur. (N. S.) 186; 9 W. R. 200 238, 240, 284
——— *v.* Lowther (1850), 5 Exch. 574; 19 L. J. (EX.) 364 . . . 178, 196
Maude, The (1876), 36 L. T. 26; 3 Asp. M. L. C. 338 564, 585
Maugham, *Re* (1885), 29 Sol. Jo. 576; affirmed (1885), 2 T. L. R. 115, C. A. . 781, 844
Mavor, *Re*, *Ex parte* Halkett (1815), 19 Ves. 474; 2 Rose, 229 242
Mavro *v.* Oceanic Marine Insurance Co. (1875), L. R. 10 C. P. 414; 44 L. J. (C. P.) 229; 32 L. T. 743; 23 W. R. 758; 2 Asp. M. L. C. 590 324
Mawhood *v.* Milbanke (1851), 15 Beav. 36 840
Mawson Shipping Co., Ltd. *v.* Beyer, [1914] 1 K. B. 304 129
Maxima, The (1878), 39 L. T. 112; 4 Asp. M. L. C. 21 25
Maxwell, *Ex parte* (1835), 4 Dowl. 87 838, 840
May, *Re*, *Ex parte* Hawley (1852), Fonbl. 243 818
—— *v.* Biggenden, Cheesman *v.* May (1857), 24 Beav. 207 808
—— *v.* O'Neill (1875), 44 L. J. (CH.) 660 712
—— *v.* Sherwin (1883), 27 Sol. Jo. 278, C. A. 730
Maybery *v.* Mansfield (1846), 9 Q. B. 754; 16 L. J. (Q. B.) 102; 11 Jur. 60 . 836
Mayhew, *Re* (1859), 7 W. R. 351 817
"Meanatchy," The, "Mary" Tug Co. *v.* British India Steam Navigation Co. *See* "Mary" Tug Co. *v.* British India Steam Navigation Co., The "Meanatchy."
Mearns *v.* Knapp (1889), 37 W. R. 585 747, 772
Mecca, The, [1895] P. 95; 64 L. J. (P.) 40; 71 L. T. 711; 43 W. R. 209; 7 Asp. M. L. C. 529; 11 R. 742, C. A. 68
Medeiros *v.* Hill (1832), 8 Bing. 231; 1 L. J. (C. P.) 77; 1 Moo. & S. 311; 5 C. & P. 182 109, 259
"Mediana" (Owners) *v.* "Comet" (Owners, Master and Crew), The "Mediana," [1899] P. 127; 68 L. J. (P.) 26; 80 L. T. 173; 15 T. L. R. 205; 8 Asp. M. L. C. 493, C. A.; affirmed, [1900] A. C. 113; 69 L. J. (Q. B.) 35; 82 L. T. 95; 48 W. R. 398; 16 T. L. R. 194; 9 Asp. M. L. C. 41 537, 538
Medina, The (1876), 1 P. D. 275; 34 L. T. 918; 3 Asp. M. L. C. 219; affirmed, 2 P. D. 5; 35 L. T. 779; 25 W. R. 156; 3 Asp. M. L. C. 305, C. A. . 560, 571
Mediterranean and New York Steamship Co. *v.* Mackay (A. F. and D.), [1903] 1 K. B. 297; 72 L. J. (K. B.) 147, C. A. 146, 154, 309, 310
Medland, *Re*, Eland *v.* Medland (1889), 41 Ch. D. 476; 58 L. J. (CH.) 572; 60 L. T. 781; 37 W. R. 753, C. A. 798

PAGE

Meggie, The (1866), L. R. 1 A. & E. 77 37
Meier & Co. *v.* Küchenmeister (1881), 8 R. (Ct. of Sess.) 642; 18 Sc. L. R. 431 89
Meiklereid *v.* West (1876), 1 Q. B. D. 428; 45 L. J. (M. C.) 91; 34 L. T. 353; 24 W. R. 703; 3 Asp. M. L. C. 129 34, 52, 85
Mein *v.* Ottmann (1904), 6 F. (Ct. of Sess.) 276; 41 Sc. L. R. 144; 11 Scots Law Times, 497 123, 124
Melampus, The (1903), *Shipping Gazette*, December 22nd 449
Melhado *v.* Porto Alegre Rail. Co. (1874), L. R. 9 C. P. 503; 43 L. J. (C. P.) 253; 31 L. T. 57; 23 W. R. 57 734
Mellona, The (1847), 3 Wm. Rob. 7 486, 538
——— (1848), 3 Wm. Rob. 16 619
Melpomene, The (1873), L. R. 4 A. & E. 129; 42 L. J. (ADM.) 45; 29 L. T. 405; 21 W. R. 956 564
Melrose Abbey, The (1898), 14 T. L. R. 202 98
Melville *v.* De Wolf (1855), 4 E. & B. 844; 24 L. J. (Q. B.) 200; 3 C. L. R. 960; 1 Jur. (N. S.) 758; 3 W. R. 401 49
Memnon, The, Liverpool, Brazil, and River Plate Steam Navigation Co. *v.* Campanha Bahiana de Navegacio a Vapor. *See* Liverpool, Brazil and River Plate Steam Navigation Co. *v.* Campanha Bahiana de Navegacio a Vapor, The Memnon.
Mendl & Co. *v.* Ropner & Co., [1913] 1 K. B. 27; 82 L. J. (K. B.) 75; 57 Sol. Jo. 130; 29 T. L. R. 37; 18 Com. Cas. 29; *sub nom.* Meral & Co. *v.* Ropner & Co., 107 L. T. 699; 12 Asp. M. L. C. 268 . . 77, 116, 117, 139, 212
Menetone *v.* Gibbons (1789), 3 Term Rep. 267 69
Mentor, The (1799), 1 Ch. Rob. 179 533
Mentz, Decker & Co. *v.* Maritime Insurance Co., [1909] 1 K. B. 132; 79 L. J. (K. B.) 104; 101 L. T. 808; 15 Com. Cas. 17; 11 Asp. M. L. C. 339 . . 112
Mercantile Bank *v.* Gladstone (1868), L. R. 3 Exch. 233; 37 L. J. (EX.) 130; 18 L. T. 641; 17 W. R. 11 154, 292, 308, 309
Mercantile Lighterage Co., *Re*, [1906] 1 Ch. 491; 75 L. J. (CH.) 171; 94 L. T. 405; 54 W. R. 389; 22 T. L. R. 250 776, 809
Mercantile Steamship Co. *v.* Hall, [1909] 2 K. B. 423; 78 L. J. (K. B.) 812; 100 L. T. 885; 25 T. L. R. 623; 53 Sol. Jo. 562; 14 Com. Cas. 208 42, 50, 62
——— *v.* Tyser (1881), 7 Q. B. D. 73; 29 W. R. 790; 5 Asp. M. L. C. 6, n. 115
Mercator, The (1910), 26 T. L. R. 450 575
Mercer *v.* Graves (1872), L. R. 7 Q. B. 499; 41 L. J. (Q. B.) 212; 26 L. T. 551; 20 W. R. 605 822
——— *v.* King (1859), 1 F. & F. 490 758
Merchant Prince, The (1885), 10 P. D. 139; 54 L. J. (P.) 79; 53 L. T. 914; 34 W. R. 231; 5 Asp. M. L. C. 520 . 379, 381, 383, 407, 412
———, [1892] P. 179; 67 L. T. 251; 7 Asp. M. L. C. 208, C. A. . 485, 502, 536
Merchant Shipping Co. *v.* Armitage (1873), L. R. 9 Q. B. 99; 43 L. J. (Q. B.) 24; 29 L. T. 809; 2 Asp. M. L. C. 185 103, 307, 310, 311
Merchant Taylors' Co., *Re* (1885), 30 Ch. D. 28; 54 L. J. (CH.) 867; 52 L. T. 775; 33 W. R. 693, C. A. 766, 767
Mercurius, The (1799), 1 Ch. Rob. 288 305
Meredith, The (1885), 10 P. D. 69; 52 L. T. 520; 5 Asp. M. L. C. 400 . 35, 136
Meredith *v.* Walker, *Re* Walker. *See* Walker, *Re*, Meredith *v.* Walker.
Merle, The (1874), 31 L. T. 447; 2 Asp. M. L. C. 402 526, 618, 644
Merrick, *Re*, *Ex parte* Joyce, [1911] 1 I. R. 279, C. A. 782, 813
Merrimac, The (1868), 18 L. T. 92 568
Mersey Docks and Harbour Board *v.* Cameron, Jones *v.* Mersey Docks and Harbour Board (1865), 20 C. B. (N. S.) 56; 11 H. L. Cas. 443; 35 L. J. (M. C.) 1; 11 Jur. (N. S.) 746; 13 W. R. 1069 236, 628
Mersey Docks and Harbour Board *v.* Henderson Brothers (1888), 13 App. Cas. 595; 58 L. J. (Q. B.) 152; 59 L. T. 697; 37 W. R. 449; 6 Asp. M. L. C. 338 . 636
——— *v.* Llaneilian Overseers (1884), 14 Q. B. D. 770; 54 L. J. (Q. B.) 49; 52 L. T. 118; 49 J. P. 164; 33 W. R. 97; 3 Asp. M. L. C. 358, C. A. 628
——— *v.* Marpessa (Owners), [1907] A. C. 241; 76 L. J. (P.) 128; 97 L. T. 1; 23 T. L. R. 572 537, 642

PAGE
Mersey Docks and Harbour Board *v.* Turner, The "Zeta," [1893] A. C. 468; 63 L. J. (P.) 17; 69 L. T. 630; 57 J. P. 660; 7 Asp. M. L. C. 369 . 359, 360, 530, 547, 618
——— *v.* Twigge and Butters (1898), 3 Com. Cas. 176; 67 L. J. (Q. B.) 604; 14 T. L. R. 371 636
Mersey Docks Trustees *v.* Gibbs (1866), L. R. 1 H. L. 93; 11 H. L. Cas. 686; 35 L. J. (EX.) 225; 14 L. T. 677; 12 Jur. (N. S.) 571; 14 W. R. 872 . 532, 555, 628, 647
Merthyr, The (1898), 79 L. T. 676; 8 Asp. M. L. C. 475 . . . 411, 422, 425
Messageries Imperiales Co. *v.* Baines (1863), 7 L. T. 763; 1 Mar. L. C. 285 . 64, 84, 88, 89
Messenger, *Re*, *Ex parte* Calvert (1876), 3 Ch. D. 317; 45 L. J. (BCY.) 134; 34 L. T. 920 816
Messina *v.* Petrococchino (1872), L. R. 4 P. C. 144; 41 L. J. (P. C.) 27; 26 L. T. 561; 20 W. R. 451 242
Metcalfe, *Re* (1862), 30 Beav. 406 775
———, *Re*, Metcalfe *v.* Blencowe (1887), 57 L. J. (CH.) 82; 57 L. T. 925; 36 W. R. 137 761
——— *v.* Britannia Ironworks Co. (1876), 1 Q. B. D. 613; 45 L. J. (Q. B.) 837; 3 Asp. M. L. C. 313; affirmed (1877), 2 Q. B. D. 423; 46 L. J. (Q. B.) 443; 36 L. T. 451; 25 W. R. 720; 3 Asp. M. L. C. 407, C. A. 236, 254, 256, 257, 258, 259, 304, 305, 306, 314, 589
———, Simpson & Co. *v.* Thompson, Pattrick and Woodwark (1902), 18 T. L. R. 706 141
Meteor, The (1875), 9 I. R. Eq. 567, C. A. 531
Meter Cabs, Ltd., *Re*, [1911] 2 Ch. 557; 81 L. J. (CH.) 82; 105 L. T. 572; 56 Sol. Jo. 36; 19 Mans. 92 818, 821
Metropolitan Rail. Co. *v.* Jackson (1877), 3 App. Cas. 193; 47 L. J. (Q. B.) 303; 37 L. T. 679; 26 W. R. 175 754
Meux *v.* Lloyd (1857), 2 C. B. (N. S.) 409 829
Meyer *v.* Dresser (1864), 16 C. B. (N. S.) 646; 36 L. J. (C. P.) 289; 15 W. R. 1041 . 140, 145, 174, 175, 291, 308
——— *v.* Sharpe (1813), 5 Taunt. 74 160
Meyerstein *v.* Barber (1866), L. R. 2 C. P. 38; 12 Jur. (N. S.) 1020; 15 L. T. 355; 15 W. R. 173; (1867), 36 L. J. (C. P.) 289; 16 L. T. 569; 15 W. R. 998; affirmed, *sub nom.* Barber *v.* Meyerstein (1870), L. R. 4 H. L. 317; 39 L. J. (C. P.) 187; 22 L. T. 808; 18 W. R. 1041 . . 265, 279, 280, 287
Meynall *v.* Morris (1911), 104 L. T. 667; 55 Sol. Jo. 480 822
Michael *v.* Fripp (1868), L. R. 7 Eq. 95; 19 L. T. 257; 17 W. R. 23 . . 23
Michenson *v.* Begbie (1829), 6 Bing. 190; 3 Moo. & P. 442 . . . 171, 298
Middleton *v.* Hurst and Middleton, Ltd., *Re* The Co. *See* Hurst and Middleton, Ltd., *Re*, Middleton *v.* The Co.
Miedbrodt *v.* Fitzsimon, The "Energie" (1875), L. R. 6 C. P. 306; 44 L. J. (ADM.) 25; 32 L. T. 579; 23 W. R. 932; 2 Asp. M. L. C. 555 . 280, 282, 287, 304
Miers *v.* Evans (1839), 3 Jur. 170 840
Milan, The (1861), Lush. 388; 31 L. J. (P. M. & A.) 105; 5 L. T. 590 . 328, 487, 543
Milanese, The (1880), 4 Asp. M. L. C. 318, C. A. 412, 413
——— (1881), Pritchard's Admiralty Digest, 3rd ed., p. 251 . . . 412
——— (1883), Pritchard's Admiralty Digest, 3rd ed., p. 222 . . . 486
Milburn *v.* London and South Western Rail. Co. (1870), L. R. 6 Exch. 4; 40 L. J. (EX.) 1; 23 L. T. 418; 19 W. R. 105 616
——— & Co. *v.* Jamaica Fruit Importing and Trading Co. of London, [1900] 2 Q. B. 540; 69 L. J. (Q. B.) 860; 83 L. T. 321; 16 T. L. R. 515; 9 Asp. M. L. C. 122; 5 Com. Cas. 346, C. A. 87, 107, 316
Mildmay *v.* Quicke (1877), 6 Ch. D. 553; 46 L. J. (CH.) 667; 25 W. R. 788 . 827, 828
Miles, *Re*, [1903] 2 Ch. 518; 72 L. J. (CH.) 704; 88 L. T. 863; 52 W. R. 47 . 784
—— *v.* Haslehurst & Co. (1906), 23 T. L. R. 142; 12 Com. Cas. 83 . . 104, 253
Milford, The (1858), Sw 362; 4 Jur. (N. S.) 417; 6 W. R. 554 . . . 12, 13, 53
Millard, *Re* (1831), 1 Dowl. 140 839
Miller, *Re*, *Re* French, Love *v.* Hills (1884), 54 L. J. (CH.) 205; 51 L. T. 853; 33 W. R. 210 776
—— *v.* Atlee (1849), 3 Exch. 799; 13 Jur. 431 823
—— *v.* Borner & Co., [1900] 1 Q. B. 691; 69 L. J. (Q. B.) 429; 82 L. T. 258; 48 W. R. 588; 9 Asp. M. L. C. 31; 5 Com. Cas. 107 102
—— *v.* James (1823), 8 Moore (C. P.), 208 831

PAGE

Miller *v.* Law Accident Insurance Co., [1903] 1 K. B. 712; 72 L. J. (K. B.) 428; 88 L. T. 370; 51 W. R. 420; 19 T. L. R. 331; 9 Asp. M. L. C. 386; 8 Com. Cas. 161, C. A. 109
—— *v.* Mackay (1864), 34 Beav. 295 136
—— *v.* Woodfall (1858), 8 E. & B. 493; 27 L. J. (Q. B.) 120; 4 Jur. (N. S.) 302 292, 301
—— & Co. *v.* Potter, Wilson & Co. (1875), 3 R. (Ct. of Sess.) 105; 13 Sc. L. R. 70 69
Millicent, The, [1891] W. N. 162 23, 33
Milliken, *Re* (1870), 18 W. R. 809 711
Mills, *Re* (1862), 33 L. J. (Q. B.) 191, n. 715
——, *Re* (1885), 79 L. T. Jo. 162 784
—— *v.* Armstrong, The "Bernina" (1888), 13 App. Cas. 1; 57 L. J. (P.) 65; 58 L. T. 423; 52 J. P. 212; 36 W. R. 870; 6 Asp. M. L. C. 257 . 328, 523, 543
—— *v.* Bainbridge (1804), cited in Abbott on Shipping, 5th ed., p. 293; 14th ed., p. 702 306
—— *v.* Finlay (1839), 1 Beav. 560 841
—— *v.* Johnston, *Re* Johnston. *See* Johnston, *Re*, Mills *v.* Johnston.
Milwall, The, [1905] P. 155; 74 L. J. (P.) 61; 93 L. T. 426; 53 W. R. 471; 21 T. L. R. 346; 10 Asp. M. L. C. 110, C. A. 359
Milo, The *v.* The William Hunter (1866), Holt (ADM.), 161 436
Milvain *v.* Perez (1861), 3 E. & E. 495; 30 L. J. (Q. B.) 90; 3 L. T. 736; 7 Jur. (N. S.) 336; 9 W. R. 269 133
Milverton Sailing Ship Co. *v.* Cape Town and District Gas Light and Coke Co. (1897), 2 Com. Cas. 281 261, 273, 278
Milward *v.* Hibbert (1842), 3 Q. B. 120; 11 L. J. (Q. B.) 137; 6 Jur. 706; 2 Gal. & Dav. 142 205, 318
——— & Co., *Re*, [1899] W. N. 251 844
Minerva (1825), 1 Hag. Adm. 347 42, 60
———, The (1800), 3 Ch. Rob. 34 11
Minet *v.* Morgan (1873), 8 Ch. App. 361; 42 L. J. (CH.) 627; 28 L. T. 573; 21 W. R. 467 726
Minna, The (1868), L. R. 2 A. & E. 97 502, 542
Minna Craig Steamship Co. *v.* Chartered Mercantile Bank of India, London and China, [1897] 1 Q. B. 460; 66 L. J. (Q. B.) 339; 76 L. T. 310; 45 W. R. 338, C. A. 145, 242, 617, 618
Minneapolis, The, [1902] P. 30; 71 L. J. (P.) 28; 86 L. T. 263; 9 Asp. M. L. C. 270 565, 583
Minnehaha, The (1861), Lush. 335; 30 L. J. (P. M. & A.) 211; 4 L. T. 810; 7 Jur. (N. S.) 1257; 9 W. R. 925; 5 Moo. P. C. C. 13 . 357, 358, 568, 569, 582
Minnetonka, The, [1905] P. 206; 74 L. J. (P.) 97; 93 L. T. 581; 53 W. R. 521; 21 T. L. R. 407; 10 Asp. M. L. C. 142, C. A. 540, 541
Minnie, The, [1894] P. 336; 71 L. T. 715; 7 Asp. M. L. C. 521; 11 R. 705, C. A. 466
Minor, *Ex parte*, *Re* Pollitt. *See* Pollitt, *Re*, *Ex parte* Minor.
Minto, *Ex parte* (1877), 35 L. T. 808; 25 W. R. 251; 3 Asp. M. L. C. 323 . 592
Mirabita *v.* Imperial Ottoman Bank (1878), 3 Ex. D. 164; 47 L. J. (Q. B.) 418; 38 L. T. 597; 3 Asp. M. L. C. 591, C. A. 160, 161, 162
Miranda, The (1872), L. R. 3 A. & E. 561; 41 L. J. (ADM.) 82; 27 L. T. 389; 21 W. R. 84; 1 Asp. M. L. C. 440 565
Missouri Steamship Co., *Re* (1889), 42 Ch. D. 321; 58 L. J. (CH.) 721; 61 L. T. 316; 37 W. R. 696, C. A. 141, 329
Mitchell *v.* Burn (1874), 1 R. (Ct. of Sess.) 900; 11 Sc. L. R. 518 . . . 298
——— *v.* Darley Main Colliery Co. (1883), 10 Q. B. D. 457; 52 L. J. (Q. B.) 394; 31 W. R. 549 805
——— *v.* Darthez (1836), 2 Bing. (N. C.) 555; 5 L. J. (C. P.) 154; 2 Scott, 771; 1 Hodg. 418 239, 240, 307, 311, 314, 589
——— *v.* Ede (1840), 11 Ad. & El. 888; 9 L. J. (Q. B.) 187; 3 Per. & Dav. 513 144, 158
——— *v.* Homfray (1881), 8 Q. B. D. 587; 50 L. J. (Q. B.) 460; 45 L. T. 694; 29 W. R. 558, C. A. 748
——— *v.* Kahl (1862), 2 F. & F. 709 90
——— *v.* Scaife (1815), 4 Camp. 298 154, 173, 174, 286, 287
Mitcheson *v.* Nicol (1852), 7 Exch. 929; 21 L. J. (EX.) 323 . . . 102, 205
Mitchinson *v.* Spencer (1902), 86 L. T. 618 749
Moakes *v.* Nicholson (1865), 19 C. B. (N. S.) 290; 34 L. J. (C. P.) 273; 12 L. T. 573 158

PAGE

Mobbs, *Ex parte, Re* Richardson. *See* Richardson, *Re, Ex parte* Mobbs.
Mobile, The (1856), Sw. 69 431, 493
Modena, The, Chiesman & Co. *v.* Modena (Owners). *See* Chiesman & Co. *v.* Modena (Owners), The Modena.
"Moderation," The, Dryden *v.* Allix. *See* Dryden *v.* Allix, The "Moderation."
Modesto, Pineiro & Co. *v.* Dupre & Co. (1902), 86 L. T. 560; 18 T. L. R. 351; 9 Asp. M. L. C. 297; 7 Com. Cas. 105 182, 184
Mœander, The, The Florence Nightingale. *See* Florence Nightingale, The, The Mœander.
Moel Tryvan (Owners) *v.* Weir (Andrew) & Co. (1909), 101 L. T. 954; 54 Sol. Jo. 217; 15 Com. Cas. 61; 11 Asp. M. L. C. 342; affirmed, [1910] 2 K. B. 844; 79 L. J. (K. B.) 898; 103 L. T. 161; 15 Com. Cas. 307, C. A. . 98, 180
Moes, Moliere and Tromp *v.* Leith and Amsterdam Shipping Co. (1867), 5 Macph. (Ct. of Sess.) 988; 39 Sc. Jur. 546 115, 203, 225
Molière, The, [1893] P. 217; 62 L. J. (P.) 102; 69 L. T. 263; 7 Asp. M. L. C. 364; 1 R. 639 426, 462
Molière Steamship Co. *v.* Naylor, Benzon & Co. (1897), 2 Com. Cas. 92 . . 126
Möller *v.* Jecks (1865), 19 C. B. (N. S.) 332 121
Moller *v.* Living (1811), 4 Taunt. 102 310
Molony *v.* L'Estrange (1829), Beat. 406 748
Monarch, The (1886), 12 P. D. 5; 56 L. J. (P.) 114; 56 L. T. 204; 35 W. R. 292; 6 Asp. M. L. C. 90 567
Monke *v.* Taylor, Taylor *v.* Popham. *See* Taylor *v.* Popham, Monke *v.* Taylor.
Monsen *v.* Macfarlane & Co., [1895] 2 Q. B. 562; 65 L. J. (Q. B.) 57; 73 L. T. 548; 8 Asp. M. L. C. 93, C. A. 182, 184, 195, 200
Monserratt *v.* Scott, [1899] 2 I. R. 551 835
Monson, The *v.* The Neptune (1865), 2 Mar. L. C. 289 452
Montagu, Scott and Baker, *Re*, [1889] W. N. 40 772, 774
Monte Rosa, The, [1893] P. 23; 62 L. J. (P.) 20; 68 L. T. 299; 41 W. R. 304; 7 Asp. M. L. C. 326 482, 485, 500, 514, 515, 519
Montesquieu *v.* Sandys (1811), 18 Ves. 302 750
Montfords *v.* Marsden, [1895] 1 Ch. 11; 64 L. J. (CH.) 52; 71 L. T. 620; 12 R. 193, C. A. 731
Montgomery *v.* Foy, Morgan & Co., [1895] 2 Q. B. 321; 65 L. J. (Q. B.) 18; 73 L. T. 12; 43 W. R. 691; 14 R. 575; 8 Asp. M. L. C. 36, C. A. . 288
——— *v.* Hutchins (1905), 94 L. T. 207; 10 Asp. M. L. C. 223 . 270, 291
——— & Co. *v.* Indemnity Mutual Marine Insurance Co., [1902] 1 K. B. 734; 71 L. J. (P.) 457; 86 L. T. 462; 50 W. R. 440; 18 T. L. R. 479; 9 Asp. M. L. C. 289; 7 Com. Cas. 120, C. A. 315
Montriou *v.* Jefferys (1825), 2 C. & P. 113; Ry. & M. 317 756
Moody *v.* Spencer (1822), 2 Dow. & Ry. (K. B.) 6; 1 L. J. (O. S.) (K. B.) 1 . . 845
Moon *v.* Hall (1864), 17 C. B. (N. S.) 760; 11 L. T. 274; 13 W. R. 83 . . 770
Moor Line, Ltd. *v.* Distillers Co., Ltd., [1912] S. C. 514; 49 Sc. L. R. 407; 1 Scots Law Times, 147 126, 132, 273
Moorcock, The (1889), 14 P. D. 64; 58 L. J. (P.) 73; 60 L. T. 654; 37 W. R. 439; 6 Asp. M. L. C. 373, C. A. 256, 647
Moore *v.* Harris (1876), 1 App. Cas. 318; 45 L. J. (P. C.) 55; 34 L. T. 519; 24 W. R. 887; 3 Asp. M. L. C. 173 . . 116, 141, 142, 149, 157, 267
——— *v.* Knight, [1891] 1 Ch. 547; 60 L. J. (CH.) 271; 63 L. T. 831; 39 W. R. 312 760
——— *v.* Prance (1851), 9 Hare, 299; 20 L. J. (CH.) 468; 15 Jur. 1188 . . 729
——— *v.* Smith (1851), 14 Beav. 393 759, 822
Moorsom *v.* Bell (1810), 2 Camp. 616 125
——— *v.* Greaves (1811), 2 Camp. 627 105
——— *v.* Kymer (1814), 2 M. & S. 303; 3 Camp. 549, n. 293, 295
——— *v.* Page (1814), 4 Camp. 103 100, 101, 197, 306
Moran *v.* Jones (1857), 7 E. & B. 523; 26 L. J. (Q. B.) 187; 3 Jur. (N. S.) 663; 5 W. R. 503 320, 322
Mordue *v.* Palmer (1870), 6 Ch. App. 22; 40 L. J. (CH.) 8; 23 L. T. 752; 19 W. R. 86 798
Morecroft, *Re* (1885), 29 Sol. Jo. 471, C. A. 783
Morewood *v.* Pollok (1853), 1 E. & B. 743; 22 L. J. (Q. B.) 250; 17 Jur. 881; 1 W. R. 304; 1 C. L. R. 78. 112, 202
Morgan *v.* Blyth, Smith *v.* Blyth, Blyth *v.* Fladgate. *See* Blyth *v.* Fladgate, Morgan *v.* Blyth, Smith *v.* Blyth.
——— *v.* Castlegate Steamship Co., The "Castlegate," [1893] A. C. 38; 62 L. J. (P. C.) 17; 68 L. T. 99; 41 W. R. 349; 7 Asp. M. L. C. 284; 1 R. 97. 68, 500, 619, 620

PAGE
Morgan *v.* Higgins (1859), 1 Giff. 270 ; 5 Jur. (N. S.) 236 ; 7 W. R. 273 . . 811
——— *v.* Minett (1877), 6 Ch. D. 638 ; 36 L. T. 948 ; 25 W. R. 744 . . 748
——— *v.* Scott (1839), 2 I. Eq. R. 128 817
——— *v.* Taylor (1859), 5 C. B. (N. S.) 653 ; 28 L. J. (C. P.) 178 ; 5 Jur. (N. S.) 791 ; 7 W. R. 285 770
Morgengry, The, and The Blackcock, [1900] P. 1 ; 69 L. J. (P.) 3 ; 81 L. T. 417 ; 69 J. P. 3 ; 48 W. R. 121 ; 16 T. L. R. 14 ; 8 Asp. M. L. C. 591, C. A. . 516, 521
Morison *v.* Gray (1834), 2 Bing. 260 ; 3 L. J. (O. S.) (C. P.) 261 ; 9 Moore (C. P.), 484 159
Mornington *v.* Wellesley (1857), 4 Jur. (N. S.) 6 819
Morrell *v.* Morrell (1882), 7 P. D. 68 ; 51 L. J. (P.) 49 ; 46 L. T. 485 ; 46 J. P. 328 ; 30 W. R. 491 757
Morris, *Ex parte* (1837), 1 Jur. 151 ; Will. Woll. & Dav. 59 840
———, *Re* (1874), 27 L. T. 554 783, 784
———, *Re*, [1908] 1 K. B. 473 ; 77 L. J. (K. B.) 265 ; 58 L. T. 500, C. A. . 820
——— *v.* Bailey (1893), 5 R. 313 743
——— *v.* Howden, [1897] 1 Q. B. 378 ; 66 L. J. (Q. B.) 264 ; 76 L. T. 156 ; 61 J. P. 246 ; 45 W. R. 221 ; 8 Asp. M. L. C. 249 ; 18 Cox, C. C. 501 . 337, 350
——— *v.* James (1838), 6 Dowl. 514 831
——— *v.* Levison (1876), 1 C. P. D. 155 ; 45 L. J. (Q. B.) 409 ; 34 L. T. 576 ; 24 W. R. 517 ; 3 Asp. M. L. C. 171 102, 191
——— *v.* Parkinson (1835), 3 Dowl. 744 808
——— *v.* Robinson (1824), 3 B. & C. 196 ; 5 Dow. & Ry. (K. B.) 35 . . 76, 248
——— and Morris *v.* Oceanic Steam Navigation Co. (1900), 16 T. L. R. 533 . 291
Morrison, *Ex parte* (1868), L. R. 4 Q. B. 153 ; 9 B. & S. 960 ; 38 L. J. (Q. B.) 65 ; 19 L. T. 430 820, 823
——— *v.* General Steam Navigation Co. (1853), 8 Exch. 733 ; 22 L. J. (EX.) 233 362, 376
——— *v.* Parsons (1810), 2 Taunt. 407 299, 303
Mors *v.* Sluce (1672), 1 Mod. Rep. 85 ; 1 Vent. 190 ; 2 Keb. 72 ; T. Raym. 220 ; 2 Lev. 69 195, 203, 325, 326
Mors-le-Blanch *v.* Wilson (1873), L. R. 8 C. P. 227 ; 42 L. J. (C. P.) 70 ; 28 L. T. 415 ; 1 Asp. M. L. C. 605 279, 280, 282, 287
Morse, *Re*, *Ex parte* Latimer, Clarke, Muirhead & Co., Ltd. (1891), 65 L. T. 552, C. A. 805
——— *v.* Cook (1824), 13 Price, 473 ; M'Cle. 211 823
Morteo *v.* Julian (1879), 4 C. P. D. 216 ; 48 L. J. (M. C.) 126 ; 41 L. T. 71 . 603
Morton *v.* Hutchinson, The "Frankland" and The "Kestrel" (1872), L. R. 4 P. C. 529 ; 9 Moo. P. C. C. (N. S.) 365 ; 27 L. T. 633 ; 1 Asp. M. L. C. 489 . 424
Moseley *v.* Victoria Rubber Co. (1887), 57 L. T. 142 768
Mosely, *Re* (1867), 15 W. R. 975 817
Moses, *Ex parte* (1873), L. R. 9 Q. B. 1 ; 43 L. J. (Q. B.) 13 ; 29 L. T. 420 ; 22 W. R. 57 714
Moss, *Re* (1854), 3 W. R. 19 796
——, *Re* (1866), L. R. 2 Eq. 345 ; 35 Beav. 526 ; 35 L. J. (CH.) 554 ; 14 L. T. 536 ; 12 Jur. (N. S.) 557 ; 14 W. R. 814 740, 818
—— *v.* African Steamship Co., The "Calabar" (1868), L. R. 2 P. C. 238 ; 19 L. T. 768 487, 531
—— *v.* Smith (1850) 9 C. B. 94 ; 19 L. J. (C. P.) 225 ; 14 Jur. 1003 . . 221, 223, 235, 236, 251
—— *v.* ——— (1906), 11 Com. Cas. 100 236
Moss Steamship Co., Ltd. *v.* Whinney, [1912] A. C. 254 ; 81 L. J. (K. B.) 674 ; 105 L. T. 305 ; 55 Sol. Jo. 631 ; 27 T. L. R. 513 ; 12 Asp. M. L. C. 25 ; 16 Com. Cas. 247 ; 49 Sc. L. R. 630 285
Mostyn *v.* Mostyn (1870), 5 Ch. App. 457 ; 39 L. J. (CH.) 780 ; 22 L. T. 461 ; 18 W. R. 657 741
Mount Park Steamship Co. *v.* Grey (1910), *Shipping Gazette*, March 12th . . 216
Mount Vernon, The (1891), 64 L. T. 148 ; 7 Asp. M. L. C. 32 36
Mourne, The, [1901] P. 68 ; 70 L. J. (P.) 7 ; 83 L. T. 748 ; 17 T. L. R. 194 ; 9 Asp. M. L. C. 155 474, 475, 499
Mouse's Case (1608), 12 Co. Rep. 63 ; 1 Roll. Rep. 79 ; 2 Bulst. 280 . . . 317
Mowbray *v.* Fleming (1809), 11 East, 285 775
Moxon, *Ex parte* (1830), 1 Dowl. 6 841
——— *v.* Payne (1873), 8 Ch. App. 881 ; 43 L. J. (CH.) 240 749

PAGE
Moxon *v.* Sheppard (1890), 24 Q. B. D. 627; 59 L. J. (Q. B.) 286; 62 L. T. 726; 38 W. R. 704 825
Mud Hopper (No. 4), The (1879), 4 Asp. M. L. C. 103 547
Muddle *v.* Stride (1840), 9 C. & P. 380 203, 226
Mudie *v.* Strick & Co., Ltd. (1909), 100 L. T. 701; 25 T. L. R. 453; 53 Sol. Jo. 400; 11 Asp. M. L. C. 235; 14 Com. Cas. 135; (1909), 14 Com. Cas. 227, C. A. 131, 132, 139, 273
Mudlark, The, [1911] P. 116; 80 L. J. (P.) 117; 27 T. L. R. 385 . . 14, 612
Muller *v.* Baldwin (1874), L. R. 9 Q. B. 457; 43 L. J. (Q. B.) 164; 30 L. T. 864; 22 W. R. 909; 2 Asp. M. L. C. 204 636
——— *v.* Gernon (1811), 3 Taunt. 394 307
Mulliner *v.* Florence (1878), 3 Q. B. D. 484; 47 L. J. (Q. B.) 700; 38 L. T. 167; 26 W. R. 385, C. A. 626
Mulloy *v.* Backer (1804), 5 East, 316 314
Munns and Longden, *Re* (1884), 50 L. T. 356 789
Munro, *Ex parte*, *Re* Lewis. *See* Lewis, *Re*, *Ex parte* Munro.
Munster *v.* Lamb (1883), 11 Q. B. D. 588; 52 L. J. (Q. B.) 726; 49 L. T. 252; 47 J. P. 805; 32 W. R. 248 726
Murphy *v.* Coffin (1883), 12 Q. B. D. 87; 32 W. R. 616 127, 254, 260, 261
——— *v.* Palgreave (1869), 21 L. T. 209 487
Murray, *Re* (1826), 1 Russ. 519 840
———, *Re*, [1867] W. N. 190 816
——— *v.* Currie (1871), L. R. 6 C. P. 24; 40 L. J. (C. P.) 26; 23 L. T. 557; 19 W. R. 104. 206, 207, 519
——— *v.* Flavell, *Re* Flavell. *See* Flavell, *Re*, Murray *v.* Flavell.
Myers *v.* Sarl (1860), 3 E. & E. 306; 30 L. J. (Q. B.) 9; 7 Jur. (N. S.) 97; 9 W. R. 96 139
Myres, *Re* (1846), 8 Q. B. 515; 15 L. J. (Q. B.) 209; 10 Jur. 563 . . . 848
Mystery, The, [1902] P. 115; 71 L. J. (P.) 39; 86 L. T. 359; 50 W. R. 414; 9 Asp. M. L. C. 281 532

N.

N., *Re* (1912), 56 Sol. Jo. 520 790
Nador, The, [1909] P. 300; 78 L. J. (P.) 106; 100 L. T. 1007 . . . 411, 536
Nash *v.* Goode and Parry (1841), 9 Dowl. 929; 5 Jur. 653. 838
Nasmyth, The (1885), 10 P. D. 41; 54 L. J. (P.) 63; 52 L. T. 392; 33 W. R. 736; 5 Asp. M. L. C. 364 573
Nathan *v.* Giles (1814), 5 Taunt. 558 160
Nation, *Re*, Nation *v.* Hamilton (1887), 57 L. T. 648 796
National Mercantile Bank, *Ex parte*, *Re* Haynes. *See* Haynes, *Re*, *Ex parte* National Mercantile Bank.
National Old Age Pensions Trust, *Re*, Stevens *v.* Taverner (1912), 57 Sol. Jo. 114 741
National Steamship Co. *v.* Merry, The Pennsylvania (1870), 23 L. T. 55; 3 Mar. L. C. 477 378, 412, 418
Navigator, The, The Falkland. *See* Falkland, The, The Navigator.
Neale, *Re*, *Ex parte* Neale (1893), 10 T. L. R. 18 855
——— *v.* Postlethwaite (1841), 1 Q. B. 243 814
Neate, *Re* (1847), 10 Beav. 181 784
——— *v.* Wilson, Deacon *v.* Quayle. *See* Deacon *v.* Quayle, Neate *v.* Wilson.
Neave *v.* Pratt (1807), 2 Bos. & P. (N. R.) 408 61
Negus, *Re*, [1895] 1 Ch. 73; 64 L. J. (CH.) 79; 71 L. T. 716; 43 W. R. 68; 13 R. 85 764, 779, 783
Neill *v.* Ridley (1854), 9 Exch. 677; 2 C. L. R. 1018 102, 205, 298
Neish *v.* Graham (1857), 8 E. & B. 505; 27 L. J. (Q. B.) 15; 4 Jur. (N. S.) 49 135, 283, 312
Nelly Schneider, The (1878), 3 P. D. 152; 39 L. T. 360; 27 W. R. 308; 4 Asp. M. L. C. 54 37
Nelson (1823), 1 Hag. Adm. 169 70
Nelson *v.* Booth (1857), 27 L. J. (CH.) 110; 3 Jur. (N. S.) 951; 5 W. R. 722 . 751, 811
——— *v.* Dahl (1879), 12 Ch. D. 568; 41 L. T. 365; 28 W. R. 57, C. A.; affirmed, *sub nom.* Dahl *v.* Nelson, Donkin & Co. (1881), 6 App. Cas. 38; 50 L. J. (CH.) 411; 44 L. T. 381; 29 W. R. 543; 4 Asp. M. L. C. 392 . 127, 180, 182, 186, 254, 260, 261, 262, 263

PAGE
Nelson *v.* Fawcett, The Resolution, The Langton (1789), Burrell, 332 . . 373
——— *v.* Protection of Commercial Interests as respects Wrecked and Damaged Property Association (1874), 43 L. J. (C. P.) 218 . . . 283, 284
——— *v.* Richardson (1884), 48 J. P. 457 44
——— (Thomas) & Sons *v.* Dundee East Coast Shipping Co., Ltd., [1907] S. C. 927; 44 Sc. L. R. 661; 15 Scots Law Times, 38 . . . 98, 210
——— (James) & Sons, Ltd. *v.* Nelson Line (Liverpool), Ltd. (No. 2), [1906] 2 K. B. 804; 75 L. J. (K. B.) 921; 22 T. L. R. 826; 11 Com. Cas. 305; affirmed, [1907] 1 K. B. 769; 76 L. J. (K. B.) 411; 96 L. T. 402; 23 T. L. R. 302; 12 Com. Cas. 210; 10 Asp. M. L. C. 390 . . 290
——— & Sons, Ltd. and Nelson Line, Liverpool, Ltd., *Re*, Nelson (James) & Sons, Ltd. *v.* Nelson Line (Liverpool), Ltd., [1907] 2 K. B. 705; 77 L. J. (K. B.) 97; 97 L. T. 661; 23 T. L. R. 656; 10 Asp. M. L. C. 544, C. A.; reversed, [1908] A. C. 108; 98 L. T. 322; 52 Sol. Jo. 278; 24 T. L. R. 315; 13 Com. Cas. 235 122, 128, 129
——— Line (Liverpool), Ltd. *v.* Nelson (James) & Sons, Ltd., [1908] A. C. 16; 77 L. J. (K. B.) 82; 97 L. T. 812; 52 Sol. Jo. 170; 24 T. L. R. 114; 10 Asp. M. L. C. 581; 13 Com. Cas. 104. . 77, 139, 189, 190, 216, 359
———, Son and Hastings, *Re* (1885), 30 Ch. D. 1; 54 L. J. (CH.) 998; 53 L. T. 415; 33 W. R. 645, C. A. 738, 786, 847
Nepoter, The (1869), L. R. 2 A. & E. 375; 38 L. J. (ADM.) 63; 22 L. T. 177; 18 W. R. 49 116, 164, 204, 225, 232, 233
Neptune (1824), 1 Hag. Adm. 227 47, 60, 563, 619, 620
———, The (1835), 3 Knapp, 94 67
——— (1841), 1 Wm. Rob. 297 586
Neptune the Second (1814), 1 Dods. 467 489
"Nerano," The *v.* The "Dromedary" (1895), 22 R. (Ct. of Sess.) 237; 32 Sc. L. R. 196; 2 Scots Law Times, 449 481
Nereid, The (1889), 14 P. D. 78; 58 L. J. (ADM.) 51; 61 L. T. 339; 37 W. R. 688; 6 Asp. M. L. C. 411 616
Nereo, The (1907), *Shipping Gazette*, November 2nd; on appeal (1908), *Shipping Gazette*, March 7th, C. A. 460
Nesbitt, *Ex parte* (1805), 2 Sch. & Lef. 279 817
——— *v.* Lushington (1792), 4 Term Rep. 783. 109, 113, 316
Netherlands Steam Boat Co. *v.* Styles, The Batavier. *See* Batavier, The.
Nevada, The (1872), 27 L. T. 720; 1 Asp. M. L. C. 477 486
Nevill's Dock and Rail. Co. *v.* Maatschappij S.S. Bestavaer Rotterdam, South Wales and Liverpool Steamship Co. *v.* Nevill's Dock and Rail. Co. *See* South Wales and Liverpool Steamship Co. *v.* Nevill's Dock and Rail. Co., Nevill's Dock and Rail. Co. *v.* Maatschappij S.S. Bestavaer Rotterdam.
New Brunswick, The (1839), 1 Wm. Rob. 28 73
New Draper, The (1802), 4 Ch. Rob. 287 36
New Ed., The, The Gustav. *See* Gustav, The, The New Ed.
New Line Steamship Co., Ltd. *v.* Bryson & Co., [1910] S. C. 409; 47 Sc. L. R. 346; 1 Scots Law Times, 150 310
New Pelton, The, [1891] P. 258; 60 L. J. (P.) 78; 65 L. T. 494; 7 Asp. M. L. C. 81 482, 502
Newall *v.* Royal Exchange Shipping Co. (1885), 33 W. R. 868 205
Newbattle, The (1885), 10 P. D. 33; 54 L. J. (P.) 16; 52 L. T. 15; 33 W. R. 318; 5 Asp. M. L. C. 356, C. A. 408
Newbiggin-by-the-Sea Gas Co. *v.* Armstrong (1879), 13 Ch. D. 310; 49 L. J. (CH.) 231; 41 L. T. 637; 28 W. R. 217, C. A. 742, 767, 833
Newbould *v.* Bailward, Parker *v.* Blenkhorn. *See* Parker *v.* Blenkhorn, Newbould *v.* Bailward.
Newen, *Re*, Carruthers *v.* Newen, [1903] 1 Ch. 812; 72 L. J. (CH.) 356; 88 L. T. 264; 51 W. R. 297; 19 T. L. R. 247 744, 846, 847
Newington Local Board *v.* Eldridge (1879), 12 Ch. D. 349, C. A. . 732, 733, 815, 818, 841
Newland, *Ex parte*, *Re* Clark. *See* Clark, *Re*, *Ex parte* Newland.
Newman, *Re* (1867), 2 Ch. App. 707; 36 L. J. (CH.) 843; 17 L. T. 128; 15 W. R. 1189 783, 789
——— *v.* Walters (1804), 3 Bos. & P. 612 . . 329, 557, 567, 568, 579, 583
——— and Dale *v.* Lamport and Holt, [1896] 1 Q. B. 20; 65 L. J. (Q. B.) 102; 73 L. T. 475; 8 Asp. M. L. C. 76 104, 218
Newman and Dale Steamship Co. and British and South American Steamship Co., *Re*, [1903] 1 K. B. 262; 72 L. J. (K. B.) 110; 87 L. T. 614; 1 Asp. M. L. C. 351; 8 Com. Cas. 87 118, 129

PAGE

"Newport," The, Hocquard *v.* R. *See* Hocquard *v.* R., The "Newport."
Newson *v.* Law Society (1912), 57 Sol. Jo. 80, C. A. 721
——— *v.* Thornton (1805), 6 East, 17 159
Newton *v.* Boodle (1847), 4 C. B. 359 783
——— *v.* Chambers (1844), 13 L. J. (Q. B.) 141 ; 8 Jur. 244 ; 1 Dow. & L. 869 . 836
——— *v.* Chapman, *Re* Chapple. *See* Chapple, *Re*, Newton *v.* Chapman.
"Ngapoota," The, "Kwang Tung" (Owner) *v.* "Ngapoota" (Owners). *See* "Kwang Tung" (Owner) *v.* "Ngapoota" (Owners), "The "Ngapoota."
Nicholaas Witzen (1837), 3 Hag. Adm. 369 584
Nicholas and Paine, *Re*, *Ex parte* Lovett (1889), 61 L. T. 87 ; 37 W. R. 715 ; 6 Morr. 173 826
Nicholls, *Ex parte* (1842), 2 Dowl. (N. S.) 423 ; 12 L. J. (Q. B.) 103 ; 7 Jur. 374 . . 841
——— *v.* Wilson (1843), 11 M. & W. 106 ; 12 L. J. (EX.) 266 ; 2 Dowl. (N.S.) 1031 739
Nichols *v.* Clent (1817), 3 Price, 547 161
——— *v.* Regent's Canal Co. (1894), 63 L. J. (Q. B.) 641 ; 71 L. T. 249 ; reversed, 71 L. T. 836, C. A. 733, 734
Nicholson, *Re* (1861), 29 Beav. 665 ; 30 L. J. (CH.) 796 ; 9 W. R. 774 . . . 782
———, *Re* (1861), 3 De G. F. & J. 93 ; 30 L. J. (CH.) 585 ; 4 L. T. 167 ; 7 Jur. (N. S.) 434 ; 9 W. R. 441, C. A. 786
———, *Re*, *Ex parte* Harrison (1814), 2 Rose, 76 34
———, *Re*, *Ex parte* Quinn (1884), 53 L. J. (CH.) 302 ; 49 L. T. 811 ; 32 W. R. 296 817
——— *v.* Chapman (1793), 2 Hy. Bl. 254 559
——— *v.* Mouncey and Symes (1812), 15 East, 384 525
Nicol *v.* Hennessy (1896), 1 Com. Cas. 410 35
Nicolina, The (1843), 2 Wm. Rob. 175 582
Nielsen *v.* Wait (1885), 16 Q. B. D. 67 ; 55 L. J. (Q. B.) 87 ; 54 L. T. 344 ; 34 W. R. 33 ; 5 Asp. M. L. C. 553, C. A. . . . 122, 123, 140, 260, 262, 276, 277
——— & Son *v.* Neame & Co. (1884), Cab. & El. 288 ; Abbott on Shipping, 5th ed., p. 296; 14th ed., p. 705 310
Niemann *v.* Moss (1860), 29 L. J. (Q. B.) 206 ; 6 Jur. (N. S.) 775 . . . 122
Nifa, The, [1892] P. 411 ; 62 L. J. (P.) 12 ; 69 L. T. 56 ; 1 R. 540 ; 7 Asp. M. L. C. 324 140, 141, 142, 199, 268, 269
Nile, The (1875), L. R. 4 A. &. E. 449 ; 44 L. J. (ADM.) 38 ; 33 L. T. 66 ; 3 Asp. M. L. C. 11 565, 619, 629
Nimrod, The (1851), 15 Jur. 1201 365, 465, 481
Niobe, The (1888), 13 P. D. 55 ; 57 L. J. (P.) 33 ; 59 L. T. 257 ; 36 W. R. 812 ; 6 Asp. M. L. C. 300 358, 491, 528
"Niobe," The, McCowan *v.* Baine. *See* McCowan *v.* Baine, The "Niobe."
"Niord," The, and The "Esk." *See* "Esk," The, and The "Niord."
Nitrate Producers' Steamship Co. *v.* Wills (George) & Co. (1905), 21 T. L. R. 699 89
No. 7 Steam Sand Pump Dredger (Owners) *v.* "Greta Holme" (Owners), The "Greta Holme," [1897] A. C. 596 ; 66 L. J. (P.) 166 ; 77 L. T. 23 ; 8 Asp. M. L. C. 317. 537, 642
Nobel's Explosives Co. *v.* Jenkins & Co., [1896] 2 Q. B. 326 ; 65 L. J. (Q. B.) 638 ; 75 L. T. 163 ; 8 Asp. M. L. C. 181 . 109, 228, 258, 259
———————, Ltd. *v.* Rea (W. R.) (1897), 2 Com. Cas. 293 . . . 323
Noden *v.* Johnson (1850), 16 Q. B. 218 ; 20 L. J. (Q. B.) 95 ; 15 Jur. 424 . . 329
Nokes *v.* Warton (1842), 5 Beav. 448 789
Nor, The (1874), 30 L. T. 576 ; 22 W. R. 30 ; 2 Asp. M. L. C. 264 . . . 504
"Nord Kap," S.S. *v.* S.S. "Sandhill," The "Sandhill," [1894] A. C. 646 ; 11 R. 144 458
"Norden," The (1853), 1 Ecc. & Ad. 185 565
Norden Steam Co. *v.* Dempsey (1876), 1 C. P. D. 654 ; 45 L. J. (Q. B.) 764 ; 24 W. R. 984 140, 183, 260, 261, 266
Norfolk (Duke) *v.* Worthy (1808), 1 Camp. 337 746
Norfolk and North American Steam Shipping Co., Ltd. *v.* Virginia Carolina Chemical Co., [1913] A. C. 52 ; 82 L. J. (K. B.) 389 112
Norma, The (1860), Lush. 124 ; 5 L. T. 340 587, 589
——— (1876), 35 L. T. 418 ; 3 Asp. M. L. C. 272 446
Norman, *Re* (1886), 16 Q. B. D. 673 ; 55 L. J. (CH.) 202 ; 54 L. T. 143 ; 34 W. R. 313, C. A. 785, 786, 788, 789
——— *v.* Binnington (1890), 25 Q. B. D. 475 ; 59 L. J. (Q. B.) 490 ; 63 L. T. 108 ; 38 W. R. 702; 6 Asp. M. L. C. 528 . . 117, 139, 189, 190 202, 205

PAGE

Norman (Douglas) & Co., *Re*, [1898] 1 Ch. 199; 67 L. J. (CH.) 85; 77 L. T. 552; 46 W. R. 421 820

"Normandie" (Owners of Norwegian S.S.) *v.* "Pekin" (Owners of British S.S.), The "Pekin," [1897] A. C. 532; 66 L. J. (P. C.) 97; 77 L. T. 443 . 376, 437, 439, 440, 447

Normandy, The (1870), L. R. 3 A. & E. 152; 39 L. J. (ADM.) 48; 23 L. T. 631; 18 W. R. 903 613

——— (1900), 16 T. L. R. 567 541

———, [1904] P. 187; 73 L. J. (P.) 55; 90 L. T. 351; 52 W. R. 634; 20 T. L. R. 239; 9 Asp. M. L. C. 568 359, 360, 547

Norris, *Re*, [1902] 1 Ch. 741; 71 L. J. (CH.) 187; 86 L. T. 46; 50 W. R. 316 . 763, 766

———, *Re*, Allen *v.* Norris (1884), 27 Ch. D. 333; 53 L. J. (CH.) 912; 51 L. T. 593; 32 W. R. 955 754

North *v.* Stewart (1890), 15 App. Cas. 452; 63 L. T. 718 825

North American, The *v.* Wild Rose (1865), 14 L. T. 68; 2 Mar. L. C. 319 . 417, 532

North Star, The (1860), Lush. 45; 29 L. J. (P. M. & A.) 73; 2 L. T. 264 . 70, 74, 242, 243, 323

"Northampton," The (1853), 1 Ecc. & Ad. 152 489, 531

Northcote *v.* The Heinrich Björn (Owners), The Heinrich Björn (1886), 11 App. Cas. 270; 55 L. J. (P.) 80; 55 L. T. 66; 6 Asp. M. L. C. 1 . . . 618, 621

Northfield *v.* Orton (1832), 1 Dowl. 415 830

Northfield Steamship Co. *v.* Compagnie L'Union des Gaz, [1912] 1 K. B. 434; 81 L. J. (K. B.) 281; 105 L. T. 853; 28 T. L. R. 148; 12 Asp. M. L. C. 87; 17 Com. Cas. 74, C. A. 127, 262, 263, 272, 273, 277

Northmoor Steamship Co. *v.* Harland and Wolff, [1903] 2 I. R. 657 . 118, 267, 268

Northumberland (Duke) *v.* Todd (1878), 7 Ch. D. 777; 47 L. J. (CH.) 343; 38 L. T. 746; 26 W. R. 350 727, 857

Northumberland Avenue Hotel Co., *Re* (1886), 33 Ch. D. 16; 54 L. T. 777, C. A. 734

Northumbria, The (1869), L. R. 3 A. & E. 6; 39 L. J. (ADM.) 3; 21 L. T. 681; 18 W. R. 188 538, 612

———, [1906] P. 292; 75 L. J. (P.) 101; 95 L. T. 618; 10 Asp. M. L. C. 328 106, 172, 175, 177, 217

Norton *v.* Cooper, *Re* Manby and Hawksford, *Ex parte* Bittleston (1856), 3 Sm. & G. 375 759, 833

Norvall, *Re*, [1869] W. N. 255 793

"Norway" (Owners) *v.* Ashburner, The "Norway" (1865), 3 Moo. P. C. C. (N. S.) 245; Brown. & Lush. 404; 13 L. T. 50; 11 Jur. (N. S.) 892; 13 W. R. 1085 91, 102, 103, 110, 111, 114, 139, 140, 198, 227, 255, 262, 271, 284, 286, 305, 308, 310, 311

Norwich Corporation *v.* Berry (1767), 1 Wm. Bl. 636 726

Nostra Senora del Carmine (1854), 18 Jur. 730 241

Nostre Padre, The (1880), Pritchard's Admiralty Digest, 3rd ed., p. 244 . . 401

Notara *v.* Henderson (1870), L. R. 5 Q. B. 346; 39 L. J. (Q. B.) 167; 22 L. T. 577; affirmed (1872), L. R. 7 Q. B. 225; 41 L. J. (Q. B.) 158; 26 L. T 442; 20 W. R. 442; 1 Asp. M. L. C. 278 . . . 74, 224, 225, 226, 227, 228, 254, 326

Nottage *v.* Jackson (1883), 11 Q. B. D. 627; 52 L. J. (Q. B.) 760; 49 L. T. 339; 32 W. R. 106, C. A. 801

Nottebohn *v.* Richter (1886), 18 Q. B. D. 63; 56 L. J. (Q. B.) 33; 35 W. R. 300, C. A. 110, 118, 199, 200, 202

Notting Hill, The (1884), 9 P. D. 105; 53 L. J. (P.) 56; 32 W. R. 764; 5 Asp. M. L. C. 241, C. A. 289, 541

Nova Scotia Steel Co. *v.* Sutherland Steam Shipping Co. (1899), 5 Com. Cas. 106 . . 99

Nova Scotian S.S. *v.* S.S. Quebec (1875), 2 Quebec Law Reports, 1 464

N. R. Gosfabrick, The (1858), Sw. 344; 4 Jur. (N. S.) 742; 6 W. R. 871 . . 69

N. Strong, The, [1892] P. 105; 67 L. T. 299; 7 Asp. M. L. C. 194 . 413, 415, 418, 419, 420

Nugent *v.* Smith (1875), 1 C. P. D. 19; 33 L. T. 731; reversed (1876), 1 C. P. D. 423; 45 L. J. (Q. B.) 697; 34 L. T. 827; 24 W. R. 237; 3 Asp. M. L. C. 198, C. A. 107, 108, 196, 233, 325, 326

Nuova Loanese, The (1852), 17 Jur. 263 244, 245

Nuova Raffaelina, The (1871), L. R. 3 A. & E. 483; 41 L. J. (ADM.) 37; 24 L. T. 321; 20 W. R. 216; 1 Asp. M. L. C. 16 138

Nurse *v.* Durnford (1879), 13 Ch. D. 764; 49 L. J. (CH.) 229; 41 L. T. 611; 28 W. R. 145 833, 834, 848

PAGE
Nutt *v.* Bourdieu (1786), 1 Term Rep. 323 112
Nyholm, *Ex parte, Re* Child. *See* Child, *Re, Ex parte* Nyholm.

O.

OAKFIELD, The (1886), 11 P. D. 34; 55 L. J. (P.) 11; 54 L. T. 578; 34 W. R. 687; 5 Asp. M. L. C. 575 532
Oakley *v.* Portsmouth and Ryde Steam Packet Co. (1856), 11 Exch. 618; 25 L. J. (EX.) 99; 4 W. R. 236 325
——— *v.* Speedy (1879), 40 L. T. 881; 4 Asp. M. L. C. 134 526
Oakville Steamship Co. *v.* Holmes (1899), 48 W. R. 152; 16 T. L. R. 54; 5 Com. Cas. 48 126
Obey, The (1866), L. R. 1 A. & E. 102; 12 Jur. (N. S.) 817 613
O'Brien, *Re* (1839), 1 I. Eq. R. 480 714
——— *v.* Lewis (1863), 4 Giff. 221; 32 L. J. (CH.) 569; 8 L. T. 179; 9 Jur. (N. S.) 321; 11 W. R. 318; (1863), 3 De G. J. & Sm. 606; 32 L. J. (CH.) 665; 8 L. T. 683; 9 Jur. (N. S.) 764; 11 W. R. 973; 2 New Rep. 536, C. A. 747, 821
——— *v.* Oceanic Steam Navigation Co. (1913), 29 T. L. R. 629; affirmed, [1914] W. N. 75; 58 Sol. Jo. 303; *sub nom.* Ryan *v.* Oceanic Steam Navigation Co., Ltd. (1914), 30 T. L. R. 302; 136 L. T. Jo. 405, C. A. . 337, 523
Ocean, The (1846), 2 Wm. Rob. 429 72, 73
Ocean Iron Steamship Insurance Association *v.* Leslie (1887), 22 Q. B. D. 722; 57 L. T. 722; 6 Asp. M. L. C. 226 35
Ocean Steamship Co. *v.* Anderson (1883), 13 Q. B. D. 651, C. A.; reversed (1884), 10 App. Cas. 107; 54 L. J. (Q. B.) 192; 52 L. T. 441; 33 W. R. 433; 5 Asp. M. L. C. 401 320
Ocean Steamship Co. "Hebe" (Owners) *v.* Apcar & Co., "Arratoon Apcar" (Owners), The "Arratoon Apcar" (1889), 15 App. Cas. 37; 59 L. J. (P. C.) 49; 62 L. T. 331; 38 W. R. 481; 6 Asp. M. L. C. 491 . . 427, 459, 460, 534
"Ocean Wave," The, Marshall *v.* Moran. *See* Marshall *v.* Moran, The "Ocean Wave."
Oceanic Steam Navigation Co. *v.* Waterford Steamship Co., The Oceanic (1903), 88 L. T. 303; 19 T. L. R. 364; 9 Asp. M. L. C. 378 416, 418
Oceano, The (1878), 3 P. D. 60, C. A. 438, 439, 447, 483
Octavia Stella, The (1887), 57 L. T. 632; 6 Asp. M. L. C. 182 530
Oddy, *Re*, [1895] 1 Q. B. 392; 64 L. J. (Q. B.) 123; 71 L. T. 861; 43 W. R. 363; 14 R. 387, C. A. 796
Odessa, The (1882), 46 L. T. 77; 4 Asp. M. L. C. 493, C. A. 434, 483
Official Receiver, *Ex parte, Re* Graydon. *See* Graydon, *Re, Ex parte* Official Receiver.
———, *Ex parte, Re* Wayman. *See* Wayman, *Re, Ex parte* Official Receiver.
Ogden *v.* Graham (1861), 1 B. & S. 773; 31 L. J. (Q. B.) 26; 5 L. T. 396; 8 Jur. (N. S.) 613; 10 W. R. 77 255, 256, 257
Ogg *v.* Shuter (1875), 1 C. P. D. 47; 45 L. J. (Q. B.) 44; 33 L. T. 492; 24 W. R. 100; 3 Asp. M. L. C. 77, C. A. 160, 161
Ogilvie, *In the Estate of*, Ogilvie *v.* Massey, [1910] P. 243; 79 L. J. (P.) 113; 103 L. T. 154, C. A. 796
Ogle *v.* Atkinson (1814), 5 Taunt. 759 161
—— *v.* Wrangham (1790), cited in Abbott on Shipping, 5th ed., p. 76; 14th ed., p. 130 35, 36
Oglesby *v.* Yglesias (1858), E. B. & E. 930; 27 L. J. (Q. B.) 356; 6 W. R. 690 . . 133
Ogmore Steamship Co., Ltd. *v.* Borner (H.) & Co., Ltd., The Deerhound (1901), 84 L. T. 360; 49 W. R. 511; 17 T. L. R. 328; 6 Com. Cas. 104; 9 Asp. M. L. C. 189 261, 278
O'Hanlan *v.* Great Western Rail. Co. (1865), 6 B. & S. 484; 34 L. J. (Q. B.) 154; 12 L. T. 490; 11 Jur. (N. S.) 797; 13 W. R. 741 290
O'Hara, Matthews & Co. *v.* Elliott & Co., [1893] 1 Q. B. 362; 62 L. J. (Q. B.) 317; 68 L. T. 166; 41 W. R. 248; 5 R. 205 805
Ohlsen *v.* Drummond (1785), 2 Chit. 705; 4 Doug. (K. B.) 356 . . . 143, 192, 193
Ohrloff *v.* Briscall, The "Helene" (1866), L. R. 1 P. C. 231; 35 L. J. (P. C.) 63; 14 L. T. 873; 12 Jur. (N. S.) 675; 15 W. R. 202; 4 Moo. P. C. C. (N. S.) 70 . . . 101, 115, 166, 172, 197, 203, 204, 206, 207, 225, 233, 325
Okehampton, The, [1913] P. 173; 29 T. L. R. 731; *sub nom.* MacAndrew & Co. *v.* "Okehampton" (Owners), The "Okehampton," 18 Com. Cas. 320 C. A. . 210, 542
"Olga," S.S. (Owners) *v.* S.S. "Anglia" (Owners) (1905), 42 Sc. L. R. 439; 7 F. (Ct. of Sess.) 739; 12 Scots Law Times, 812 615

PAGE
Oliver, *Re* (1867), 36 L. J. (CH.) 261; 15 W. R. 331 781
——— *v.* Colven (1879), 27 W. R. 822 265, 279, 280
——— *v.* Fielden (1849), 4 Exch. 135; 18 L. J. (EX.) 353 . . 91, 94, 179, 185, 192
——— *v.* Muggeridge (1859), 7 W. R. 164 172
——— *v.* Woodroffe (1839), 4 M. & W. 650 731
Olivia, The (1862), 67 L. T. 398; Lush. 497 App. v.
Olivier, The (1862), Lush. 484; 31 L. J. (P. M. & A.) 137; 6 L. T. 259 . 71, 230, 245
Ollive *v.* Booker (1847), 1 Exch. 416; 17 L. J. (EX.) 21 91, 92, 179
Olympic, The, [1913] P. 92; 82 L. J. (P.) 41; 108 L. T. 592; 29 T. L. R. 335; 12 Asp. M. L. C. 318; *sub nom.* Fraser and Weller *v.* Oceanic Steam Navigation Co., 57 Sol. Jo. 388, C. A. . . 46, 49, 548
——————— and H.M.S. Hawke, [1913] P. 214; 29 T. L. R. 441, C. A. . 437, 441, 442, 447, 449, 450, 459, 463, 501
Omoa Coal and Iron Co. *v.* Huntley (1877), 2 C. P. D. 464; 37 L. T. 184; 3 Asp. M. L. C. 501 86
O'Neil *v.* Armstrong, Mitchell & Co., [1895] 2 Q. B. 418; 65 L. J. (Q. B.) 7; 73 L. T. 178; 14 R. 709, C. A. 60
Onni, The (1860), Lush. 154; 3 L. T. 447 69
Onrust, The (1867), 17 L. T. 415 93
Onward, The (1873), L. R. 4 A. & E. 38; 42 L. J. (ADM.) 61; 28 L. T. 204; 21 W. R. 601; 1 Asp. M. L. C. 40 . 229, 230, 231, 241, 242, 243, 244, 245, 246, 249, 251, 253
Onward Building Society, *Re*, *Ex parte* Watson, [1893] 1 Q. B. 16; 62 L. J. (Q. B.) 80; 68 L. T. 443; 57 J. P. 439; 41 W. R. 107; 5 R. 19 762
Oostzee Stoomvart Maats *v.* Bell and Harrison (1906), 28 T. L. R. 643; 11 Com. Cas. 214 146
Oporto, The, [1897] P. 249; 66 L. J. (P.) 49, C. A. . . . 446, 455, 460, 466
Oppenheim *v.* Fraser (1876), 34 L. T. 524; 3 Asp. M. L. C. 146 . 91, 141, 143
——————— *v.* Russell (1802), 3 Bos. & P. 42 284, 285
Oquendo, The (1878), 38 L. T. 151; 3 Asp. M. L. C. 558 . . 111, 115, 202, 205
Oravia, The, Oravia (Owners) *v.* Nercus (Owners) (1905), 92 L. T. 278; 10 Asp. M. L. C. 100; affirmed (1907), 96 L. T. 869; 10 Asp. M. L. C. 434; 23 T. L. R. 358, C. A.; affirmed (1907), 97 L. T. 523; 23 T. L. R. 663; 10 Asp. M. L. C. 525 413, 418, 421
" Orbona," The (1853), 1 Ecc. & Ad. 161 580
Orchis, The (1890), 15 P. D. 38; 59 L. J. (P.) 31; 62 L. T. 407; 38 W. R. 472; 6 Asp. M. L. C. 501, C. A. 26
Ord *v.* Johnston (1855), 1 Jur. (N. S.) 1063; 4 W. R. 37 842
Orelia (1833), 3 Hag. Adm. 75 625, 626
Orient, The (1869), 3 Mar. L. C. 321 619
" Orient," The, Yeo *v.* Tatem. *See* Yeo *v.* Tatem, The " Orient."
Orient Steam Navigation Co. *v.* Ocean Marine Insurance Co. (1887), 3 T. L. R. 778 804
Orienta, The, [1895] P. 49; 64 L. J. (P.) 32; 71 L. T. 711; 11 R. 687; 7 Asp. M. L. C. 529, C. A. 68, 620
" Oriental," The, Wallace *v.* Fielden. *See* Wallace *v.* Fielden, The " Oriental."
Oriental Steamship Co. *v.* Tylor, [1893] 2 Q. B. 518; 63 L. J. (Q. B.) 128; 69 L. T. 577; 42 W. R. 89; 4 R. 554; 7 Asp. M. L. C. 377, C. A. . . . 312
Orion, The, [1891] P. 307; 60 L. J. (P.) 90; 65 L. T. 500; 7 Asp. M. L. C. 88 390, 391, 398
Ormerod *v.* Foskett (1796), Peake, Add. Cas. 77 836
——— *v.* Tate (1801), 1 East, 464 821, 823
———, Grierson & Co. *v.* St. George's Ironworks, Ltd., [1905] 1 Ch. 505; 74 L. J. (CH.) 373; 92 L. T. 541; 53 W. R. 502, C. A. 805
Ormston, *Re*, Goldring *v.* Lancaster (1888), 59 L. T. 594, C. A. 833
Ornen, The (1900), 16 T. L. R. 149, C. A.; reversed (1901), 17 T. L. R. 359 . 427, 450
Orpheus, The (1871), L. R. 3 A. & E. 308; 40 L. J. (ADM.) 24; 23 L. T. 855 303, 545
Orr *v.* Dickinson (1859), 28 L. J. (CH.) 516; John. 1; 5 Jur. (N. S.) 672 . . 30
Orwell, The (1888), 13 P. D. 80; 57 L. J. (P.) 61; 59 L. T. 312; 36 W. R. 703; 6 Asp. M. L. C. 309 328
Osborn and Osborn, *Re*, [1913] 3 K. B. 862; 109 L. T. 505, C. A. . . . 799
Osborne, *Re* (1858), 25 Beav. 353; 27 L. J. (CH.) 532; 4 Jur. (N. S.) 296; 6 W. R. 401 775, 781
——— *v.* Milman (1887), 18 Q. B. D. 471; 56 L. J. (Q. B.) 263; 56 L. T. 808; 51 J. P. 437; 35 W. R. 397, C. A. 856
Osgood *v.* Groning (1810), 2 Camp. 466 304, 305, 314

PAGE
Osmanli, The (1850), 3 Wm. Rob. 198; 7 Notes of Cases, 322 . . 70, 71, 243
——————(1850), 7 Notes of Cases, 507 379
Osmond *v.* Mutual Cycle and Manufacturing Supply Co., [1899] 2 Q. B. 488; 68 L. J. (Q. B.) 1027; 81 L. T. 254; 48 W. R. 125, C. A. 777
Ostle *v.* Christian (1823), Turn. & R. 324 791
Ottaway *v.* Hamilton (1878), 3 C. P. D. 393; 47 L. J. (Q. B.) 725; 38 L. T. 925; 26 W. R. 783, C. A. 777
Otter, The (1874), L. R. 4 A. & E. 203; 30 L. T. 43; 22 W. R. 557; 2 Asp. M. L. C. 208 417, 500
Ottley *v.* Gilby (1845), 8 Beav. 602; 14 L. J. (CH.) 177 754, 755
Ovingdean Grange, The, [1902] P. 208; 71 L. J. (P.) 105; 87 L. T. 15; 9 Asp. M. L. C. 242, C. A. 483, 514, 515, 516
Owen, *Re*, *Ex parte* Payton (1885), 52 L. T. 628; 2 Morr. 87 . . . 772 773
—— *v.* Henshaw (1877), 7 Ch. D. 385; 47 L. J. (CH.) 267; 26 W. R. 188 . 827
—— *v.* London and North Western Rail. Co. (1867), L. R. 3 Q. B. 54; 7 B. & S. 758; 37 L. J. (Q. B.) 35; 17 L. T. 210; 16 W. R. 125 . . . 795
—— *v.* Ord (1828), 3 C. & P. 349 729
Owen Wallis, The (1874), L. R. 4 A. & E. 175; 43 L. J. (ADM.) 36; 30 L. T. 41; 22 W. R. 695; 2 Asp. M. L. C. 206 14, 374, 380, 482, 494
Owens *v.* Scales (1842), 10 M. & W. 657; 12 L. J. (EX.) 26; 6 Jur. 1000; 2 Dowl. (N. S.) 304 777
Oxenham *v.* Lemon (1823), 2 Dow. & Ry. (K. B.) 461; 1 L. J. (O. S.) (K. B.) 133 778

P.

PACIFIC, The (1864), Brown. & Lush. 243; 33 L. J. (P. M. & A.) 120; 10 L. T. 541; 10 Jur. (N. S.) 1110 29, 67, 68
——————(1884), 9 P. D 124; 53 L. J. (P.) 67; 51 L. T. 127; 33 W. R. 124; 5 Asp. M. L. C. 263. 382, 487
——————, [1898] P. 170; 67 L. J. (P.) 65; 79 L. T. 125; 46 W. R. 686; 8 Asp. M. L. C. 422 561
Packwood *v.* Union-Castle Mail Steamship Co. (1903), 20 T. L. R. 59 . . 117
Pactolus, The (1856), Sw. 173 539
Page, *Re* (1823), 1 Bing. 160; 7 Moore (C. P.), 572; 1 L. J. (O. S.) (C. P.) 45 . 850
——, *Re* (No. 3) (1863), 32 Beav. 487; 8 L. T. 231; 9 Jur. (N. S.) 1116; 11 W. R. 584 777
Paine, *Re* (1912), 28 T. L. R. 201 729
—— *v.* Chisholm, [1891] 1 Q. B. 531; 60 L. J. (Q. B.) 413; 39 W. R. 353, C. A. 768
Painter *v.* Linsell (1840), 8 Scott, 453; 8 Dowl. 250 783
Palace Restaurants, Ltd., *Re*, *Re* Companies (Consolidation) Act, 1908. *See* Companies (Consolidation) Act, 1908, *Re*, *Re* Palace Restaurants, Ltd.
Palace Shipping Co., Ltd. *v.* Caine, [1907] A. C. 386; 76 L. J. (K. B.) 1079; 23 T. L. R. 731 47, 48, 55, 60
Palatine, The (1872), 27 L. T. 631; 1 Asp. M. L. C. 468 . . . 463, 483, 493
Palinurus, The (1887), 13 P. D. 14; 58 L. T. 533; 36 W. R. 768; 6 Asp. M. L. C. 271 400
Pallister, *Ex parte*, *Re* Holloway. *See* Holloway, *Re*, *Ex parte* Pallister.
Palmer, *Re* (1890), 45 Ch. D. 291; 59 L. J. (CH.) 575; 62 L. T. 778; 38 W. R. 673, C. A. 771, 774
—— *v.* Naylor (1854), 10 Exch. 382; 23 L. J. (EX.) 323; 18 Jur. 961; 2 W. R. 621; 2 C. L. R. 1202 113
—— *v.* Rouse (1858), 3 H. & N. 505; 27 L. J. (EX.) 437; 6 W. R 674 . 548, 559
—— *v.* S. (1907), 51 Sol. Jo. 653 759
—— *v.* Zarifi Brothers (1877), 37 L. T. 790; 3 Asp. M. L. C. 540 . . . 296
Palmyra, The *v.* The Charles (1865), Holt (ADM.), 59 381, 391
"Panama," The, Barron *v.* Stewart. *See* Barron *v.* Stewart, The "Panama."
Pandorf *v.* Hamilton (1886), 16 Q. B. D. 629, C. A. 110
Panthea, The (1871), 25 L. T. 389; 1 Asp. M. L. C. 133 624
"Panther," The (1853), 1 Ecc. & Ad. 31 465
Papa de Rossie, The (1878), 3 P D. 160; 27 W. R. 367 806
Papayanni *v.* Hocquard, The "True Blue" (1866), L. R. 1 P. C. 250; 4 Moo. P. C. C. (N. S.) 96 576
—————— and Jeromia *v.* Grampian Steamship Co., Ltd. (1896), 1 Com. Cas. 448. 317, 318
Papé *v.* Westacott, [1894] 1 Q. B. 272; 63 L. J. (Q. B.) 222; 70 L. T. 18; 42 W. R. 131, C. A. 745

PAGE
Paramatta, The (1891), Stockton's Vice-Admiralty Reports (New Brunswick), 192 452
Parana, The (1877), 2 P. D. 118; 36 L. T. 388; 25 W. R. 596; 3 Asp. M. L. C. 399, C. A. 289, 541
Parfitt, *Re* (1889), 23 Q. B. D. 40; 58 L. J. (Q. B.) 428; 61 L. T. 88; 37 W. R. 751; 6 Morr. 166 762
——— *v.* Lawless (1872), L. R. 2 P. & D. 462; 41 L. J. (P.) 68; 27 L. T. 215; 21 W. R. 200 748, 752
Paris, The, [1896] P. 77; 65 L. J. (P.) 42; 73 L. T. 736 825
Park, *Re*, Cole *v.* Park (1889), 41 Ch. D. 326; 58 L. J. (CH.) 547; 61 L. T. 173; 37 W. R. 542, C. A. 780
—— *v.* Duncan & Son (1898), 25 R. (Ct. of Sess.) 528; 35 Sc. L. R. 378; 5 Scots Law Times, 280 107
Parkdale, The, [1897] P. 53; 66 L. J. (P.) 10; 75 L. T. 597; 45 W. R. 368; 8 Asp. M. L. C. 211 50
Parker, *Re* (1882), 21 Ch. D. 408; 52 L. J. (CH.) 159; 47 L. T. 633; 47 J. P. 36; 31 W. R. 212, C. A. 781
——— (R. A.), *Re* (1885), 29 Ch. D. 199; 54 L. J. (CH.) 959; 52 L. T. 686; 33 W. R. 541 765
——— *v.* Black Rock (Owners) (1914), 58 Sol. Jo. 285; 30 T. L. R. 271, C. A. . 445
——— *v.* Blenkhorn, Newbould *v.* Bailward (1888), 14 App. Cas. 1; 58 L. J. (Q. B.) 209; 59 L. T. 906; 37 W. R. 401 765
——— *v.* Plomesgate Rural Council (1904), 9 Com. Cas. 107 256
——— *v.* Potts (1815), 3 Dow, 23 214, 218
——— *v.* Rolls (1854), 14 C. B. 691 754, 758
——— *v.* Winlow (1857), 7 E. & B. 942; 27 L. J. (Q. B.) 49; 4 Jur. (N. S.) 64 . 90, 180, 181, 256, 259, 260, 261
Parkinson, *Re*, R. *v.* Gershon (1887), 56 L. T. 715 840
——— *v.* Hanbury (1865), 12 L. T. 624; 11 Jur. (N. S.) 474; 13 W. R. 1056. . 803
Parlement Belge, The (1880), 5 P. D. 197; 42 L. T. 273; 28 W. R. 642; 4 Asp. M. L. C. 234, C. A. 375, 533, 560, 580, 617, 618, 619
Parmenter *v.* Todhunter (1808), 1 Camp. 541 249
Parnaby *v.* Lancaster Canal Co. (1839), 11 Ad. & El. 223; 9 L. J. (EX.) 338; 3 Per. & Dav. 162 534, 647
Parr *v.* Applebee (1855), 7 De G. M. & G. 585; 24 L. J. (CH.) 767; 3 W. R. 645, C. A. 28
Parry, *Ex parte*, *Re* Lett. *See* Lett, *Re*, *Ex parte* Parry.
——— *v.* Howell, Tardrew *v.* Howell. *See* Tardrew *v.* Howell, Parry *v.* Howell.
Parsons *v.* New Zealand Shipping Co., [1901] 1 K. B. 548; 70 L. J. (K. B.) 404; 84 L. T. 218; 49 W. R. 355; 17 T. L. R. 274; 9 Asp. M. L. C. 170; 6 Com. Cas. 41, C. A. 155, 270
Pasley *v.* Freeman (1789), 3 Term Rep. 51 754, 837
Pasmore *v.* Birnie (1817), 2 Stark. 59 754
Pass, *Re* (1887), 35 W. R. 410 832
Patent Bread Machinery Co., *Re*, *Ex parte* Valpy and Chaplin (1872), 7 Ch. App. 289; 26 L. T. 228; 20 W. R. 347 757
Patent Ivory Manufacturing Co., *Re*, Howard *v.* Patent Ivory Manufacturing Co. (1888), 38 Ch. D. 156; 57 L. J. (CH.) 878; 58 L. T. 395; 36 W. R. 801 734
Pater, *Re*, R. *v.* Middlesex Justices (1864), 5 B. & S. 299; 33 L. J. (M. C.) 142; 10 L. T. 376; 10 Jur. (N. S.) 972; 12 W. R. 823; 9 Cox, C. C. 544 . . 828
Paterson, *Re* (1832), 1 Dowl. 468 830
Patria, The (1871), L. R. 3 A. & E. 436; 41 L. J. (ADM.) 23; 24 L. T. 849; 1 Asp. M. L. C. 71 108, 111, 141, 154, 170, 171, 172, 304
Patriotto, The *v.* The Rival (1860), 2 L. T. 301 490
Patroclus, The (1888), 13 P. D. 54; 58 L. T. 774; 36 W. R. 928; 6 Asp. M. L. C. 285 402
Patten *v.* Thompson (1816), 5 M. & S. 350 159, 160
Pattullo, *Ex parte*, *Ex parte* Chatterton, *Re* Van Laun. *See* Van Laun, *Re*, *Ex parte* Pattullo, *Ex parte* Chatterton.
Paul *v.* Birch (1743), 2 Atk. 621 171, 173, 286
Paull, *Re*, *Re* Carthew. *See* Carthew, *Re*, *Re* Paull.
Pauline, The (1845), 2 Wm. Rob. 358; 9 Jur. 286 549
Payne, *Ex parte*, *Re* Sinclair. *See* Sinclair, *Re*, *Ex parte* Payne.
Paynter *v.* James (1867), L. R. 2 C. P. 348; 15 L. T. 660; 15 W. R. 493; affirmed, 18 L. T. 449; 16 W. R. 768 284, 304, 305
Payton, *Ex parte*, *Re* Owen. *See* Owen, *Re*, *Ex parte* Payton.

PAGE

"P. Caland" and Freight (Owners) *v.* Glamorgan Steamship Co., The "P. Caland," [1891] P. 313; 60 L. J. (P.) 100; 65 L. T. 496; [1892] P. 191; 61 L. J. (P.) 54; 67 L. T. 249, C. A.; [1893] A. C. 207; 62 L. J. (P.) 41; 68 L. T. 469; 7 Asp. M. L. C. 317; 1 R. 138 387, 388
Peace, The (1856), Sw. 115 588
Peace and Ellis, *Re* (1887), 57 L. T. 753; 35 W. R. 61 766, 767
Peach, *Re* (1844), 2 Dow. & L. 33; 13 L. J. (Q. B.) 249 787
Peacock, *Ex parte, Re* Duffield. *See* Duffield, *Re, Ex parte* Peacock.
Pead *v.* Price (1903), 19 T. L. R. 563 731
Pearlmoor, The, [1904] P. 286; 73 L. J. (P.) 50; 90 L. T. 319; 20 T. L. R. 199; 9 Asp. M. L. C. 540 116, 232
Pearson *v.* Göschen (1864), 17 C. B. (N. S.) 352; 33 L. J. (C. P.) 265; 10 L. T. 758; 10 Jur. (N. S.) 903; 12 W. R. 1116 . . . 65, 88, 135, 154, 155, 169, 173, 174, 209, 287
——— *v.* Scott (1878), 9 Ch. D. 198; 38 L. T. 747; 26 W. R. 796 . . 745, 746
——— *v.* Sutton (1814), 5 Taunt. 364 829, 841
Peart *v.* Bushell (1827), 2 Sim. 38 830
Pease *v.* Gloahec, The "Marie Joseph" (1866), L. R. 1 P. C. 219; 35 L. J. (P. C.) 66; 15 L. T. 6; 12 Jur. (N. S.) 677; 15 W. R. 201; 3 Moo. P. C. C. (N. S.) 556 147, 159, 160, 161, 163, 166
Peatfield *v.* Barlow (1869), L. R. 8 Eq. 61; 38 L. J. (CH.) 310; 20 L. T. 217; 17 W. R. 516 845
Peckforton Castle, The (1877), 2 P. D. 222; 37 L. T. 359; 26 W. R. 81; affirmed (1878), 3 P. D. 11; 47 L. J. (P.) 69; 38 L. T. 816; 26 W. R. 346; 3 Asp. M. L. C. 533, C. A. 431, 433, 462
Pedersen *v.* Lotinga (1857), 28 L. T. (O. S.) 267; 5 W. R. 290 . . . 134, 135
Pedley and May *v.* Morris (1891), 61 L. J. (Q. B.) 21; 65 L. T. 526; 40 W. R. 42 . 795
Peed *v.* Cussen (1830), Hayes, 66 834
Peek *v.* Larsen (1871), L. R. 12 Eq. 378; 40 L. J. (CH.) 763; 25 L. T. 580; 19 W. R. 1045; 1 Asp. M. L. C. 163 172, 199, 286
Peel *v.* London and North Western Rail. Co. (No. 2), [1907] 1 Ch. 607; 76 L. J. (CH.) 379; 96 L. T. 498 804
—— *v.* Price (1815), 4 Camp. 243 199
Peel's (Sir Robert) Settled Estates, *Re*, [1910] 1 Ch. 389; 79 L. J. (CH.) 233; 102 L. T. 67; 54 Sol. Jo. 214; 26 T. L. R. 227 761
Peerless, The (1860), Lush. 30 485, 490, 530, 531, 536
"Peerless," The, Prowse *v.* European and American Steam Shipping Co. *See* Prowse *v.* European and American Stean Shipping Co., The "Peerless."
Peers, *Re* (1856), 21 Beav. 520 808
"Pekin," The, "Normandie" (Owners of Norwegian S.S.) *v.* "Pekin" (Owners of British S.S.). *See* "Normandie" (Owners of Norwegian S.S.) *v.* Pekin" (Owners of British S.S.), The "Pekin."
Pelly *v.* Wathen (1849), 7 Hare, 351; 18 L. J. (CH.) 281; 14 Jur. 9 (1851), 1 De G. M. & G. 16; 21 L. J. (CH.) 105; 16 Jur. 47, C. A. . . 817, 818
Pelsall Coal and Iron Co. *v.* London and North Western Rail. Co. (1892), 8 T. L. R. 629 . 825
——— *v.* ——— (No. 3) (1892), 8 Ry. & Can. Tr. Cas. 146 824
Pemberton, *Ex parte* (1810), 18 Ves. 282 816
Pender, *Re* (1846), 2 Ph. 69; 16 L. J. (CH.) 25; 10 Jur. 891 . . 777, 781, 785
———, *Re* (1847), 10 Beav. 390 776
Penfield *v.* McMurdo, *Re* McMurdo. *See* McMurdo, *Re*, Penfield *v.* McMurdo.
Peninsular and Oriental Steam Navigation Co. *v.* R., [1901] 2 K. B. 686; 70 L. J. (K. B.) 845; 85 L. T. 71; 17 T. L. R. 610; 9 Asp. M. L. C. 228 . 15, 46
——— *v.* Shand (1865), 3 Moo. P. C. C. (N. S.) 272; 6 New Rep. 387; 12 L. T. 808; 11 Jur. (N. S.) 771; 13 W. R. 1049; 2 Mar. L. C. 244 141, 328, 329
Penley *v.* Anstruther (1883), 52 L. J. (CH.) 367; 48 L. T. 664 777
Pennell *v.* Franklin, *Re* White. *See* White, *Re*, Pennell *v.* Franklin.
Pennsylvania, The (1874), 2 Asp. M. L. C. 378 487
———, National Steamship Co. *v.* Merry. *See* National Steamship Co. *v.* Merry, The Pennsylvania.
Penny *v.* Wimbledon Urban Council, [1899] 2 Q. B. 72; 68 L. J. (Q. B.) 704; 80 L. T. 615; 63 J. P. 406; 47 W. R. 565; 15 T. L. R. 348, C. A. . . . 534
Penrose *v.* Wilks (1790), cited in Abbott on Shipping, 5th ed., p. 281; 14th ed., p. 683 293, 294

PAGE
Pensher, The (1857), Sw. 211 538, 539
Pentland, The (1897), 13 T. L. R. 430 212
Pentucket, The, The Tees. *See* Tees, The, The Pentucket.
Peppercorn, *Re* (1866), L. R. 1 C. P. 473; 35 L. J. (C. P.) 239; 1 Har. & Ruth. 487; 14 L. T. 252; 12 Jur. (N. S.) 761; 14 W. R. 693 715
Pepperell, The (1855), Sw. 12 487
Percy (1837), 3 Hag. Adm. 402 29
Perez *v.* Alsop (1862), 3 F. & F. 188 284
Perkins, *Re* (1845), 8 Beav. 241; 14 L. J. (CH.) 168; 9 Jur. 220 . . 791, 792
Perla, The (1857), Sw. 230 577, 583
——— (1858), Sw. 353; 4 Jur. (N. S.) 741 69
Perrett, *Ex parte*, *Re* Frape. *See* Frape, *Re*, *Ex parte* Perrett.
Perry & Co. *v.* Hessin & Co. (1913), 108 L. T. 332; 57 Sol. Jo. 302; 30 R. P. C. 193 803, 804
Persia, The, [1902] W. N. 210 583
Perth (1838), 3 Hag. Adm. 414 415
Peter Benoit, The (1914), 30 T. L. R. 277 482
Peter der Grosse, The (1875), 1 P. D. 414 156
Peter Graham, The, The Beta. *See* Beta, The, The Peter Graham.
Peters *v.* Sheehan (1842), 10 M. & W. 213; 12 L. J. (EX.) 177; 6 Jur. 739; 1 Dowl. (N. S.) 943 809
Petersen *v.* Dunn & Co. (1895), 43 W. R. 349; 1 Com. Cas. 8 . . 120, 131, 132, 196, 201
——— *v.* Freebody & Co., [1895] 2 Q. B. 294; 65 L. J. (Q. B.) 12; 73 L. T. 163; 44 W. R. 5; 14 R. 493; 8 Asp. M. L. C. 65, C. A. . 265, 266, 267, 272
Petrel, The, [1893] P. 320; 62 L. J. (ADM.) 92; 70 L. T. 417; 7 Asp. M. L. C. 434; 1 R. 651 543
Petrocochino *v.* Bott (1874), L. R. 9 C. P. 355; 43 L. J. (C. P.) 214; 30 L. T. 840; 2 Asp. M. L. C. 310 265, 267, 269, 276
Petty *v.* Daniel (1886), 34 Ch. D. 172; 56 L. J. (CH.) 192; 55 L. T. 745; 35 W. R. 151 847
Phantom, The (1866), L. R. 1 A. & E. 58; 12 Jur. (N. S.) 529; 14 W. R. 774 . 562, 571
Phelps (James) & Co. *v.* Hill, [1891] 1 Q. B. 605; 60 L. J. (Q. B.) 382; 64 L. T. 610; 7 Asp. M. L. C. 42, C. A. . . . 83, 96, 221, 224, 227, 231
——— and Dodd, *Re* (1839), 3 Jur. 479 829
———, Stokes & Co. *v.* Comber (1885), 29 Ch. App. 813; 54 L. J. (CH.) 1017; 52 L. T. 873; 33 W. R. 829; 5 Asp. M. L. C. 428, C. A. . . . 162, 285
Philadelphian, The, [1900] P. 262; 69 L. J. (P.) 101; 82 L. T. 601; 48 W. R. 514; 16 T. L. R. 383; 9 Asp. M. L. C. 72, C. A. 405
Philby *v.* Hazle (1860), 8 C. B. (N. S.) 647; 29 L. J. (C. P.) 370; 2 L. T. 433; 7 Jur. (N. S.) 125; 8 W. R. 611 776
Philippine, The (1867), L. R. 1 A. & E. 309; 16 L. T. 34; 15 W. R. 462 . . 825
Philips *v.* Baillie (1784), 3 Doug. (K. B.) 374 83
Phillipps *v.* Briard (1856), 1 H. & N. 21; 25 L. J. (EX.) 233; 4 W. R. 486 . 137, 140, 141
Phillips, *Ex parte*, *Re* Watson. *See* Watson, *Re*, *Ex parte* Phillips.
——— *v.* Barber (1821), 5 B. & Ald. 161 110
——— *v.* Clark (1857), 2 C. B. (N. S.) 156; 26 L. J. (C. P.) 168; 3 Jur. (N. S.) 467; 5 W. R. 582. 116, 203, 204, 225, 233
——— *v.* Dickson (1860), 8 C. B. (N. S.) 391; 29 L. J. (C. P.) 223; 2 L. T. 185; 6 Jur. (N. S.) 401; 8 W. R. 390 841
——— *v.* Edwards (1858), 3 H. & N. 813 107, 148, 325
——— *v.* Headlam (1831), 2 B. & Ad. 380; 9 L. J. (O. S.) (K. B.) 238 . . 213
——— *v.* Highland Rail. Co., The "Ferret" (1883), 8 App. Cas. 329; 52 L. J. (P. C.) 51; 48 L. T. 915; 31 W. R. 869; 5 Asp. M. L. C. 94 . 53, 620
——— *v.* Pound (1852), 7 Exch. 881; 21 L. J. (EX.) 277; 16 Jur. 645 . . 727
——— *v.* Rodie (1812), 15 East, 547 135, 285
Phillpotts, *Re* (1853), 18 Beav. 84; 2 W. R. 3 783, 789
Philotaxe, The (1877), 37 L. T. 540; 3 Asp. M. L. C. 512 . . 383, 401, 445, 461, 464, 489
Philp, *Re* (1860), 2 Giff. 35; 29 L. J. (CH.) 866; 6 Jur. (N. S.) 1024 . . . 781
Philpott *v.* Swann (1861), 11 C. B. (N. S.) 270; 30 L. J. (C. P.) 358; 5 L. T. 183; 7 Jur. (N. S.) 1291 198, 221, 222, 223, 232
Phipps *v.* Daubney (1851), 16 Q. B. 514; 20 L. J. (Q. B.) 273; 15 Jur. 797; 2 L. M. & P. 180 778
Phœnix Life Assurance Co., *Re*, Howard and Dollman's Case (1863), 1 Hem. & M. 433; 2 New Rep. 548; 11 W. R. 984 815, 820

PAGE
Phosphate Sewage Co. *v.* Hartmont (1877), 5 Ch. D. 394; 46 L. J. (CH.) 661; 37 L. T. 9; 24 W. R. 530, C. A. 837
Phyn *v.* Royal Exchange Assurance Co. (1798), 7 Term Rep. 505 . . . 113
Picasso *v.* Maryport Harbour Trustees, [1884] W. N. 85 . . . 769, 800, 802
Pickering *v.* Barklay (1648), Sty. 132 110, 113
Pickernell *v.* Jauberry (1862), 3 F. & F. 217 65, 169, 174
Pickford *v.* Ewington (1835), 4 Dowl. 453 730
Pickup *v.* Thames Insurance Co. (1878), 3 Q. B. D. 594; 47 L. J. (Q. B.) 749; 39 L. T. 341; 26 W. R. 689; 4 Asp. M. L. C. 43, C. A. 218
Pickwick, The (1852), 16 Jur. 669 560, 585, 586
Picton, The, [1910] P. 46; 79 L. J. (P.) 53; 101 L. T. 917; 11 Asp. M. L. C. 358 391, 397, 398, 401, 487
Pierson *v.* Knutsford Estates Co. (1884), 13 Q. B. D. 666; 53 L. J. (Q. B.) 181; 32 W. R. 451, C. A. 824, 825
"Pieve Superiore," The, Dapueto *v.* Wyllie. *See* Dapueto *v.* Wyllie, The "Pieve Superiore."
Pigot *v.* Cadman (1857), 1 H. & N. 837; 26 L. J. (EX.) 134; 5 W. R. 353 . . 776
Pike *v.* Ongley (1887), 18 Q. B. D. 708; 56 L. J. (Q. B.) 373; 35 W. R. 534, C. A. 89
Pilcher *v.* Arden, *Re* Brook. *See* Brook, *Re*, Pilcher *v.* Arden.
Pilgrim, The, [1895] P. 117; 64 L. J. (P.) 78; 11 R. 57 615
Pilgrim *v.* Hirchfelt (1863), 9 L. T. 288; 12 W. R. 51 . . . 777, 778, 813
Pince *v.* Beattie (1863), 32 L. J. (CH.) 734; 9 Jur. (N. S.) 1119; 11 W. R. 979; 2 New Rep. 546 772
Pinder *v.* Wilks (1814), 5 Taunt. 612 295
Pink *v.* Fleming (1890), 25 Q. B. D. 396; 59 L. J. (Q. B.) 559; 63 L. T. 413; 6 Asp. M. L. C. 554, C. A. 232
Pinkerton, *Re*, Pinkerton *v.* Easton (1873), L. R. 16 Eq. 490; 42 L. J. (CH.) 878; 29 L. T. 364; 21 W. R. 943 824
Pinna, The (1912), *Times*, November 28th 563
Pinnas, The (1888), 59 L. T. 526; 6 Asp. M. L. C. 313 . . 577, 578, 579, 580
Pinner *v.* Knights (1843), 6 Beav. 174 834
Pirie *v.* Steele (1837), 2 Mood. & R. 49; 8 C. & P. 200 324
—— & Co. *v.* Middle Dock Co. (1881), 44 L. T. 426; 4 Asp. M. L. C. 388 . . 316, 318, 323
—— & Sons *v.* Warden (1871), 9 Macph. (Ct. of Sess.) 523; 43 Sc. Jur. 280 . 147, 265
Pisani *v.* A.-G. for Gibraltar (1874), L. R. 5 P. C. 516; 30 L. T. 729; 22 W. R. 900 749
Pitcher *v.* Rigby (1821), 9 Price, 79 811
Pitgaveney, The, [1910] P. 215; 79 L. J. (P.) 65; 103 L. T. 47; 26 T. L. R. 473 . 378, 382, 397, 398, 443, 445, 471
Pitman *v.* Francis (1884), Cab. & El. 355 755
Pitt, *Ex parte*, *Re* Raven. *See* Raven, *Re*, *Ex parte* Pitt.
Place *v.* Potts (1855), 5 H. L. Cas. 383; 24 L. J. (EX.) 225; 3 W. R. 574 . . 303
Pladda, The (1876), 2 P. D. 34; 46 L. J. (P.) 61 490, 495, 536
Plant *v.* Pearman (1872), 41 L. J. (Q. B.) 169; 26 L. T. 313; 20 W. R. 314 . 756
Plato, The *v.* The Perseverance (1865), Holt (ADM.), 262 493
Plumer *v.* Gregory (1874), L. R. 18 Eq. 621; 43 L. J. (CH.) 616; 31 L. T. 80 . . 759, 760
Plummer *v.* Wildman (1815), 3 M. & S. 482 322
Pole *v.* Cetcovitch (1860), 9 C. B. (N. S.) 430; 30 L. J. (C. P.) 102; 3 L. T. 438; 7 Jur. (N. S.) 604; 9 W. R. 279 95
Poll *v.* Dambe, [1901] 2 K. B. 579; 70 L. J. (K. B.) 72[1]; 84 L. T. 870; 65 J. P. 774; 50 W. R. 28; 17 T. L. R. 590; 9 Asp. M. L. C. 220 . . . 12, 61
Pollard, *Re* (1868), L. R. 2 P. C. 106; 5 Moo. P. C. C. (N. S.) 111 . . . 828
Pollitt, *Re*, *Ex parte* Minor, [1893] 1 Q. B. 175; 67 L. T. 715; 41 W. R. 89 . 771
Pollitzer *v.* Steamship Cascapedia Co. (1886), 2 T. L. R. 413 277
Pollok *v.* McAlpin, The Lochlibo *See* Lochlibo, The
Polynésien, The, [1910] P. 28; 79 L. J. (P.) 45; 101 L. T. 749; 11 Asp. M. L. C. 354 496, 536
Pomeroy and Tanner, *Re*, [1897] 1 Ch. 284; 66 L. J. (CH.) 158; 75 L. T. 625; 45 W. R. 245 775, 813, 846
————————, No. 2, *Re* (1897), 76 L. T. 149 786
Pomery *v.* Pomery, [1909] W. N. 158; 53 Sol. Jo. 631 732
Pommerania, The (1879), 4 P. D. 195; 48 L. J. (P.) 55; 39 L. T. 642 . . 743
Pongola, The (1895), 73 L. T. 512; 8 Asp. M. L. C. 89 35
Pontida, The (1884), 9 P. D. 102; 53 L. J. (P.) 78; 51 L. T. 849; 33 W. R. 38; 5 Asp. M. L. C. 330, C. A. 67, 69, 70, 72, 73, 229, 242, 243

PAGE

Pontifex *v.* Farnham (1892), 62 L. J. (Q. B.) 344 ; 68 L. T. 168 ; 41 W. R. 238 ; 5 R. 149 771
Pool *v.* Pool (1889), 58 L. J. (P.) 67 ; 61 L. T. 401 738
Pooley, *Re*, *Ex parte* Harper (1882), 20 Ch. D. 685 ; 51 L. J. (CH.) 810 ; 47 L. T. 177 ; 30 W. R. 650, C. A. 735, 769
——— *v.* Quilter (1858), 2 De G. & J. 327 ; 27 L. J. (CH.) 374 ; 4 Jur. (N. S.) 345 ; 6 W. R. 402, C. A. 751
Pooley's Trustee *v.* Whetham (1886), 33 Ch. D. 111 ; 55 L. J. (CH.) 899 ; 55 L. T. 333 ; 34 W. R. 689, C. A. 751, 752, 811
Pope *v.* Bavidge (1854), 10 Exch. 73 93, 99
Popham *v.* Exham (1860), 10 I. Ch. R. 440 750
Porcupine (1825), 1 Hag. Adm. 378 42
Port Caledonia, The, and The Anna, [1903] P. 184 ; 72 L. J. (P.) 60 ; 89 L. T. 216 ; 52 W. R. 223 ; 9 Asp. M. L. C. 479 546, 558, 572
Port Hunter, The, [1910] P. 343 ; 103 L. T. 550 ; 26 T. L. R. 610, C. A. . . 581
Port Jackson Steamboat Co. *v.* Llewellyn, The Byron. *See* Byron, The, Port Jackson Steamboat Co. *v.* Llewellyn.
Port of London Authority *v.* Cairn Line of Steamers, Ltd., [1913] 1 K. B. 497 ; 82 L. J. (K. B.) 340 ; 108 L. T. 217 ; 29 T. L. R. 229 ; 12 Asp. M. L. C. 293 ; 18 Com. Cas. 72 639, 643
Port Victor, Cargo ex, [1901] P. 243 ; 70 L. J. (P.) 52 ; 84 L. T. 677 ; 49 W. R. 578 ; 17 T. L. R. 538 ; 9 Asp. M. L. C. 163, C. A. 558, 560, 561, 580, 581, 586
Port Victoria, The, [1902] P. 25 ; 71 L. J. (P.) 36 ; 86 L. T. 804 ; 50 W. R. 383 ; 18 T. L. R. 164 ; 9 Asp. M. L. C. 314 505, 506
Porter *v.* Fraser (1912), 29 T. L. R. 91 742, 833
——— *v.* Izat (1836), 1 M. & W. 381 ; 1 Tyr. & Gr. 639 92, 187
——— *v.* West (1881), 50 L. J. (CH.) 231 ; 43 L. T. 569 ; 29 W. R. 236 . 825, 827
———, Amphlett and Jones, *Re*, [1912] 2 Ch. 98 ; 81 L. J. (CH.) 544 ; 107 L. T. 40 ; 56 Sol. Jo. 521 777, 796
Porteus *v.* Watney (1878), 3 Q. B. D. 534 ; 47 L. J. (Q. B.) 643 ; 39 L. T. 195 ; 27 W. R. 30 ; 4 Asp. M. L. C. 34, C. A. . . . 121, 124, 175, 176, 271, 272, 274
Postlethwaite *v.* Freeland (1880), 5 App. Cas. 599 ; 49 L. J. (Q. B.) 630 ; 42 L. T. 845 ; 28 W. R. 833 ; 7 Asp. M. L. C. 302 . . . 121, 124, 125, 130, 190, 191, 254, 266, 267, 271, 274, 275, 276, 277
Potter *v.* Rankin (1868), L. R. 4 C. P. 76 ; 38 L. J. (C. P.) 130 ; 19 L. T. 383 . 803
——— *v.* ——— (1870), L. R. 5 C. P. 518 ; 18 W. R. 868 796
——— (John) & Co. *v.* Burrell & Son, [1897] 1 Q. B. 97 ; 66 L. J. (Q. B.) 63 ; 75 L. T. 491 ; 45 W. R. 145 ; 8 Asp. M. L. C. 200, C. A. . 93, 96, 97, 98, 139, 180, 200
——— & Co. *v.* New Zealand Shipping Co. (1895), 64 L. J. (Q. B.) 689 ; 11 T. L. R. 502 ; 1 Com. Cas. 114 100
Potts *v.* Dutton (1845), 8 Beav. 493 798, 841
——— *v.* Sparrow (1834), 6 C. & P. 749 755
Pounset *v.* Humphreys (1837), Coop. Pr. Cas. 142 821
Powell *v.* Powell, [1900] 1 Ch. 243 ; 69 L. J. (CH.) 164 ; 82 L. T. 84 . . . 748
——— *v.* Thomas, [1891] 1 Q. B. 97 ; 63 L. T. 812 ; 39 W. R. 224 . . . 847
Power *v.* Whitmore (1815), 4 M. & S. 141 319, 321
Prance, *Re*, *Re* Gregg. *See* Gregg, *Re*, *Re* Prance.
Prankerd, *Ex parte* (1819), 3 B. & Ald. 257 716
Pratt *v.* Vizard (1833), 5 B. & Ad. 808 ; 2 Nev. & M. (K. B.) 455 ; 3 L. J. (K. B.) 7 . . 817
Prees *v.* Coke (1871), 6 Ch. App. 645 751
Prendergast *v.* Compton (1837), 8 C. & P. 454 329
President Lincoln, The, [1911] P. 248 ; 105 L. T. 442 430
Press and Inskip, *Re* (1865), 35 Beav. 34 784
Prestney *v.* Colchester Corporation (1883), 24 Ch. D. 376 ; 52 L. J. (CH.) 877 ; 48 L. T. 749 ; 31 W. R. 757, C. A. 805, 847
Preston Corporation *v.* Biornstad, The "Ratata," [1898] A. C. 513 ; 67 L. J. (P.) 73 ; 78 L. T. 797 ; 47 W. R. 156 ; 8 Asp. M. L. C. 427 . . 327, 357, 358, 527, 648
Prestwich *v.* Poley (1865), 18 C. B. (N. S.) 806 744, 846
Price, *Ex parte* (1751), 2 Ves. Sen. 407 820, 821
——, *Ex parte*, *Re* Kinneir. *See* Kinneir, *Re*, *Ex parte* Price.
——— *v.* Bullen (1824), 3 L. J. (O. S.) (K. B.) 39 756
——— *v.* Clinton, [1906] 2 Ch. 487 ; 75 L. J. (CH.) 658 ; 95 L. T. 710 . . 769, 800
——— *v.* Crouch (1891), 60 L. J. (Q. B.) 767 823
——— *v.* Livingstone (1882), 9 Q. B. D. 679 ; 53 L. J. (Q. B.) 118 ; 47 L. T. 629 ; 5 Asp. M. L. C. 13, C. A. 219, 220

PAGE
Price *v.* Moxon (1754), cited 2 Ves. 54 750
—— *v.* Noble (1811), 4 Taunt. 123 315, 317
—— & Co. *v.* Union Lighterage Co., [1904] 1 K. B. 412; 73 L. J. (K. B.) 222; 89 L. T. 731; 52 W. R. 325; 20 T. L. R. 177; 9 Com. Cas. 120, C. A. . 116, 139
Pride of Canada, The (1863), Brown. & Lush. 208; 9 L. T. 546 . . . 574
Pride of Wales and Annie Lisle (Mortgagees), *Re* (1867), 15 L. T. 606; 15 W. R. 381 29, 302
Prideaux, *Ex parte*, *Re* Bush and Prideaux. *See* Bush and Prideaux, *Re*, *Ex parte* Prideaux.
————, *Ex parte*, *Re* Symes. *See* Symes, *Re*, *Ex parte* Prideaux.
Priestley *v.* Fowler (1837), 3 M. & W. 1; 7 L. J. (EX.) 42; Murp. & H. 305; 1 Jur. 987 543, 544
Priestly *v.* Fernie (1865), 3 H. & C. 977; 34 L. J. (EX.) 172; 11 Jur. (N. S.) 813; 13 L. T. 208; 13 W. R. 1089 65, 68, 89
Primula, The, [1894] P. 128; 63 L. J. (P.) 118; 70 L. T. 253; 42 W. R. 527; 6 R. 749; 7 Asp. M. L. C. 429 313
Prince George (1837), 3 Hag. Adm. 376 29, 42, 624
————, The, Smith *v.* Gould. *See* Smith *v.* Gould, The Prince George.
Prince Leopold de Belgique, The, [1909] P. 103; 78 L. J. (P.) 57; 100 L. T. 201; 25 T. L. R. 183; 11 Asp. M. L. C. 203 370, 427, 436, 440, 441, 466, 469
Prince of Saxe Cobourg (1837), 3 Hag. Adm. 387 70
————, The, Soares *v.* Rahn. *See* Soares *v.* Rahn, The Prince of Saxe Cobourg.
Prince of Wales, The (1848), 6 Notes of Cases, 39 558
Prince Regent, The (1824), cited in 2 Wm. Rob. 85 246
Princess, The (1885), 52 L. T. 932; 5 Asp. M. L. C. 451 539
———— (1894), 70 L. T. 388; 6 R. 723; 7 Asp. M. L. C. 432 . . . 106
Princess Alice, The, and The Alice. *See* Alice, The, and The Princess Alice.
Princess Helena, The (1861), Lush. 190; 30 L. J. (ADM.) 137; 4 L. T. 869 . 48
Princess Royal, The (1870), L. R. 3 A. & E. 41; 39 L. J. (ADM.) 43; 22 L. T. 29 . . 587
Princesse Marie José, [1913] W. N. 248; 109 L. T. 326; 29 T. L. R. 678 . . 627
Princeton, The (1878), 3 P. D. 90; 47 L. J. (P.) 33; 38 L. T. 260; 3 Asp. M. L. C. 562 489
Pringle *v.* Gloag (1879), 10 Ch. D. 676; 48 L. J. (CH.) 380; 40 L. T. 512; 27 W. R. 574 767, 822
—— *v.* Mollett (1840), 6 M. & W. 80; 9 L. J. (EX.) 148 . . . 126, 219
Prinz Frederik (1820), 2 Dods. 451 560
Prinz Heinrich, The (1888), 13 P. D. 31; 57 L. J. (P.) 17; 58 L. T. 593; 36 W. R. 511; 6 Asp. M. L. C. 273 . . 559, 581, 587, 619
———— (1897), 14 T. L. R. 48 114, 225
Prior *v.* Wilson (1860), 1 L. T. 549; 8 W. R. 260 210
Priscilla, The (1859), Lush. 1; 2 L. T. 272; 5 Jur. (N. S.) 1421 246
———— (1870), L. R. 3 A. & E. 125; 23 L. T. 566; 1 Asp. M. L. C. 468 . 464, 488, 493
Pritchard *v.* Draper (1831), 1 Russ. & M. 191; Taml. 332 777, 813
———— *v.* Roberts (1874), L. R. 17 Eq. 222; 43 L. J. (CH.) 129; 29 L. T. 883; 22 W. R. 259 826
"Privateer," The (1881), 9 L. R. Ir. 105, C. A. 430, 431, 432, 433
Proctor *v.* Sutton Lodge Chemical Co. (1888), 5 R. P. C. 142 799
Produce Brokers' Co. *v.* Furness, Withy & Co. (1912), 106 L. T. 636; 28 T. L. R. 329; 17 Com. Cas. 165 139, 269
Prosperino Palasso, The (1873), 29 L. T. 622; 2 Asp. M. L. C. 158 . . 157, 203
Providence (1825), 1 Hag. Adm. 391 40, 51
Prowse *v.* European and American Steam Shipping Co., The "Peerless" (1860), 13 Moo. P. C. C. 484; 30 L. J. (P. M. & A.) 89; Lush. 103 . . . 478, 530
Pryor, *Re*, *Ex parte* Board of Trade (1888), 59 L. T. 256 735
Public Works Commissioner *v.* Houlder Brothers & Co., Ltd., Houlder Brothers & Co., Ltd. *v.* Public Works Commissioner. *See* Houlder Brothers & Co., Ltd. *v.* Public Works Commissioner, Public Works Commissioner *v.* Houlder Brothers & Co., Ltd.
Pugh, *Re*, *Ex parte* Briscoe (1863), 1 De G. J. & Sm. 673; 8 L. T. 586; 11 W. R. 762, C. A. 789
Puller *v.* Staniforth (1809), 11 East, 232 207, 208
Punta Lara, The (1910), 26 T. L. R. 268 583
Purbrook, *Ex parte*, *Re* Union Brick and Cement Co. *See* Union Brick and Cement Co., *Re*, *Ex parte* Purbrook.

PAGE
Purissima Concepcion (1849), 3 Wm. Rob. 181 568, 569, 570
Purves *v.* Landell (1845), 12 Cl. & Fin. 91 755
——— *v.* Straits of Dover Steamship Co., [1899] 2 Q. B. 217; 68 L. J. (Q. B.) 925; 81 L. T. 35; 47 W. R. 630; 15 T. L. R. 430; 8 Asp. M. L. C. 566; 4 Com. Cas. 274, C. A. 56
Pust *v.* Dowie (1864), 5 B. & S. 20; 34 L. J. (Q. B.) 127; 13 W. R. 459 . 91, 140, 144, 198, 310
Pybus, *Re* (1887), 35 Ch. D. 568; 56 L. J. (CH.) 921; 57 L. T. 362; 35 W. R. 770 766, 786
Pyke, *Re* (1865), 6 B. & S. 703; 34 L. J. (Q. B.) 121; 11 Jur. (N. S.) 504 . . 720
Pyman *v.* Burt (1884), Cab. & El. 207 110, 145, 202
——— & Co. *v.* Burt, [1884] W. N. 100 810
——— Brothers *v.* Dreyfus Brothers & Co. (1889), 24 Q. B. D. 152; 59 L. J. (Q. B.) 13; 61 L. T. 724; 38 W. R. 447; 6 Asp. M. L. C. 444 . . 182, 261
Pyrénnée, The (1863), Brown. & Lush. 189 619

Q.

QUARRINGTON *v.* White (1837), 6 L. J. (C. P.) 253 845
Quebec Marine Insurance Co. *v.* Commercial Bank of Canada (1870), L. R. 3 C. P. 234; 39 L. J. (P. C.) 53; 22 L. T. 559; 18 W. R. 769 212
Queen, The (1869), L. R. 2 A. & E. 354; 38 L. J. (ADM.) 39; 20 L. T. 855 . 371
——— (No. 2) (1869), 19 L. T. 706 624
———, The Hannibal. *See* Hannibal, The, The Queen.
Queen of the Orwell, The (1863), 7 L. T. 839; 11 W. R. 499 371
Queen Victoria, The (1891), 64 L. T. 520; 7 Asp. M. L. C. 9, C. A. . . 489, 498
Queenborough Corporation *v.* Smeed, Dean & Co., Ltd. (1904), 68 J. P. 244; 20 T. L. R. 279 635
Queensland National Bank *v.* Peninsular and Oriental Steam Navigation Co., [1898] 1 Q. B. 567; 67 L. J. (Q. B.) 402; 78 L. T. 67; 46 W. R. 324; 14 T. L. R. 166; 8 Asp. M. L. C. 338; 3 Com. Cas. 51, C. A. . . . 113, 188
Quested *v.* Callis (1842), 10 M. & W. 18; 11 L. J. (EX.) 345; 6 Jur. 512; 1 Dowl. (N. S.) 888 823
Quickstep, The (1890), 15 P. D. 196; 59 L. J. (P.) 65; 63 L. T. 713; 6 Asp. M. L. C. 603 528
Quilter, *Ex parte*, *Re* James. *See* James, *Re*, *Ex parte* Quilter.
Quinn, *Ex parte*, *Re* Nicholson. *See* Nicholson, *Re*, *Ex parte* Quinn.

R.

R. *v.* Abrahams, [1904] 2 K. B. 859; 73 L. J. (K. B.) 972; 91 L. T. 493; 68 J. P. 546; 20 T. L. R. 684; 20 Cox, C. C. 715; 10 Asp. M. L. C. 5 . 13, 54, 55
— *v.* Almon (1765), Wilm. 243 828
— *v.* Arnaud (1846), 9 Q. B. 806; 16 L. J. (Q. B.) 50; 11 Jur. 279 . . . 16
— *v.* Benson (1833), 3 Hag. Adm. 96 11
— *v.* Bjornsen (1865), Le. & Ca. 545; 34 L. J. (M. C.) 180; 12 L. T. 473; 13 W. R. 664; 10 Cox, C. C. 74 20
— *v.* Borron (1820), 3 B. & Ald. 432 725
— *v.* Brompton County Court Judge, [1893] 2 Q. B. 195; 62 L. J. (Q. B.) 604; 68 L. T. 829; 57 J. P. 648; 41 W. R. 648; 5 R. 462 828
— *v.* Buchanan (1846), 8 Q. B. 883; 15 L. J. (Q. B.) 227; 10 Jur. 736 . . 856
— *v.* City of London Court (Judge), [1892] 1 Q. B. 273; 61 L. J. (Q. B.) 337; 66 L. T. 135; 40 W. R. 215; 7 Asp. M. L. C. 140, C. A. 530
— *v.* ———————, and Michigan (Owners) (1890), 25 Q. B. D. 339; 59 L. J. (Q. B.) 427; 63 L. T. 492; 38 W. R. 638; 6 Asp. M. L. C. 547 15
— *v.* Collingridge (1864), 34 L. J. (Q. B.) 9; 12 W. R. 1109 . . 591, 592, 651
— *v.* Cork County Justices (1913), 48 L. J. 389 724
— *v.* Cumberland Justices (1847), 17 L. J. (Q. B.) 102; 12 Jur. 1025; 5 Dow. & L. 431; 5 Ry. & Can. Cas. 332 733
— *v.* Dawson (1696), 13 State Tr. 451 113
— *v.* Eastwood (1856), 6 E. & B. 285. 808
— *v.* Edwards (1829), 9 B. & C. 652 839
— *v.* Ewen (1856), 2 Jur. (N. S.) 454 12
— *v.* Forty-nine Casks of Brandy (1836), 3 Hag. Adm. 257 559

PAGE
R. *v.* Gardner (1859), 1 F. & F. 669 63
— *v.* Gershon, *Re* Parkinson. *See* Parkinson, *Re*, R. *v.* Gershon.
— *v.* Goldberg, [1904] 2 K. B. 866; 73 L. J. (K. B.) 970; 91 L. T. 490; 68 J. P. 554; 20 T. L. R. 683; 20 Cox, C. C. 699; 10 Asp. M. L. C. 2 . . 54
— *v.* Greenwich County Court Registrar (1885), 15 Q. B. D. 54; 54 L. J. (Q. B.) 392; 53 L. T. 902; 33 W. R. 671; 2 Morr. 175, C. A. 713
— *v.* Griffiths and Williams (1886), 16 Cox, C. C. 46 724
— *v.* Incorporated Law Society, [1895] 2 Q. B. 456; 64 L. J. (Q. B.) 797; 73 L. T. 187; 43 W. R. 687; 15 R. 597 . . 854
— *v.* ———————, [1896] 1 Q. B. 327; 65 L. J. (Q. B.) 326; 74 L. T. 67; 44 W. R. 307, C. A. 855
— *v.* Johnston (1886), 55 L. T. 265; 51 J. P. 22; 6 Asp. M. L. C. 14; 16 Cox, C. C. 221 44
— *v.* Keyn (1876), 2 Ex. D. 63; 46 L. J. (M. C.) 17; 13 Cox, C. C. 403 . . 376
— *v.* Lefroy (1873), L. R. 8 Q. B. 134; 42 L. J. (Q. B.) 121; 28 L. T. 132; 21 W. R. 332 828
— *v.* Lewis, [1906] 2 K. B. 307; 75 L. J. (K. B.) 508; 95 L. T. 476; 10 Asp. M. L. C. 270 609
— *v.* Liverpool Customs Collector (1813), 2 M. & S. 223 34
— *v.* London Corporation (1847), 13 Q. B. 1 723
— *v.* Lynch, [1898] 1 Q. B. 61; 67 L. J. (Q. B.) 59; 77 L. T. 568; 46 W. R. 205; 14 T. L. R. 78; 18 Cox, C. C. 677; 8 Asp. M. L. C. 363 . . 15, 61
— *v.* McCleverty, The Telegrafo or Restauracion (1871), L. R. 3 P. C. 673; 40 L. J. (ADM.) 18; 8 Moo. P. C. C. (N. S.) 43; 24 L. T. 748; 20 W. R. 242; 1 Asp. M. L. C. 63 33
— *v.* Middlesex Justices, *Re* Pater. *See* Pater, *Re*, R. *v.* Middlesex Justices.
— *v.* Miller (1823), 1 Hag. Adm. 197 11
— *v.* Oxfordshire County Court Judge, [1894] 2 Q. B. 440; 63 L. J. (Q. B.) 689; 70 L. T. 874; 42 W. R. 603; 58 J. P. 752; 10 R. 381 724
— *v.* Oxfordshire Justices, [1893] 2 Q. B. 149; 62 L. J. (M. C.) 156; 69 L. T. 368; 57 J. P. 712; 41 W. R. 615; 4 R. 482, C. A. 738
— *v.* Property Derelict (1825), 1 Hag. Adm. 383 559
— *v.* Sankey (1836), 5 Ad. & El. 423; 5 L. J. (K. B.) 255; 6 Nev. & M. (K. B.) 839 815
— *v.* Scriveners' Co. (1830), 10 B. & C. 511; 8 L. J. (O. S.) (K. B.) 199 . . 84
— *v.* Southerton (1805), 6 East, 126 849
— *v.* Stewart, [1899] 1 Q. B. 964; 68 L. J. (Q. B.) 582; 80 L. T. 660; 63 J. P. 547; 47 W. R. 445; 8 Asp. M. L. C. 534; 15 T. L. R. 308 . . 12, 13, 43
— *v.* Tew (1752), Say. 50 758
— *v.* Tomlinson (1866), L. R. 1 C. C. R. 49; 36 L. J. (M. C.) 41; 15 L. T. 188; 12 Jur. (N. S.) 945; 15 W. R. 46; 10 Cox, C. C. 323 592, 651
— *v.* Two Casks of Tallow (1837), 3 Hag. Adm. 294 549
— *v.* Vaughan (1743), 1 Wils. 22 850
— *v.* Walsh (1834), 1 Ad. & El. 481; 3 L. J. (M. C.) 100; 3 Nev. & M. (K. B.) 632 20
— *v.* Wenham (1866), 10 Cox, C. C. 222 721
— *v.* Williams (1884), 9 App. Cas. 418; 53 L. J. (P. C.) 64 647
— *v.* Wilson (James) (1858), Dears. & B. 558; 27 L. J. (M. C.) 230; 4 Jur. (N. S.) 670; 6 W. R. 503; 8 Cox, C. C. 25 55
Racehorse, The (1800), 3 Ch. Rob. 101 305
Racer, The (1874), 30 L. T. 904; 2 Asp. M. L. C. 217 562
Racine, The, [1906] P. 273; 75 L. J. (P.) 83; 95 L. T. 598; 22 T. L. R. 575; 10 Asp. M. L. C. 300, C. A. 538, 540
Radley *v.* London and North Western Rail. Co. (1876), 1 App. Cas. 754; 46 L. J. (EX.) 573; 35 L. T. 637; 25 W. R. 147 508, 513, 514
Rae *v.* Hackett (1844), 12 M. & W. 724; 13 L. J. (EX.) 216; 8 Jur. 421 . 143, 178, 181, 255
—— *v.* Meek (1889), 14 App. Cas. 558 760
Raeburn and Verel *v.* Burness & Sons (1895), 1 Com. Cas. 22 88
Raft of Timber (1844), 2 Wm. Rob. 251 14, 559
Ragnhild, The, [1911] P. 254; 105 L. T. 446 397, 471
Railways Commissioner *v.* O'Rourke, [1896] A. C. 594; 65 L. J. (P. C.) 84; 75 L. T. 84 802, 804
Rainbow, The (1885), 53 L. T. 91; 5 Asp. M. L. C. 479 48
Raisby, The (1885), 10 P. D. 114; 54 L. J. (P.) 65; 53 L. T. 56; 33 W. R. 938; 5 Asp. M. L. C. 473 323, 586, 619
Raithwaite Hall, The (1874), 30 L. T. 233; 2 Asp. M. L. C. 210 . 425, 483, 507

PAGE
Raitt *v.* Mitchell (1815), 4 Camp. 146. 621
Rajah, The (1872), L. R. 3 A. & E. 539; 41 L. J. (ADM.) 97; 27 L. T. 102; 21 W. R. 14 615
Rajah of Cochin, The (1859), Sw. 473 48, 375
Rakusen *v.* Ellis, Munday and Clarke, [1912] 1 Ch. 831; 81 L. J. (CH.) 409; 106 L. T. 556; 28 T. L. R. 326, C. A. 735
Ralli Brothers *v.* Paddington Steamship Co. (1900), 5 Com. Cas. 124 . . 152, 171, 172, 294
Ralph Creyke, The (1886), 55 L. T. 155; 6 Asp. M. L. C. 19 . . 481, 494, 497
Rambler, The, The Titan. *See* Titan, The, The Rambler.
Rance, *Re* (1856), 22 Beav. 177 789
Randall *v.* Lynch (1810), 12 East, 179; 2 Camp. 352 . . 124, 125, 271, 273
——— *v.* Newson (1877), 2 Q. B. D. 102; 46 L. J. (Q. B.) 259; 36 L. T. 164; 25 W. R. 313, C. A. 327
"Ranger," The, Malcomson *v.* General Steam Navigation Co., The "Cologne." *See* Malcomson *v.* General Steam Navigation Co., The "Ranger" and The "Cologne."
Rankin *v.* Potter (1873), L. R. 6 H. L. 83; 42 L. J. (C. P.) 169; 29 L. T. 142; 22 W. R. 1; 2 Asp. M. L. C. 65 178
Rankine *v.* Raschen (1877), 4 R. (Ct. of Sess.) 725; 14 Sc. L. R. 476 . . 617
Ransom, *Re* (1854), 18 Beav. 220 781
Ranza, The (1898), 79 L. J. (P.) 21, n. 448, 450
Raphael, *Re*, *Ex parte* Salomon, [1899] 1 Ch. 853; 68 L. J. (CH.) 309; 80 L. T. 226; 47 W. R. 330; reversed, 68 L. J. (CH.) 765; 81 L. T. 497, C. A. . . 782
Rapid Road Transit Co., *Re*, [1909] 1 Ch. 96; 78 L. J. (CH.) 132; 99 L. T. 774; 53 Sol. Jo. 83 818
Rasche, The (1873), L. R. 4 A. & E. 127; 42 L. J. (ADM.) 71; 22 W. R. 240 . 575, 583
"Ratata," The, Preston Corporation *v.* Biornstad. *See* Preston Corporation *v.* Biornstad, The "Ratata."
Rathbone Brothers & Co. *v.* McIver (D.) Sons & Co., [1903] 2 K. B. 378; 72 L. J. (K. B.) 703; 89 L. T. 378; 52 W. R. 68; 19 T. L. R. 590; 9 Asp. M. L. C. 467; 8 Com. Cas. 303, C. A. 117, 189, 190, 358
Raven, *Re*, *Ex parte* Pitt (1881), 45 L. T. 742; 30 W. R. 134 771
——— *v.* Stevens & Sons (1886), 3 T. L. R. 67 721
Rawlinson *v.* Moss (1861), 30 L. J. (CH.) 797; 4 L. T. 619; 7 Jur. (N. S.) 1053; 9 W. R. 733 737, 818
Ray *v.* Flower Ellis (1912), 56 Sol. Jo. 724, C. A. 843
——— *v.* Newton, [1913] 1 K. B. 249; 82 L. J. (K. B) 125; 108 L. T. 313; 57 Sol. Jo. 130, C. A. 771, 772, 787
Rayne *v.* Benedict (1841), 10 L. J. (CH.) 297; 5 Jur. 598 245, 249
Rayner *v.* Rederiaktiebolaget Condor, [1895] 2 Q. B. 289; 64 L. J. (Q. B.) 540; 73 L. T. 96; 15 R. 542; 8 Asp. M. L. C. 43 106, 207
Raynes *v.* Ballantyne (1898), 14 T. L. R. 399 116
Read, *Re*, [1894] 3 Ch. 238; 63 L. J. (CH.) 831; 71 L. T. 189; 42 W. R. 601; 8 R. 489 762
——— *v.* Dupper (1795), 6 Term Rep. 361 823
——— *v.* Rann (1830), 10 B. & C. 438; 8 L. J. (O. S.) (K. B). 144 . . 137
Reade, *Re*, Salthouse *v.* Reade (1889), 33 Sol. Jo. 219 765, 766
Readhead *v.* Midland Rail. Co. (1867), L. R. 2 Q. B. 412 216
——— *v.* ——— (1869), L. R. 4 Q. B. 379; 38 L. J. (Q. B.) 169 . 361
Rebecca, The (1799), 2 Ch. Rob. 101 305
——— (1804), 5 Ch. Rob. 102 73, 625, 627
Recepta, The (1889), 14 P. D. 131; 58 L. J. (P.) 70; 61 L. T. 698; 6 Asp. M. L. C. 433 19, 615
Red Cross, The (1907), 97 L. T. 610; 10 Asp. M. L. C. 521 . . . 442, 466, 470, 481
Red "R." Steamship Co. *v.* Allatini Brothers (1909), 100 L. T. 268; 25 T. L. R. 269; 53 Sol. Jo. 162; 14 Com. Cas. 82; affirmed (1910), 101 L. T. 510; 25 T. L. R. 791; 11 Asp. M. L. C. 193; 15 Com. Cas. 290, C. A. . 172, 175, 176, 177, 286, 287
Red Rose, The (1868), L. R. 2 A. & E. 80 623
Rederiaktieselskabet "Superior" *v.* Dewar and Webb, [1909] 1 K. B. 948; 78 L. J. (K. B.) 584; 100 L. T. 513; 25 T. L. R. 396; 53 Sol. Jo. 358; 11 Asp. M. L. C. 232; 14 Com. Cas. 99; varied, [1909] 2 K. B. 998; 78 L. J. (K. B.) 1100; 101 L. T. 371; 25 T. L. R. 821; 14 Com. Cas. 320, C. A. . 135, 285, 286
Redfarn *v.* Sowerby (1818), 1 Swan. 84 818

PAGE
Redgrave *v.* Hurd (1881), 20 Ch. D. 1; 51 L. J. (CH.) 118; 45 L. T. 489; 30 W. R. 251, C. A. 751
Redman *v.* Wilson (1845), 14 M. & W. 476; 14 L. J. (EX.) 333; 9 Jur. 714 . 111
Reece *v.* Cox (1867), 16 L. T. 327 813
——— *v.* Rigby (1821), 4 B. &. Ald. 202 756
Reeder *v.* Bloom (1825), 3 Bing. 9 720
Rees, *Re* (1849), 12 Beav. 256 784, 791
——, *Re*, Rees *v.* Rees (1887), 58 L. T. 68 765
——— *v.* Williams (1875), L. R. 10 Exch. 200; 44 L. J. (EX.) 116; 32 L. T. 462; 23 W. R. 550 731, 773
Reeve *v.* Davis (1834), 1 Ad. & El. 312; 3 Nev. & M. (K. B.) 873 . . . 85
——— *v.* Gibson, [1891] 1 Q. B. 652; 60 L. J. (Q. B.) 451; 39 W. R. 420, C. A. . 807
——— *v.* Palmer (1858), 5 C. B. (N. S.) 84. 758
Reeves (Herbert) & Co., *Re*, [1902] 1 Ch. 29; 71 L. J. (CH.) 70; 50 W. R. 252, C. A. 792
R. E. F., *Re* (1908), 52 Sol. Jo. 83 788
Regalia, The (1884), 51 L. T. 904; 5 Asp. M. L. C. 338 37
Regent United Service Stores, *Re* (1878), 8 Ch. D. 75; 38 L. T. 84; 26 W. R. 425, C. A. 743
Reginald, The (1907), 10 Asp. M. L. C. 519 393
Reid *v.* Burrows, [1892] 2 Ch. 413; 61 L. J. (CH.) 448; 67 L. T. 183; 40 W. R. 620 844
——— *v.* Darby (1808), 10 East, 143 76
——— *v.* Hoskins, Avery *v.* Bowden (1856), 6 E. & B. 953; 26 L. J. (Q. B.) 5; 3 Jur. (N. S.) 238; 5 W. R. 45 108, 132, 193, 194, 196, 197, 201, 208
——— *v.* Lee & Sons (1901), 17 T. L. R. 771 131, 277, 278
Reiher, The (1881), 45 L. T. 767; 4 Asp. M. L. C. 478 379, 401
Rein *v.* Lane (1867), L. R. 2 Q. B. 144; 8 B. & S. 83; 36 L. J. (Q. B.) 81; 15 L. T. 466; 15 W. R. 345 87
——— *v.* Wrathall, *Re* Leeuw. *See* Leeuw, *Re*, Rein *v.* Wrathall.
Reinbeck, The (1889), 60 L. T. 209; 6 Asp. M. L. C. 366, C. A. 627
Reindeer Steamship Co. *v.* Forslind & Son (1908), 24 T. L. R. 529; 52 Sol. Jo. 425; 13 Com. Cas. 214, C. A. 105
Reischer *v.* Borwick, [1894] 2 Q. B. 548; 63 L. J. (Q. B.) 753; 71 L. T. 238; 9 R. 558; 7 Asp. M. L. C. 493, C. A. 232, 233, 360
Reliance (1833), 3 Hag. Adm. 66 70
———, The (1843), 2 Wm. Rob. 119 620
Remnant, *Re* (1849), 11 Beav. 603; 18 L. J. (CH.) 374 775
Reney *v.* Kirkcudbright Magistrates, [1892] A. C. 264; 61 L. J. (P. C.) 23; 67 L. T. 474; 7 Asp. M. L. C. 221 499, 532, 640, 642, 648
Renpor, The (1883), 8 P. D. 115; 52 L. J. (P.) 49; 48 L. T. 887; 31 W. R. 640; 5 Asp. M. L. C. 98, C. A. 558, 561, 572, 581
Renteria *v.* Ruding (1830), Mood. & M. 511 295
Repetto *v.* Millar's Karri and Jarrah Forests, Ltd., [1901] 2 K. B. 306; 70 L. J. (K. B.) 561; 84 L. T. 836; 49 W. R. 526; 17 T. L. R. 421; 9 Asp. M. L. C. 215; 6 Com. Cas. 129 155, 297
Repulse, The (1845), 2 Wm. Rob. 396 572
Resolution, The (1889), 60 L. T. 430; 6 Asp. M. L. C. 363 . . 417, 418, 424
———————, The Langton, Nelson *v.* Fawcett. *See* Nelson *v.* Fawcett, The Resolution, The Langton.
Resolven, The (1892), 9 T. L. R. 75 91
Restitution Steamship Co. *v.* Pirie (Sir J.) & Co. (1889), 61 L. T. 330; 6 T. L. R. 50; 6 Asp. M. L. C. 428; affirmed, 64 L. T. 491, n.; 7 Asp. M. L. C. 11, n., C. A. 133, 135, 151, 195
Reusse *v.* Meyers (1813), 3 Camp. 475 91, 143
Rew *v.* Lane (1856), 3 Jur. (N. S.) 125; 5 W. R. 110 759
——— *v.* Payne, Douthwaite & Co. (1886), 53 L. T. 982; 5 Asp. M. L. C. 515 . 161
Reynolds, *Ex parte*, *Re* Barnett. *See* Barnett, *Re*, *Ex parte* Reynolds.
——————— *v.* Howell (1873), L. R. 8 Q. B. 398; 42 L. J. (Q. B.) 181; 29 L. T. 208; 22 W. R. 18 730
——————— *v.* Jex (1865), 7 B. & S. 86; 34 L. J. (Q. B.) 251; 13 W. R. 968 . 66, 88, 155, 173, 174, 286
——————— *v.* Reynolds (1909), 26 T. L. R. 104, C. A. 823, 826
——————— & Co. *v.* Tomlinson, [1896] 1 Q. B. 586; 65 L. J. (Q. B.) 496; 74 L. T. 591; 8 Asp. M. L. C. 150 256, 258, 259
Rhadamanthe, The (1813), 1 Dods. 201 622, 623
Rhein, The (1902), 86 L. T. 265; 18 T. L. R. 343; 9 Asp. M. L. C. 278 . . 482

PAGE
Rhodes, *Re* (1844), 8 Beav. 224; 14 L. J. (CH.) 137; 9 Jur. 169 . . . 772
——— *v.* Bate (1866), 1 Ch. App. 252; 35 L. J. (CH.) 267; 13 L. T. 778; 12 Jur. (N. S.) 178; 14 W. R. 292 747, 752
——— *v.* Moules, [1895] 1 Ch. 236; 64 L. J. (CH.) 122; 71 L. T. 599; 43 W. R. 99; 12 R. 6, C. A. 746, 760
——— *v.* Sugden, *Re* Wadsworth. *See* Wadsworth, *Re*, Rhodes *v.* Sugden.
"Rhondda," The, Scicluna *v.* Stevenson. *See* Scicluna *v.* Stevenson, The "Rhondda."
Rhosina, The (1885), 10 P. D. 24; 54 L. J. (P.) 42; 52 L. T. 140; 5 Asp. M. L. C. 114 641, 642
——— (1885), 10 P. D. 131; 54 L. J. (P.) 72; 53 L. T. 30; 33 W. R. 794; 7 Asp. M. L. C. 460, C. A. 532, 648
Rialto, The, [1891] P. 175; 60 L. J. (P.) 71; 64 L. T. 540; 7 Asp. M. L. C. 35 571, 572
Ribble Navigation Co. *v.* Hargreaves (1856), 17 C. B. 385; 25 L. J. (C. P.) 97 638
Rice, *Re* (1837), 2 Keen, 181; 6 L. J. (CH.) 291; 1 Jur. 351 . . . 781, 840
Rich *v.* Coe (1777), 2 Cowp. 636 66
—— *v.* Kneeland (1613), Cro. Jac. 330; Hob. 17; Abbott on Shipping, 5th ed., p. 223; 14th ed., p. 503 203, 325
Richards, *Re*, [1912] 1 Ch. 49; 81 L. J. (CH.) 165; *sub nom. Re* R., 56 Sol. Jo. 74 808
——— *v.* Platel (1841), Cr. & Ph. 79; 10 L. J. (CH.) 375; 5 Jur. 834 . 815, 841
——— *v.* Scarborough Market Co. (1853), 17 Beav. 83; 22 L. J. (CH.) 759; 17 Jur. 294; 1 W. R. 250 848
Richardson, *Re*, *Ex parte* Mobbs (1845), 8 Beav. 499 791
——— *v.* Nourse (1819), 3 B. & Ald. 237 249, 318, 324
——— *v.* Richardson, [1895] P. 346; 64 L. J. (P.) 119; 73 L. T. 135; 44 W. R. 102; 11 R. 663, C. A. 769, 800
——— *v.* Stanton, Stanton *v.* Richardson. *See* Stanton *v.* Richardson, Richardson *v.* Stanton.
Richardsons and Samuel (M.) & Co., *Re*, [1898] 1 Q. B. 261; 66 L. J. (Q. B.) 868; 77 L. T. 479; 14 T. L. R. 5; 8 Asp. M. L. C. 330; 3 Com. Cas. 79, C. A. . 120, 130, 131, 132, 139, 191, 194, 195, 201
Richelieu and Ontario Navigation Co. *v.* Taylor, [1910] A. C. 170; 101 L. T. 501; 11 Asp. M. L. C. 315; *sub nom.* The Havana, 79 L. J. (P. C.) 65 . 499
Richmond, The (1902), 19 T. L. R. 29 358, 359
Richmond Hill Steamship Co. *v.* Trinity House Corporation, [1896] 2 Q. B. 134; 65 L. J. (Q. B.) 561; 75 L. T. 8; 45 W. R. 6; 8 Asp. M. L. C. 164, C. A. . 80
Ridd *v.* Thorne, [1902] 2 Ch. 344; 71 L. J. (CH.) 624; 86 L. T. 655; 50 W. R. 542 . . 826
Ridley *v.* Sutton (1863), 1 H. & C. 741; 32 L. J. (EX.) 122; 7 L. T. 693; 9 Jur. (N. S.) 358; 11 W. R. 314 769
——— *v.* Tiplady (1855), 20 Beav. 44; 24 L. J. (CH.) 207; 1 Jur. (N. S.) 249; 3 W. R. 276 756, 834
Riga, The (1872), L. R. 3 A. & E. 516; 41 L. J. (ADM.) 39; 26 L. T. 202; 20 W. R. 927; 1 Asp. M. L. C. 246 69
Rigborgs Minde, The (1883), 8 P. D. 132; 52 L. J. (P.) 74; 49 L. T. 232; 5 Asp. M. L. C. 123, C. A. 531
Rigel, The, [1912] P. 99; 81 L. J. (P.) 86; 106 L. T. 652; 28 T. L. R. 251 . 544
Rijnstroom, The (1899), 80 L. T. 422; 8 Asp. M. L. C. 538 617
Ringer, *Ex parte* (1909), 73 J. P. 436; 53 Sol. Jo. 745; 25 T. L. R. 718; 7 L. G. R. 1041 681
Ripley *v.* Scaife (1826), 5 B. & C. 167; 7 Dow. & Ry. (K. B.) 818; 2 C. & P. 132 105, 217
Ripon, The (1848), 6 Notes of Cases, 245 455
——— (1885), 10 P. D. 65; 54 L. J. (P.) 56; 52 L. T. 438; 33 W. R. 659; 5 Asp. M. L. C. 365 381, 481, 531
Ripon City, The, [1897] P. 226; 66 L. J. (P.) 110; 77 L. T. 98; 8 Asp. M. L. C. 304 29, 68, 617, 618, 620
———, [1898] P. 78; 67 L. J. (P.) 30; 78 L. T. 296; 46 W. R. 586; 14 T. L. R. 219; 8 Asp. M. L. C. 391 26
Risoluto, The (1883), 8 P. D. 109; 52 L. J. (P.) 46; 48 L. T. 909; 31 W. R. 657; 5 Asp. M. L. C. 93 540
Ritchie *v.* Atkinson (1808), 10 East, 295 93, 143, 210, 306, 310
——— *v.* Couper (1860), 28 Beav. 344 35
——— *v.* Larsen, [1899] 1 Q. B. 727; 68 L. J. (Q. B.) 335; 80 L. T 259; 47 W. R. 413; 15 T. L. R. 167; 4 Com. Cas. 129; 8 Asp. M. L. C. 501 . 51

PAGE
River Derwent, The (1889), 6 Asp. M. L. C. 467 507
——— (1891), 64 L. T. 509; 7 Asp. M. L. C. 37 483
Rivington *v.* Garden, [1901] 1 Ch. 561; 70 L. J. (CH.) 282; 84 L. T. 197; 49 W. R. 279 768
R. L. Alston, The (1882), 8 P. D. 5; 48 L. T. 469; 5 Asp. M. L. C. 43, C. A. . 482, 487
Roanoke, The, [1908] P. 231; 77 L. J. (P.) 115; 99 L. T. 78; 52 Sol. Jo. 426; 24 T. L. R. 526, C. A. 437, 446, 447
Rob Roy, The (1849), 3 Wm. Rob. 190 369, 381
——— (1849), 7 Notes of Cases, 280 App. iii
Robarts *v.* Buèe (1878), 8 Ch. D. 198; 47 L. J. (CH.) 414; 26 W. R. 393 . . 822
——— *v.* Jefferys (1830), 8 L. J. (O. S.) (CH.) 137 820
Robbins *v.* Fennell (1847), 11 Q. B. 248; 17 L. J. (Q. B.) 77; 12 Jur. 157 845, 846
Robert and Ann, The *v.* The Lloyds (1864), Holt (ADM.), 55 . . . 391, 399
Robert Dickinson, The (1884), 10 P. D. 15; 54 L. J. (P.) 5; 52 L. T. 55; 33 W. R. 400; 5 Asp. M. L. C. 341 37
Robert Dixon, The (1879), 4 P. D. 121; 40 L. T. 333; 27 W. R. 736; affirmed, 5 P. D. 54; 42 L. T. 334; 28 W. R. 716; 4 Asp. M. L. C. 246, C. A. . 357, 358, 491, 527, 569
Robert Ingham, The, The Aurora. *See* Aurora, The, The Robert Ingham.
Roberts, *Ex parte*, *Re* Humphreys. *See* Humphreys, *Re*, *Ex parte* Roberts.
——— *v.* Brett (1865), 11 H. L. Cas. 337; 34 L. J. (C. P.) 241; 12 L. T. 286; 11 Jur. (N. S.) 377; 13 W. R. 587 93
——— *v.* Holt (1685), 2 Show. 443 295
——— *v.* Lucas (1855), 11 Exch. 41; 24 L. J. (EX.) 227; 1 Jur. (N. S.) 527; 3 W. R. 415; 3 C. L. R. 987 777, 778
——— *v.* Shaw (1863), 4 B. & S. 44; 32 L. J. (Q. B.) 308; 8 L. T. 634; 10 Jur. (N. S.) 147; 11 W. R. 829 313
Robertson, *Re* (1887), 19 Q. B. D. 1; 56 L. T. 859; 35 W. R. 833 . . . 766
———, *Re* (1889), 42 Ch. D. 553; 58 L. J. (CH.) 832; 62 L. T. 38; 38 W. R. 170 778, 790, 791, 793
——— *v.* Amazon Tug and Lighterage Co. (1881), 7 Q. B. D. 598; 51 L. J. (Q. B.) 68; 46 L. T. 146; 30 W. R. 308; 4 Asp. M. L. C. 496, C. A. 211, 357, 527
——— *v.* Caruthers (1819), 2 Stark. 571 75
——— *v.* Clarke (1824), 1 Bing. 445; 2 L. J. (O. S.) (C. P.) 71; 8 Moore (C. P.), 622 75, 252
——— *v.* Ewer (1786), 1 Term Rep. 127 112
——— *v.* Fleming (1861), 4 Macq. 167; 1 Pater. App. 1053 . . 753, 845
——— *v.* French (1803), 4 East, 130 138, 139, 142
——— *v.* Jackson (1845), 2 C. B. 412; 15 L. J. (C. P.) 28; 10 Jur. 98 . . 127, 128, 260
——— *v.* Wait (1853), 8 Exch. 299; 22 L. J. (EX.) 209; 1 W. R. 132 . 137, 138
Robey & Co.'s Perseverance Ironworks *v.* Ollier (1872), 7 Ch. App. 695; 27 L. T. 362; 20 W. R. 956; 1 Asp. M. L. C. 413 162, 285
Robin, The, [1892] P. 95; 67 L. T. 298; 7 Asp. M. L. C. 194 768
Robins *v.* Bridge (1837), 3 M. & W. 114; 7 L. J. (EX.) 49; 6 Dowl. 140; Murp. & H. 357 836
——— *v.* Goldingham (1872), L. R. 13 Eq. 440; 41 L. J. (CH.) 813; 25 L. T. 900; 20 W. R. 277 737, 818
Robinson, *Re* (1859), 5 Jur. (N. S.) 1021 839
———, *Re* (1867), L. R. 3 Exch. 4; 37 L. J. (EX.) 11; 17 L. T. 179; 16 W. R. 110 786, 790
——— *v.* Anderson (1855), 7 De G. M. & G. 239, C. A. 842
——— *v.* Emanuel (1874), L. R. 9 C. P. 414; 43 L. J. (C. P.) 244; 30 L. T. 50 835
——— *v.* Knights (1873), L. R. 8 C. P. 465; 42 L. J. (C. P.) 211; 28 L. T. 820; 21 W. R. 683; 2 Asp. M. L. C. 10 103, 311
——— *v.* Macdonnell (1816), 5 M. & S. 228; 2 B. & Ald. 134 . . . 302
——— *v* Mollett (1875), L. R. 7 H. L. 802; 44 L. J. (C. P.) 362 . . 140, 141
——— *v.* Mullett (1817), 4 Price, 353 735
——— *v.* Powell (1839), 5 M. & W. 479 808
——— *v.* Price (1877), 2 Q. B. D. 295; 46 L. J. (Q. B.) 551; 36 L. T. 354; 25 W. R. 469; 3 Asp. M. L. C. 407, C. A. . . 187, 318, 319
——— *v.* —— (1886), 21 L. J. 46 733
——— *v.* Rowland (1838), 2 Jur. 136; 6 Dowl. 271; 1 Will. Woll. & H. 74 . 774, 813
——— *v.* Turpin (1805), Peake (3rd ed.), 203, n. 140, 265

PAGE
Robinson *v.* Ward (1825), 2 C. & P. 59; Ry. & M. 274 758
Robson, *Re* (1890), 45 Ch. D. 71; 59 L. J. (CH.) 627; 63 L. T. 372; 38 W. R. 556 764
——— *v.* Eaton (1785), 1 Term Rep. 62 730
Roche *v.* London and South Western Rail. Co., [1899] 2 Q. B. 502; 68 L. J. (Q. B.) 1041; 81 L. T. 315; 48 W. R. 1; 15 T. L. R. 514; 8 Asp. M. L. C. 588, C. A. 616
——— *v.* Roche (1890), 29 L. R. Ir. 339; 26 I. L. T. 107, C. A. 827
Rocher *v.* Busher (1815), 1 Stark. 27 67
Rodenacker *v.* May and Hassell, Ltd. (1901), 6 Com. Cas. 37 . . . 277, 278
Roderick Dhu, The (1856), Sw. 177; 5 W. R. 168 73
Rodger *v.* Comptoir d'Escompte de Paris (1869), L. R. 2 P. C. 393; 5 Moo. P. C. C. (N. S.) 538; 21 L. T. 33; 17 W. R. 468 163
Rodgers *v.* Forresters (1810), 2 Camp. 483 . . . 121, 274, 275, 277, 278
Rodney, The, [1900] P. 112; 69 L. J. (P.) 29; 82 L. T. 27; 48 W. R. 527; 16 T. L. R. 183; 9 Asp. M. L. C. 39 116
Rodocanachi *v.* Milburn (1886), 18 Q. B. D. 67; 56 L. J. (Q. B.) 202; 56 L. T. 594; 35 W. R. 241; 6 Asp. M. L. C. 100, C. A. . 149, 169, 289, 290, 291, 312, 314, 541
Rodoconachi *v.* Elliott (1874), L. R. 9 C. P. 518; 43 L. J. (C. P.) 255; 31 L. T. 239; 2 Asp. M. L. C. 399 109
Roe *v.* Doe (1736), Barnes, 39 730
Roebuck, The (1874), 31 L. T. 274; 2 Asp. M. L. C. 387 61, 66, 96
Roecliff, The (1869), L. R. 2 A. & E. 363; 38 L. J. (ADM.) 56; 20 L. T. 586; 17 W. R. 745 303, 545, 619
Roelandts *v.* Harrison (1854), 9 Exch. 444; 23 L. J. (EX.) 169; 2 C. L. R. 995 . 218, 219, 220
Rogers *v.* Hunter (1827), 2 C. & P. 601; Mood. & M. 63 121, 274
——— *v.* London, Chatham and Dover Rail. Co. (1877), 26 W. R. 192 . . 835
Romain, *Re*, [1903] 1 Ch. 702; 72 L. J. (CH.) 309; 88 L. T. 125; 58 W. R. 346 766
Romance, The, [1901] P. 15; 70 L. J. (P.) 1; 83 L. T. 488; 9 Asp. M. L. C. 149 378, 380, 386, 389, 404
Romer and Haslam, *Re*, [1893] 2 Q. B. 286; 62 L. J. (Q. B.) 610; 69 L. T. 547; 42 W. R. 51; 4 R. 486, C. A. 738, 785, 787, 847
Romney Marsh, Lords Bailiff-Jurats *v.* Trinity House Corporation (1870), L. R. 5 Exch. 204; 39 L. J. (EX.) 163; 22 L. T. 446; 18 W. R. 869; affirmed (1872), L. R. 7 Exch. 247; 41 L. J. (EX.) 106; 20 W. R. 952 . 505, 628, 644
Rona, The (1882), 7 P. D. 247; 51 L. J. (P.) 65; 46 L. T. 601; 30 W. R. 614; 4 Asp. M. L. C. 520 542
——— (1884), 51 L. T. 28 211, 214, 217, 220, 221, 227
———, and The Ava (1873), 2 Asp. M. L. C. 182 . 383, 429, 435, 458, 487
Rondane, The (1900), 69 L. J. (P.) 114; 82 L. T. 128; 9 Asp. M. L. C. 106 . 368, 420, 422, 423
Roney & Co., *Re* (1913), 49 L. J. 34, C. A. 798
Ronneberg *v.* Falkland Islands Co. (1864), 17 C. B. (N. S.) 1; 34 L. J. (C. P.) 34; 10 L. T. 530; 10 Jur. (N. S.) 940; 12 W. R. 914 238 239
Rookwood, The (1894), 10 T. L. R. 314, C. A. 195
Ropner & Co. *v.* Stoate, Hosegood & Co. (1905), 92 L. T. 328; 21 T. L. R. 245; 10 Asp. M. L. C. 32; 10 Com. Cas. 73 277
Rosalia, The, [1912] P. 109; 81 L. J. (P.) 79; 106 L. T. 351; 28 T. L. R. 287 518
"Rosalie," The (1853), 1 Ecc. & Ad. 188 577
——— (1880), 5 P. D. 245; 50 L. J. (P.) 3; 44 L. T. 32; 4 Asp. M. L. C. 384 433, 452, 453, 510
Rosario, The (1876), 2 P. D. 41; 46 L. J. (P.) 52; 35 L. T. 816; 3 Asp. M. L. C. 334 54, 574
Roscow *v.* Coxson (1819), 8 Taunt. 684 112
Rose, The (1799), 2 Ch. Rob. 206 305
——— (1843), 2 Wm. Rob. 1 379, 487
——— (1873), L. R. 4 A. & E. 6; 42 L. J. (ADM.) 11; 28 L. T. 291; 21 W. R. 511; 1 Asp. M. L. C. 567 30
Rose *v.* Bank of Australasia, [1894] A. C. 687; 63 L. J. (Q. B.) 504; 70 L. T. 422; 6 R. 121; 7 Asp. M. L. C. 445 319, 320
Rose of England, The (1888), 59 L. T. 262; 6 Asp. M. L. C. 304 . 420, 482, 494
"Rosehaugh," The (1854), 1 Ecc. & Ad. 267 567
Rosetta, The (1888), 59 L. T. 342; 6 Asp. M. L. C. 310 411, 536

PAGE
Rosetto *v.* Gurney (1851), 11 C. B. 176; 20 L. J. (C. P.) 257; 15 Jur. 1177 . 221
Rosin and Turpentine Import Co. *v.* Jacobs & Sons (1910), 102 L. T. 81; 26 T. L. R. 259; 54 Sol. Jo. 268; 11 Asp. M. L. C. 363; 15 Com. Cas. 111 . 116
Ross *v.* Ashwin, [1884] W. N. 86 795
—— *v.* Buxton (1889), 42 Ch. D. 190; 58 L. J. (CH.) 442; 60 L. T. 630; 54 J. P. 85; 38 W. R. 71. 820, 821, 823, 825
—— *v.* Hunter (1790), 4 Term Rep. 33 112
—— *v.* Laughton (1813), 1 Ves. & B. 349 818
—— *v.* Shearman (1820), 2 Coop. *temp.* Cott. 152 857
Rotch *v.* Edie (1795), 6 Term Rep. 413 109
Rotherfield Steamship Co. *v.* Tweedy, Reid & Co. (1897), 2 Com. Cas. 84 . 84
Rotherham Alum and Chemical Co., *Re* (1883), 25 Ch. D. 103; 53 L. J. (CH.) 290; 50 L. T. 219; 32 W. R. 131, C. A. 734
Rothschild *v.* Brookman (1831), 5 Bli. (N. S.) 165 749
Routh *v.* Macmillan (1863), 2 H. & C. 750; 33 L. J. (EX.) 38; 9 L. T. 541; 10 Jur. (N. S.) 158; 12 W. R. 381 92
Roux *v.* Salvador (1836), 3 Bing. (N. C.) 266; 7 L. J. (EX.) 328; 4 Scott, 1; 2 Hodg. 209. 251
Rowena, The (1877), 37 L. T. 366; 26 W. R. 82; 3 Asp. M. L. C. 506 . . 73
Rowland and Marwood's Steamship Co. *v.* Wilson, Sons & Co. (1897), 2 Com. Cas. 198 126, 128
Rowlands *v.* Miller, [1899] 1 Q. B. 735; 68 L. J. (Q. B.) 338; 80 L. T. 290; 47 W. R. 687; 15 T. L. R. 216; 4 Com. Cas. 133; 8 Asp. M. L. C. 508 50, 51
———— *v.* Williams (1885), 53 L. T. 135; reversed (1885), *Times*, November 12th, C. A. 825
Rowley, *Re* (1886), 30 Sol. Jo. 567 769
——— *v* Southwell, Southwell *v.* Rowley (1889), 61 L. T. 805 824
Rowson *v.* Atlantic Transport Co., [1903] 2 K. B. 666; 72 L. J. (K. B.) 811; 89 L. T. 204; 19 T. L. R. 668; 9 Asp. M. L. C. 458; 9 Com. Cas. 33, C. A. 116, 117
——— *v.* Earle (1829), Mood & M. 538 739
Royal Arch, The (1857), Sw. 269; 6 W. R. 191 . . . 29, 70, 71, 73, 580, 623, 627
Royal Exchange Shipping Co. *v.* Dixon (1886), 12 App. Cas. 11; 56 L. J. (Q. B.) 266; 56 L. T. 206; 35 W. R. 461; 6 Asp. M. L. C. 92 . . . 205, 317
Royal Mail Steam Packet Co. *v.* English Bank of Rio de Janeiro (1887), 19 Q. B. D. 362; 57 L. J. (Q. B.) 31; 36 W. R. 105 228, 316, 317, 320
————————, Ltd. and River Plate Steamship Co., Ltd., *Re*, [9110] 1 K. B. 600; 79 L. J. (K. B.) 673; 102 L. T. 333; 11 Asp. 372; 15 Com. Cas. 124 128, 129
Royal Mail Steamship Co. *v.* Macintyre Brothers & Co. (1911), 16 Com. Cas. 231 114, 207, 325
"Royal Stuart," The (1855), 2 Ecc. & Ad. 258 72
Royalist, The (1863), Brown. & Lush. 46; 32 L. J. (P. M. & A.) 105; 9 Jur. (N. S.) 852 40
Royle *v.* Busby (1880), 6 Q. B. D. 171; 50 L. J. (Q. B.) 196; 43 L. T. 717; 29 W. R. 315, C. A. 836
Ruabon Steamship Co. *v.* London Assurance, [1900] A. C. 6; 69 L. J. (Q. B.) 86; 81 L. T. 585; 48 W. R. 225; 16 T. L. R. 90; 5 Com. Cas. 71; 9 Asp. M. L. C. 2 539
Rubicon (1833), 3 Hag. Adm. 9 72
Ruby, The (1890), 15 P. D. 139; 63 L. T. 735; 6 Asp. M. L. C. 577 . . 610
———— (No. 2), [1898] P. 59; 67 L. J. (P.) 28; 78 L. T. 267; 46 W. R. 687; 14 T. L. R. 184 618
———— (1900), 83 L. T. 438; 9 Asp. M. L. C. 146 27, 28
Ruby Queen, The (1861), Lush. 266 490, 619
Ruck *v.* Hatfield (1822), 5 B. & Ald. 632 160
Rumsey *v.* Rumsey, *Ex parte* Rumsey (1855), 21 Beav. 40. 765
Runciman & Co. *v.* Smyth & Co. (1904), 20 T. L. R. 625 169, 176
Runquist *v.* Ditchell (1799), 3 Esp. 64 83, 148, 154
Rusden *v.* Pope (1868), L. R. 3 Exch. 269; 37 L. J. (EX.) 137; 18 L. T. 651; 16 W. R. 1122 25, 26, 300
Rush, *Re* (1870), L. R. 9 Eq. 147; 39 L. J. (CH.) 159; 21 L. T. 692; 18 W. R. 331; *sub nom. Re* A. B., 39 L. J. (CH.) 159. 837, 840
Rushforth *v.* Hadfield (1806), 7 East, 224 285

PAGE
Russel *v.* Buchanan (1838), 9 Sim. 167 796
——— *v.* Reece (1847), 2 Car. & Kir. 669 830
Russell, *Ex parte*, *Re* Butterworth. *See* Butterworth, *Re*, *Ex parte* Russell.
———, *Ex parte*, *Re* Elderton. *See* Elderton, *Re*, *Ex parte* Russell.
——— *v.* Griffith (1860), 2 F. &. F. 118 138
——— *v.* Niemann (1864), 17 C. B. (N. S.) 163; 34 L. J. (C. P.) 10; 10 L. T. 786; 13 W. R. 93 108, 109, 176
——— *v.* Palmer (1767), 2 Wils. 325 755
——— *v.* Russell, [1898] A. C. 307; 67 L. J. (P.) 69 822
——— *v.* Yorke (1839), 7 Scott, 130 808
———, Son and Scott, *Re* (1885), 30 Ch. D. 114; 54 L. J. (CH.) 948; 52 L. T. 794; 33 W. R. 815 772
———————, *Re* (1886), 55 L. T. 71, C. A. 779
Russian Steam-Navigation Co. *v.* Silva (1863), 13 C. B. (N. S.) 610 . . . 140
Ruthin Corporation *v.* Adams (1835), 7 Sim. 345; 4 L. J. (CH.) 168, n. . 834, 848
Rydon *v.* Williams, *Re* Salmond. *See* Salmond, *Re*, Rydon *v.* Williams.
Rymer *v.* de Rosaz, *Re* de Rosaz. *See* de Rosaz, *Re*, Rymer *v.* de Rosaz

S.

S., *Re* (1910), 55 Sol. Jo. 127 790, 792
— *v.* K. (1886), 30 Sol. Jo. 220 801
Sabina, The (1843), 7 Jur. 182 580, 622, 624
Sack *v.* Ford (1862), 13 C. B. (N. S.) 90; 32 L. J. (C. P.) 12; 9 Jur. (N. S.) 750 . 85, 207
Sadd, *Re* (1865), 34 Beav. 650; 34 L. J. (CH.) 562; 12 L. T. 816; 11 Jur. (N. S.) 774; 13 W. R. 1009 755, 816
——— *v.* Griffin, [1908] 2 K. B. 510; 77 L. J. (K. B.) 775; 99 L. T. 502; 24 T. L. R. 715; 52 Sol. Jo. 567, C. A. 777
Sadler *v.* Palfreyman (1834), 1 Ad. & El. 717; 3 L. J. (K. B.) 179; 3 Nev. & M. (K. B.) 599 784
Saffron Walden Second Benefit Building Society *v.* Rayner (1880), 14 Ch. D. 406; 49 L. J. (CH.) 465; 43 L. T. 3; 28 W. R. 681, C. A. 737, 743, 746
St. Aubin, The, [1907] P. 60; 76 L. J. (P.) 25; 95 L. T. 587; 10 Asp. M. L. C. 298 380, 381, 383, 405, 482, 495
St. Aubyn *v.* Smart (1868), 3 Ch. App. 646; 19 L. T. 192; 16 W. R. 1095 . 760
St. Audries, The (1886), 5 Asp. M. L. C. 552 442, 481
St. Cloud, The (1863), 8 L. T. 54; Brown. & Lush. 4 154, 164, 167, 172, 206, 290
St. John Pilot Commissioners *v.* Cumberland Rail. and Coal Co., [1910] A. C. 208; 79 L. J. (P. C.) 67; 101 L. T. 498; 26 T. L. R. 52; 11 Asp. M. L. C. 312 14
St. Lawrence, The (1880), 5 P. D. 250; 49 L. J. (P.) 82 . . 26, 69, 623, 624, 625
St. Olaf, The (1876), 2 P. D. 113; 35 L. T. 428; 3 Asp. M. L. C. 268 . . 21
St. Pancras Parish *v.* Clapham Parish (1860), 2 E. & E. 742; 29 L. J. (M. C.) 146; 6 Jur. (N. S.) 700; 8 W. R. 493 710, 711
St. Paul, The, [1909] P. 43; 78 L. J. (P.) 1; 100 L. T. 184; 11 Asp. M. L. C. 169, C. A. 408, 413, 415
St. Winifred and The Devonshire. *See* Devonshire, The, and St. Winifred.
Salacia, (1829), 2 Hag. Adm. 262 575, 579
———, The (1862), Lush. 545 246, 300, 302, 623, 624
————————— (1862), Lush. 578; 32 L. J. (P. M. & A.) 43; 8 L. T. 91 . 72, 73, 241, 244, 246, 250
Salaman, *Re*, [1894] 2 Ch. 201; 63 L. J. (CH.) 664; 70 L. T. 772; 42 W. R. 530; 7 R. 540, C. A. 782
Salmon and Woods, *Re*, *Ex parte* Gould (1885), 2 Morr. 137 . . . 22, 24
Salmond, *Re*, Rydon *v.* Williams (1905), 22 T. L. R. 161 794
Salomon, *Ex parte*, *Re* Raphael. *See* Raphael, *Re*, *Ex parte* Salomon.
Salomons *v.* Nissen (1788), 2 Term Rep. 674 157, 163
Salt Union *v.* Wood, [1893] 1 Q. B. 370; 62 L. J. (M. C.) 75; 68 L. T. 92; 57 J P. 201; 41 W. R. 301; 7 Asp. M. L. C. 281; 5 R. 176 . 14, 38, 61, 331, 377
Saltburn, The (1894), 71 L. T. 19; 7 Asp. M. L. C. 474; 6 R. 702 . . 574, 626
Salter *v.* Adey (1855), 24 L. T. 229; 1 Jur. (N. S.) 930 136
Salthouse *v.* Reade, *Re* Reade. *See* Reade, *Re*, Salthouse *v.* Reade.
Salton *v.* New Beeston Cycle Co., [1900] 1 Ch. 43; 81 L. T. 437; 48 W. R. 92; 16 T. L. R. 25 737, 741, 742
Salvador, The (1909), 25 T. L. R. 384; 26 T. L. R. 149, C. A. 357

PAGE
Salvesen & Co. *v.* Guy & Co. (1885), 13 R. (Ct. of Sess.) 85; 23 Sc. L. R. 59 . 133
——— (Chr.) & Co. *v.* Rederi Aktiebolaget Nordstjernan, [1905] A. C. 302; 74 L. J. (P. C.) 96; 92 L. T. 575 89, 90
Samuel, The (1851), 15 Jur. 407 557, 559, 572, 585
Samuel *v.* Jones (1862), 7 L. T. 760 27
——— *v.* Royal Exchange Assurance Co. (1828), 8 B. & C. 119; 6 L. J. (O. S.) (K. B.) 315 255, 256
———, Samuel & Co. *v.* West Hartlepool Steam Navigation Co. (1906), 11 Com. Cas. 115 87, 169, 170, 171, 286, 298
——— *v.* West Hartlepool Steam Navigation Co. (1907), 12 Com. Cas. 203 286
"San Roman," The, Anderson *v.* The "San Roman" (Owners). *See* Anderson *v.* The "San Roman" (Owners), The "San Roman."
Sandback Charity Trustees *v.* North Staffordshire Rail. Co. (1877), 3 Q. B. D. 1; 47 L. J. (Q. B.) 10; 37 L. T. 391; 26 W. R. 229, C. A. 795
Sandeman *v.* Scurr (1866), L. R. 2 Q. B. 86; 8 B. & S. 50; 36 L. J. (Q. B.) 58; 15 L. T. 608; 15 W. R. 277 . . . 85, 86, 154, 170, 171, 175, 203, 206, 207
——— & Sons *v.* Tyzack and Branfoot Steamship Co., Ltd., [1913] A. C. 680; 109 L. T. 580; 57 Sol. Jo. 752; 29 T. L. R. 694; [1913] S. C. (House of Lords) 84; 50 Sc. L. R. 869 270, 304, 306
Sanders *v.* Jenkins, [1897] 1 Q. B. 93; 66 L. J. (Q. B.) 40 260
——— *v.* Maclean (1883), 11 Q. B. D. 327; 52 L. J. (Q. B.) 481; 49 L. T. 462; 31 W. R. 698; 5 Asp. M. L. C. 160; C. A. . . 146, 158, 160, 161
——— *v.* Vanzeller (1843), 4 Q. B. 260; 12 L. J. (EX.) 497; 2 Gal. & Dav. 244; 3 Gal. & Dav. 580 293, 295, 296
Sanders' Settlement, *Re*, [1896] 1 Ch. 480; 65 L. J. (CH.) 426; 74 L. T. 261; 44 W. R. 385, C. A. 766
Sanderson *v.* Busher, Magalhaens *v.* Busher. *See* Magalhaens *v.* Busher, Sanderson *v.* Busher.
——— *v.* Glass (1742), 2 Atk. 296 811
Sandford *v.* Porter and Waine, [1912] 2 I. R. 551, C. A. 737, 743
"Sandhill," The, S.S. "Nord Kap" *v.* S.S. "Sandhill." *See* "Nord Kap," S.S. *v.* S.S. "Sandhill," The "Sandhill."
Sandsend, The (1903), *Shipping Gazette*, May 22nd, cited in Kennedy, Civil Salvage, 2nd ed., p. 262 574
Sanguinetti *v.* Pacific Steam Navigation Co. (1877), 2 Q. B. D. 238; 46 L. J. (Q. B.) 105; 35 L. T. 658; 25 W. R. 150; 3 Asp. M. L. C. 300, C. A. . 133, 134, 135, 185
Sans Pareil, H.M.S., [1900] P. 267; 69 L. J. (P.) 127; 82 L. T. 606; 16 T. L. R. 390; 9 Asp. M. L. C. 78, C. A. . 375, 382, 386, 408, 449, 472, 473, 477, 514, 515, 533
Sansom *v.* Rhodes (1840), 8 Scott, 544; 9 L. J. (C. P.) 132; 6 Bing. (N. C.) 261 83
Santa Anna, The (1863), 32 L. J. (P. M. & A.) 198 84
Santanderino, The (1893), 3 Exchequer Court Reports of Canada, 378 . . 466
Santiago, The (1900), 70 L. J. (P.) 12; 83 L. T. 439; 17 T. L. R. 22; 9 Asp. M. L. C. 147 583, 604
"Santipore," The (1854), 1 Ecc. & Ad. 231 564, 584
Santon, The (1878), 26 W. R. 810 23
Santos *v.* Brice (1861), 6 H. & N. 290; 30 L. J. (EX.) 108 312
"Sappho," The (1871), L. R. 3 P. C. 690; 40 L. J. (ADM.) 47; 24 L. T. 795; 8 Moo. P. C. C. (N. S.) 66 566, 567
———, The Ada. *See* Ada, The, The Sappho.
"Sara," The, Hamilton *v.* Baker. *See* Hamilton *v.* Baker, The "Sara."
Saracen, The, Bernard *v.* Hyne. *See* Bernard *v.* Hyne, The Saracen.
Saragossa, The (1892), 68 L. T. 400; 7 Asp. M. L. C. 289, C. A. . . 448, 464
Sarah, The (1862), Lush. 549 545
——— (1878), 3 P. D. 39; 37 L. T. 831; 3 Asp. M. L. C. 542 . . 557, 574
Sarah Bell, The (1845), 4 Notes of Cases, 144 560
Sarah Jane, The (1843), 2 Wm. Rob. 110 565, 573
Saratoga, The (1861), Lush. 318 558, 568
Sargasso, The, [1912] P. 192; 82 L. J. (P.) 9; 107 L. T. 204; 28 T. L. R. 444 414, 501, 518
Sargent *v.* Gannon (1849), 7 C. B. 742; 18 L. J. (C. P.) 220; 6 Dow. & L. 691 . 776
——— *v.* Morris (1820), 3 B. & Ald. 277 167
Sarpedon, Cargo ex (1877), 3 P. D. 28; 37 L. T. 505; 26 W. R. 374; 3 Asp. M. L. C. 509 558, 561, 581, 587

PAGE

"Satanita," The, Clarke *v.* Dunraven (Earl). *See* Clarke *v.* Dunraven (Earl), The "Satanita."
Saunders *v.* Drew (1832), 3 B. & Ad. 445 312
Saunderson *v.* Glass (1742), 2 Atk. 296 770
Savage, *Re* (1880), 15 Ch. D. 557; 29 W. R. 348 833, 848
Savery *v.* Enfield Local Board, [1893] A. C. 218; 62 L. J. (CH.) 674; 68 L. T. 722; 57 J. P. 581; 42 W. R. 33; 1 R. 160 763
——— *v.* King (1856), 5 H. L. Cas. 627; 25 L. J. (CH.) 482; 2 Jur. (N. S.) 503; 4 W. R. 571 747, 749, 750
Saville *v.* Campion (1819), 2 B. & Ald. 503 86, 284
Savin *v.* Hoylake Rail. Co. (1865), L. R. 1 Exch. 9; 4 H. & C. 67; 35 L. J. (EX.) 52; 13 L. T. 374; 11 Jur. (N. S.) 934; 14 W. R. 109 733
Savona, The, [1900] P. 252; 69 L. J. (P.) 95; 49 W. R. 303 236
Sawyer *v.* Goddard, *Re* Dartnall. *See* Dartnall, *Re*, Sawyer *v.* Goddard.
——— *v.* Goodwin (1867), 36 L. J. (CH.) 578; 15 W. R. 1008 759
Saxon *v.* Blake (1861), 29 Beav. 438 836
Saxon Steamship Co. *v.* Union Steamship Co. (1900), 69 L. J. (Q. B.) 907; 83 L. T. 107; 16 T. L. R. 527; 9 Asp. M. L. C. 114; 5 Com. Cas. 381 . 123, 125, 195, 209
Saxonia, The, The Eclipse (1862), Lush. 410; 31 L. J. (P. M. & A.) 201; 8 Jur. (N. S.) 315; 10 W. R. 431; 15 Moo. P. C. C. 262 . . 12, 13, 369, 376, 379, 381
Sayer *v.* Wagstaff (1843), 12 L. J. (CH.) 496 791
——— *v.* ——— (1844), 14 L. J. (CH.) 116; 8 Jur. 1083 787
Scaife *v.* Tobin (1832), 3 B. & Ad. 523 322, 323
Scallan, *Ex parte*, *Ex parte* Jones, *Re* Burton. *See* Burton, *Re*, *Ex parte* Scallan, *Ex parte* Jones.
Scaramanga *v.* Marquand & Co. (1885), 53 L. T. 810; 5 Asp. M. L. C. 506, C. A. 291
——— *v.* Stamp (1880), 5 C. P. D. 295; 49 L. J. (Q. B.) 674; 42 L. T. 840; 28 W. R. 691; 4 Asp. M. L. C. 295, C. A. . 66, 74, 95, 578
———, Manoussin & Co. *v.* English & Co. (1895), 1 Com. Cas. 99 . 211, 290
Scarsdale, The, [1906] P. 103; 75 L. J. (P.) 31; 94 L. T. 528; 54 W. R. 335; 22 T. L. R. 255; 10 Asp. M. L. C. 235, C. A.; affirmed, [1907] A. C. 373; 76 L. J. (P.) 147; 97 L. T. 526; 23 T. L. R. 729 60
Scarth *v.* Rutland (1866), L. R. 1 C. P. 642 770
Schack *v.* Anthony (1813), 1 M. & S. 573 89
Schelingser, *Re*, *Ex parte* Watts (1836), 1 Deac. 588 782
Scheyes, *Ex parte*, *Re* Wontner. *See* Wontner, *Re*, *Ex parte* Scheyes.
Schieffelin *v.* Harvey (1810), 6 Johnson's Reports, 170 326
Schilizzi *v.* Derry (1855), 4 E. & B. 873; 24 L. J. (Q. B.) 193; 1 Jur. (N. S.) 795; 3 W. R. 374 180, 181, 256, 258, 259, 260
Schiller, Cargo ex (1877), 2 P. D. 145; 36 L. T. 714; 3 Asp. M. L. C. 439, C. A. . 548, 561, 562, 563, 574, 580, 581, 618, 619
Schjott *v.* Schjott (1881), 19 Ch. D. 94; 51 L. J. (CH.) 368; 45 L. T. 333; 30 W. R. 329, C. A. 742, 833
Schloss *v.* Heriot (1863), 14 C. B. (N. S.) 59; 32 L. J. (C. P.) 211; 8 L. T. 246; 10 Jur. (N. S.) 76; 11 W. R. 596 187, 316
Schmaltz *v.* Avery (1851), 16 Q. B. D. 655; 20 L. J. (Q. B.) 228; 15 Jur. 291 . 90
Schmidt *v.* Royal Mail Steamship Co. (1876), 45 L. J. (Q. B.) 646; 4 Asp. M. L. C. 217, n. 111, 112, 316, 322
Schmitten *v.* Faulks, [1893] W. N. 64 834
Scholefield *v.* Lockwood (1868), L. R. 7 Eq. 83; 38 L. J. (CH.) 232; 17 W. R. 184 826
Scholes *v.* Brook (1891), 63 L. T. 837 757
——— & Sons, *Re* (1886), 32 Ch. D. 245; 55 L. J. (CH.) 626; 54 L. T. 466; 34 W. R. 515 782, 790, 848
Scholey *v.* Peck, [1893] 1 Ch. 709; 62 L. J. (CH.) 658; 68 L. T. 118; 41 W. R. 508; 3 R. 245 826
Schuster *v.* Fletcher (1878), 3 Q. B. D. 418; 47 L. J. (Q. B.) 530; 38 L. T. 605; 26 W. R. 756; 3 Asp. M. L. C. 577 320
——— *v.* McKellar (1857), 7 E. & B. 704; 26 L. J. (Q. B.) 281; 3 Jur. (N. S.) 1320; 5 W. R. 656 85, 86, 152, 153, 167
Schwalbanker, *Ex parte* (1832), 1 Dowl. 182 838
Schwalbe, The (1861), Lush. 239; 14 Moo. P. C. C. 241; 4 L. T. 160 . 488, 530
Schwan, The (1889), 61 L. T. 308; 6 Asp. M. L. C. 409 483
———, The Albano, [1892] P. 419; 69 L. T. 34; 7 Asp. M. L. C. 347, C. A. 535, 615
Schwann, The, [1909] A. C. 450; 78 L. J. (P.) 112; 101 L. T. 289; 25 T. L. R. 742; 53 Sol. Jo. 696 77, 189, 213

PAGE
Scicluna *v.* Stevenson, The "Rhondda" (1883), 8 App. Cas. 549; 49 L. T. 210; 5 Asp. M. L. C. 114, C. A. 457, 466, 467, 496
"Scindia," The, Kirby *v.* "Scindia" (Owners). *See* Kirby *v.* "Scindia" (Owners), The "Scindia."
Scio, The (1867), L. R. 1 A. & E. 353; 16 L. T. 642 . . . 29, 621, 627
Scioto, The (1847), Davies, 359 488
Scotia, The (1890), 63 L. T. 324; 6 Asp. M. L. C. 541 . . . 485, 495, 503, 510, 519
Scotson *v.* Pegg (1861), 6 H. & N. 295; 30 L. J. (EX.) 225; 3 L. T. 753; 9 W. R. 280 120, 295
Scott *v.* Ebury (Lord) (1867), L. R. 2 C. P. 255; 36 L. J. (C. P.) 161; 15 L. T. 506; 15 W. R. 517 734
—— *v.* Fleming (1845), 15 L. J. (CH.) 88; 9 Jur. 1085 737, 818
—— *v.* Foley, Aikman & Co. (1900), 16 T. L. R. 55; 5 Com. Cas. 53 . 92, 187
—— *v.* Hitchcock (1904), 20 T. L. R. 759 742, 833
—— *v.* Miller (1837), 3 Bing. (N. C.) 811; 5 Scott, 11 311
—— *v.* —— (1859), John. 220; 28 L. J. (CH.) 584; 5 Jur. (N. S.) 858; 7 W. R. 470 856
—— *v.* Scott (1818), 2 Stark. 438 85, 526
—— *v.* ——, [1913] A. C. 417; 82 L. J. (P.) 74; 109 L. T. 1; 57 Sol. Jo. 498; 29 T. L. R. 520 828
Scout, The (1872), L. R. 3 A. & E. 512; 41 L. J. (ADM.) 42; 26 L. T. 371; 20 W. R. 617; 1 Asp. M. L. C. 258 565
Scowby, *Re*, Scowby *v.* Scowby, [1897] 1 Ch. 741; 66 L. J. (CH.) 327; 76 L. T. 363, C. A. 833
Scrace *v.* Whittington (1823), 2 B. & C. 11; 1 L. J. (O. S.) (K. B.) 221; 3 Dow. & Ry. (K. B.) 195 836
Screw Colliery Co. *v.* Webster or Kerr, [1910] A. C. 165; 79 L. J. (P. C.) 57; [1910] S. C. (House of Lords) 25; 47 Sc. L. R. 99 465
Scrutton *v.* Childs (1877), 36 L. T. 212; 3 Asp. M. L. C. 373 . . 142, 199, 268
Scudamore *v.* Vandenstene (1687), 2 Co. Inst. 673 89
Sea Insurance Co. *v.* Hadden (1884), 13 Q. B. D. 706; 53 L. J. (Q. B.) 252; 50 L. T. 657; 32 W. R. 841; 5 Asp. M. L. C. 230, C. A. 301
Sea Nymph, The (1860), Lush. 23; 15 L. T. 103 488, 493, 501
Sea Salvage, The (1912), *Times*, December 8th 562
Sea Spray, The, [1907] P. 133; 76 L. J. (P.) 48; 96 L. T. 792; 10 Asp. M. L. C. 462 534, 622
Sea Steamship Co., Ltd. *v.* Price, Walker & Co., Ltd. (1903), 19 T. L. R. 519; 8 Com. Cas. 292 140, 141, 274, 275, 276, 277
Seacombe, The, The Devonshire, [1912] P. 21; 81 L. J. (P.) 36; 106 L. T. 241; 28 T. L. R. 107; 56 Sol. Jo. 140; 12 Asp. M. L. C. 137, C. A.; affirmed (The Devonshire), *sub nom.* Devonshire (Owners) *v.* Leslie (Owners), [1912] A. C. 634; 81 L. J. (P.) 94; 107 L. T. 179; 28 T. L. R. 551; 57 Sol. Jo. 10 . 528, 529,
Seal *v.* Hudson (1847), 4 Dow. & L. 760; 11 Jur. 610; 2 Saund. & C. 55 . 836
Sealy, *Re* (1911), 45 I. L. T. 1, C. A. 787
Seaman, *Ex parte, Ex parte* Dewdney. *See* Dewdney, *Ex parte, Ex parte* Seaman.
——, *Re*, Wilson *v.* Hood (1864), 3 H. & C. 148; 33 L. J. (EX.) 204; 10 L. T. 345; 10 Jur. (N. S.) 592; 12 W. R. 748 826
Searle *v.* Lund (1904), 90 L. T. 529; 20 T. L. R. 390; 9 Asp. M. L. C. 557, C. A. . 124, 257
Seaton, The (1883), 9 P. D. 1; 53 L. J. (P.) 15; 49 L. T. 747; 32 W. R. 600; 5 Asp. M. L. C. 191 461, 463
Seaward *v.* "Vera Cruz" (1884), 10 App. Cas. 59; 54 L. J. (P.) 9; 52 L. T. 474; 49 J. P. 324; 33 W. R. 477; 5 Asp. M. L. C. 386 543
Seccombe *v.* Wood (1840), 2 Mood. & R. 290 369
Secret, The (1872), 26 L. T. 670; 1 Asp. M. L. C. 318 . . . 488, 489, 536
——, The Innisfail. *See* Innisfail, The, The Secret.
Secretary of State for War and Denne, *Re* (1884), 33 W. R. 120 . . . 766
Sedgwick, *Re, Ex parte* Watts (1846), De G. 265; 15 L. J. (BCY.) 13; 10 Jur. 256. 750
Sedgworth *v.* Overend (1797), 7 Term Rep. 279 542
Sedley *v.* Sutherland (1800), 3 Esp. 202 837
See Reuter, The (1811), 1 Dods. 22 37
Seeger *v.* Duthie (1860), 8 C. B. (N. S.) 45; 30 L. J. (C. P.) 65; 3 L. T. 478; 7 Jur. (N. S.) 239; 9 W. R. 166 . 88, 91, 120, 125, 143, 179, 196, 200, 210, 297, 310, 311, 312
"Segredo," otherwise "Eliza Cornish" (1853), 1 Ecc. & Ad. 36; 17 Jur. 738; Abbott on Shipping, 5th ed., p. 8; 14th ed., p. 23 . . 40, 75, 76, 248

PAGE
Seine, The (1859), Sw. 411 469, 503
Selina, The (1842), 2 Notes of Cases, 18 588, 622, 623
Senat *v.* Porter (1797), 7 Term Rep. 158 84
Senior *v.* Butt (1827), 5 L. J. (o. s.) (K. B.) 136 830
Serafina, The (1864), Brown. & Lush. 277 66
Serraino & Sons *v.* Campbell, [1891] 1 Q. B. 283; 60 L. J. (Q. B.) 303; 64 L. T. 615; 39 W. R. 356; 7 Asp. M. L. C. 48, C. A. . . 106, 154, 164, 176
Servante *v.* James (1829), 10 B. & C. 410; 8 L. J. (o. s.) (K. B.) 64; 5 Mood. & R. 299 88
Seville Sulphur and Copper Co. *v.* Colvils, Lowden & Co. (1888), 15 R. (Ct. of Sess.) 616; 25 Sc. L. R. 437 92, 116, 117, 212, 215, 218
Sevin *v.* Deslandes (1860), 30 L. J. (CH.) 457; 7 Jur. (N. S.) 837; 9 W. R. 218 84, 98
Seward *v.* Ratter (1884), 12 R. (Ct. of Sess.) 222; 22 Sc. L. R. 173 . . . 61
Sewell *v.* Burdick (1884), 10 App. Cas. 74; 54 L. J. (Q. B.) 156; 52 L. T. 445; 33 W. R. 461; 5 Asp. M. L. C. 376 . 144, 147, 148, 157, 158, 159, 162, 163, 165, 167, 292, 295, 296
Seymolicus, The, [1909] P. 109; 78 L. J. (P.) 52; 100 L. T. 382; 11 Asp. M. L. C. 206 466
Seymour, *Re* (1888), 34 Sol. Jo. 361 737, 743
Shackell, *Ex parte, Re* Vines and Hobbs. *See* Vines and Hobbs, *Re, Ex parte* Shackell.
Shadforth *v.* Cory (1863), 32 L. J. (Q. B.) 379; 8 L. T. 736; 11 W. R. 918; 1 Mar. L. C. 363 121, 127, 260
——— *v.* Higgin (1813), 3 Camp. 385 91, 94, 179, 192
Shakkeborg, The, [1911] P. 245, n. 486
Shallcross *v.* Oldham (1862), 2 John. & H. 609; 5 L. T. 824; 10 W. R. 291 . . 65
Shamrock Steamship Co. *v.* Storey & Co. (1899), 81 L. T. 413; 16 T. L. R. 6; 8 Asp. M. L. C. 590; 5 Com. Cas. 21, C. A. 123, 195
Shand *v.* Sanderson (1859), 4 H. & N. 381; 28 L. J. (EX.) 278; 7 W. R. 416 . 170, 171, 286,
Shannon, The (1842), 1 Wm. Rob. 463 489, 536
Shannon *v.* Casey (1874), 8 I. R. Eq. 307 809
Sharp *v.* Gibbs (1857), 1 H. & N. 801 94, 179, 210
——— *v.* Taylor (1849), 2 Ph. 801 36
Sharpe, *Ex parte* (1837), 5 Dowl. 717 839
Sharples *v.* Marsh (1854), 2 W. R. 400 782
Shaw, *Re* (1851), 2 L. M. & P. 214; 20 L. J. (Q. B.) 280 808
——— *v.* Neale (1858), 6 H. L. Cas. 581; 27 L. J. (CH.) 444; 4 Jur. (N. S.) 695; 6 W. R. 635 742, 811, 821
———, Savill and Albion Co. *v.* Timaru Harbour Board (1890), 15 App. Cas. 429; 59 L. J. (P. C.) 77; 62 L. T. 913; 6 Asp. M. L. C. 521 . 601, 648
———, ——— & Co. *v.* Aitken, Lilburn & Co. (1883), Cab. & El. 195 . 102, 191, 327
Shaw's Claim, *Re* Brampton and Longtown Rail. Co. *See* Brampton and Longtown Rail. Co., *Re*, Shaw's Claim.
Sheels *v.* Davies (1814), 4 Camp. 119 306
Sheffield *v.* Eden (1878), 10 Ch. D. 291; 40 L. T. 283; 27 W. R. 477, C. A. . . 817
Shepard *v.* De Bernales (1811), 13 East, 565 . . . 150, 292, 293, 294, 297, 304
Shepherd *v.* Harrison (1871), L. R. 5 H. L. 116; 40 L. J. (Q. B.) 148; 24 L. T. 857; 20 W. R. 1; 1 Asp. M. L. C. 66 160, 161
——— *v.* Kottgen (1877), 2 C. P. D. 585; 47 L. J. (C. P.) 67; 37 L. T. 618; 26 W. R. 120; 3 Asp. M. L. C. 544, C. A. 317
Sheppard *v.* Wright (1699), Show. Parl. Cas. 18 316
Sherbro, The (1883), 52 L. J. (P.) 28; 48 L. T. 767; 5 Asp. M. L. C. 88 . . 29
Sheridan *v.* New Quay Co. (1858), 4 C. B. (N. S.) 618; 28 L. J. (C. P.) 58; 5 Jur. (N. S.) 248 161
Shersby *v.* Hibbert, The Duke of Manchester (1847), 5 Notes of Cases, 470 . 491
Sherwell, *Re, Ex parte* Snow, [1879] W. N. 22 803
Shevlin *v.* M'Grane (1886), 17 L. R. Ir. 271 824, 826
Shield *v.* Wilkins (1850), 5 Exch. 304; 19 L. J. (EX.) 238 . . 180, 181, 255, 258
Shields *v.* Davis (1815), 6 Taunt. 65 297, 308
Shilcock *v.* Passman (1836), 7 C. & P. 289 755
Shillito, The (1897), 3 Com. Cas. 44 175
Shillito *v.* Biggart, [1903] 1 K. B. 683; 72 L. J. (K. B.) 294; 88 L. T. 426; 51 W. R. 479; 19 T. L. R. 313; 8 Com. Cas. 137; 9 Asp. M. L. C. 396 . 27, 29, 300
Shilson, Coode & Co., *Re*, [1904] 1 Ch. 837; 73 L. J. (CH.) 541; 90 L. T. 641; 52 W. R. 556; 20 T. L. R. 418 775

PAGE
Shipley *v.* Hoyle, *Re* Dickinson, Bute (Marquis) *v.* Walker, *Ex parte* Hoyle, Shipley *v.* Hoyle. *See* Dickinson, *Re*, Bute (Marquis) *v.* Walker, *Ex parte* Hoyle, Shipley *v.* Hoyle.
Shippey *v.* Grey (1880), 49 L. J. (Q. B.) 524; 42 L. T. 673; 28 W. R. 877, C. A. 825
Shipton *v.* Thornton (1838), 9 Ad. & El. 314; 8 L. J. (Q. B.) 73; 1 Per. & Dav. 216 74, 221, 222, 235, 236, 237, 238, 239, 240, 304, 306, 307
———, Anderson & Co. *v.* Weil Brothers & Co., [1912] 1 K. B. 574; 81 L. J. (K. B.) 910; 106 L. T. 372; 28 T. L. R. 269; 17 Com. Cas. 153 . . . 101
Shirwell *v.* Shaplock (1815), 2 Chit. 397 150, 281
Shore *v.* Bentall (1828), 7 B. & C. 798, n. 213
——— *v.* Wilson (1842), 9 Cl. & Fin. 355; 7 Jur. 781; 11 Sim. 592 . . . 141
Short, *Ex parte*, *Re* Mackenzie. *See* Mackenzie, *Re*, *Ex parte* Short.
——— *v.* Simpson (1866), L. R. 1 C. P. 248; 35 L. J. (C. P.) 147; 13 L. T. 674; 12 Jur. (N. S.) 258; 14 W. R. 307; 1 Har. & Ruth. 181 . 147, 158, 164
——— *v.* Spackman (1831), 2 B. & Ad. 962 89
Shortal, *Ex parte*, *Re* Kilkenny Corporation. *See* Kilkenny Corporation, *Re*, *Ex parte* Shortal.
Shorter *v.* Tod-Heatly, [1894] W. N. 21 833
Shower *v.* Cudmore (1682), T. Jo. 216 179
Shrapnel *v.* Laing (1888), 20 Q. B. D. 334; 57 L. J. (Q. B.) 195; 58 L. T. 705; 36 W. R. 297, C. A. 795, 796
Shrapnell *v.* Gamgee (1891), 8 T. L. R. 9 727
Shrewsbury (Earl) *v.* Trappes (1862), 10 W. R. 663 802
Shrewsbury and Leicester Rail. Co., *Re*, *Re* Vardy (1851), 20 L. J. (CH.) 325 . 783, 784, 785
Shubrick *v.* Salmond (1765), 3 Burr. 1637 91, 94, 98, 180, 192
Shuttleworth, *Re*, Lilley *v.* Moore (1911), 55 Sol. Jo. 366 753
Sibery *v.* Connelly (1907), 96 L. T. 140; 23 T. L. R. 257; 10 Asp. M. L. C. 330, C. A. 48
Sibson and Kerr *v.* Ship "Barcraig" Co. (1896), 24 R. (Ct. of Sess.) 91; 34 Sc. L. R. 114; 4 Scots Law Times, 129 137
Sickens *v.* Irving (1859), 7 C. B. (N. S.) 165; 29 L. J. (C. P.) 25; 6 Jur. (N. S.) 200 65, 88
Sieveking *v.* Maass (1856), 6 E. & B. 670; 25 L. J. (Q. B.) 358; 2 Jur. (N. S.) 515; 4 W. R. 606, C. A. 178, 181, 255
Sigard *v.* Roberts (1799), 3 Esp. 71 61
Silesia, The (1880), 5 P. D. 177; 43 L. T. 319; 29 W. R. 156; 4 Asp. M. L. C. 338 578, 579
Sill *v.* Thomas (1839), 8 C. & P. 762 744, 756
Sills *v.* Brown (1840), 9 C. & P. 601 510
Silver Bullion (1854), 2 Ecc. & Ad. 70 570, 571
Simes *v.* Gibbs (1838), 6 Dowl. 310; 2 Jur. 418; 1 Will. Woll. & H. 40 . . 839
Simla, The (1906), unreported, cited in Kennedy, Civil Salvage, 2nd ed., p. 70, n. . 560
Simmonds *v.* Great Eastern Rail. Co. (1868), 3 Ch. App. 797; 38 L. J. (CH.) 87; 19 L. T. 235; 16 W. R. 1100 817
Simmons, *Re* (1885), 15 Q. B. D. 348; 53 L. T. 147; 49 J. P. 740; 33 W. R. 706 856
————, *Re*, and *Re* a Solicitor. *See* Solicitor, a, *Re*, and *Re* Simmons.
———— *v.* Liberal Opinion, Ltd., [1911] 1 K. B. 966; 80 L. J. (K. B.) 617; 104 L. T. 264; 55 Sol. Jo. 315; 27 T. L. R. 278, C. A. . 742, 836
———— *v.* Rose, Weeks *v.* Ward, *Re* Ward (1862), 31 Beav. 1 . 758, 834, 835, 846
———— *v.* Simmons (1895), 39 Sol. Jo. 673 808
———— *v.* Storer (1880), 14 Ch. D. 154; 49 L. J. (CH.) 121; 42 L. T. 291; 28 W. R. 408 769, 796
Simmons' Contract, *Re*, [1908] 1 Ch. 452; 77 L. J. (CH.) 215; 98 L. T. 185 . 762
Simonds *v.* Hodgson (1832), 3 B. & Ad. 50; 1 L. J. (K. B.) 51 73
——— *v.* White (1824), 2 B. & C. 805; 2 L. J. (O. S.) (K. B.) 159; 4 Dow. & Ry. (K. B.) 375 316, 323, 325
Simpson *v.* Fogo (1860), 1 John. & H. 18; 29 L. J. (CH.) 657; 2 L. T. 594; 6 Jur. (N. S.) 949; 8 W. R. 407 29
——— *v.* Thomson (1877), 3 App. Cas. 279; 38 L. T. 1; 3 Asp. M. L. C. 567 526
——— *v.* Young (1861), 2 F. & F. 426 84, 89
Sims *v.* Brittain (1832), 4 B. & Ad. 375; 1 Nev. & M. (K. B.) 594 36
—— *v.* Brutton (1850), 5 Exch. 802; 20 L. J. (EX.) 41 759

PAGE
Sims & Co. *v.* Midland Rail. Co., [1913] 1 K. B. 103; 82 L. J. (K. B.) 67; 107 L. T. 700; 29 T. L. R. 81; 18 Com. Cas. 44 250
Sinclair, *Re*, *Ex parte* Payne (1885), 15 Q. B. D. 616; 53 L. T. 767; 2 Morr. 255 771
"Singapore," The, and The "Hebe" (1866), L. R. 1 P. C. 378; 4 Moo. P. C. C. (N. S.) 271 432, 451, 500
Sinquasi, The (1880), 5 P. D. 241; 50 L. J. (P.) 5; 43 L. T. 768; 4 Asp. M. L. C. 383 358, 528, 531
Siordet *v.* Hall (1828), 4 Bing. 607; 6 L. J. (O. S.) (C. P.) 137; 1 Moo. & P. 561 108, 115, 225
Sir Charles Napier, The (1880), 5 P. D. 73; 43 L. T. 364; 28 W. R. 718; 4 Asp. M. L. C. 321, C. A. 65
Sir Henry Webb, The (1849), 13 Jur. 639 65, 88, 155
"Sir Ralph Abercrombie," The, Carmichael *v.* Brodie. *See* Carmichael *v.* Brodie, The "Sir Ralph Abercrombie."
Sisters, The (1852), Pritchard's Admiralty Digest, 3rd ed., p. 248 . . . 501
——— (1875), 32 L. T. 837; 2 Asp. M. L. C. 589 616
——— (1876), 1 P. D. 117; 45 L. J. (P.) 39; 34 L. T. 338; 24 W. R. 412; 3 Asp. M. L. C. 122, C. A. 504, 506
Sittingbourne and Sheerness Rail. Co. *v.* Lawson (1886), 2 T. L. R. 605, C. A. . 839
Sivewright *v.* Allen, [1906] 2 K. B. 81; 75 L. J. (K. B.) 476; 94 L. T. 778; 70 J. P. 290; 54 W. R. 604; 22 T. L. R. 482; 11 Com. Cas. 167 . 46, 49
Six Sisters, The, [1900] P. 302; 69 L. J. (P.) 139 482, 485
Sjoerds *v.* Luscombe (1812), 16 East, 201 191
Skandinav, The (1881), 51 L. J. (P.) 93, C. A. 310
Skegness and St. Leonard's Tramway Co., *Re*, *Ex parte* Hanly (1888), 41 Ch. D. 215; 58 L. J. (CH.) 737; 60 L. T. 406; 37 W. R. 225; 1 Meg. 127, C. A. . 733
Skibladner, The (1877), 3 P. D. 24; 47 L. J. (P.) 84; 38 L. T. 150; 3 Asp. M. L. C. 556 558, 583
Skipsea, The, [1905] P. 32; 74 L. J. (P.) 34; 93 L. T. 181; 53 W. R. 538; 10 Asp. M. L. C. 91 483, 498
Skipwith, The (1864), 10 L. T. 43; 10 Jur. (N. S.) 445 626
Slack *v.* Parker (1886), 54 L. T. 212 760
Sladden, *Re* (1847), 10 Beav. 488 789
Slater *v.* Slater (1888), [1897] 1 Ch. 222, n.; 58 L. T. 149 835
——— *v.* Sunderland Corporation (1863), 33 L. J. (Q. B.) 37; 9 L. T. 422 . . 821
Slattery *v.* Dublin, Wicklow and Wexford Rail. Co. (1876), 10 I. R. C. L. 256 . 514
Sleeman, *Ex parte* (1864), 10 Jur. (N. S.) 593; 12 W. R. 748 826
Sleigh *v.* Tyser, [1900] 2 Q. B. 333; 69 L. J. (Q. B.) 626; 82 L. T. 804; 16 T. L. R. 404; 9 Asp. M. L. C. 97; 5 Com. Cas. 271 189
Smackman *v.* General Steam Navigation Co. (1908), 98 L. T. 396; 13 Com. Cas. 196 117, 266, 267
Smailes & Son *v.* Hans Dessen & Co. (1905), 94 L. T. 492; 54 W. R. 471; 10 Asp. M. L. C. 225; 11 Com. Cas. 74; varied (1906), 95 L. T. 809; 10 Asp. M. L. C. 319; 12 Com. Cas. 117, C. A. . . . 275, 277, 278, 281, 282, 283
Smale *v.* Graves (1850), 3 De G. & Sm. 706 843
Small *v.* Moates (1833), 9 Bing. 574; 2 Moo. & S. 674 . . 154, 173, 175, 286, 287
Smart, *Ex parte* (1835), 1 Har. & W. 526 840
Smidt *v.* Tiden (1874), L. R. 9 Q. B. 446; 43 L. J. (Q. B.) 199; 30 L. T. 891; 22 W. R. 913; 2 Asp. M. L. C. 307 87, 293
Smith, *Ex parte*, *Re* Bank of Hindustan, China and Japan. *See* Bank of Hindustan, China and Japan, *Re*, *Ex parte* Smith.
———, *Ex parte*, *Re* Bishop, *Ex parte* Langley. *See* Bishop, *Re*, *Ex parte* Langley, *Ex parte* Smith.
———, *Re* (1841), 4 Beav. 309 . . . 737, 776, 781, 791, 794, 818, 819, 847
———, *Re* (1846), 9 Beav. 342 810
———, *Re* (1861), 4 L. T. 43; 9 W. R. 396 737, 818
———, *Re* (1863), 33 Beav. 248 721
———, *Re* (1884), 32 W. R. 408 783
——— *v.* Bailey, [1891] 2 Q. B. 403; 60 L. J. (Q. B.) 779; 65 L. T. 331; 56 J. P. 116; 40 W. R. 28, C. A. 525
——— *v.* Bank of New South Wales, The "Staffordshire" (1872), L. R. 4 P. C. 194; 41 L. J. (ADM.) 49; 8 Moo. P. C. C. (N. S.) 443; 27 L. T. 46; 20 W. R. 557; 1 Asp. M. L. C. 365 69, 72, 73, 242
——— *v.* Betty, [1903] 2 K. B. 317; 72 L J (K. B.) 853; 89 L. T. 258; 52 W. R. 137; 19 T. L. R. 602, C. A. 813, 820

PAGE

Smith *v.* Blyth, Blyth *v.* Fladgate, Morgan *v.* Blyth. *See* Blyth *v.* Fladgate, Morgan *v.* Blyth, Smith *v.* Blyth.
—— *v.* Brown (1831), 5 C. & P. 94; 9 L. J. (O. S.) (EX.) 151; 1 C. & J. 542; 1 Tyr. 486 777
—— *v.* —— (1871), L. R. 6 Q. B. 729; 40 L. J. (Q. B.) 214; 24 L. T. 808; 19 W. R. 1165 544
—— *v.* Buller (1875), L. R. 19 Eq. 473; 45 L. J. (CH.) 69; 31 L. T. 873; 23 W. R. 332 769, 800, 802
—— *v.* Chichester (1842), 2 Dr. & War. 393 816
—— *v.* Coleman (1843), 7 Jur. 1053 759
—— *v.* Dart & Son (1884), 14 Q. B. D. 105; 54 L. J. (Q. B.) 121; 52 L. T. 218; 33 W. R. 455; 5 Asp. M. L. C. 360 . . . 93, 94, 97, 98, 129, 179, 181, 185, 192
—— *v.* Day (1881), 16 Ch. D. 726; 50 L. J. (CH.) 33; 44 L. T. 217; 29 W. R. 424 767
—— *v.* Dimes (1849), 4 Exch. 32; 19 L. J. (EX.) 60; 13 Jur. 518; 7 Dow. & L. 78. 781, 847
—— *v.* Dobson (1841), 3 Scott (N. R.), 336; 3 Man. & G. 59 488
—— *v.* Drummond (1883), Cab. & El. 160 99
—— *v.* Edwardes (1888), 22 Q. B. D. 10; 58 L. J. (Q. B.) 227; 60 L. T. 10; 37 W. R. 112, C. A. 812
—— *v.* Fox (1848), 6 Hare, 386; 17 L. J. (CH.) 170; 12 Jur. 130 . . . 754
—— *v.* Gillett (1835), 3 Dowl. 364 850
—— *v.* Gould, Prince George, The (1842), 4 Moo. P. C. C. 21 . . . 70, 243
—— *v.* Kerr, [1902] 1 Ch. 774; 71 L. J. (CH.) 369; 86 L. T. 477; 18 T. L. R. 456, C. A. 708
—— *v.* Kirby (1875), 1 Q. B. D. 131; 24 W. R. 207 612
—— *v.* Lay (1856), 3 K. & J. 105 136
—— *v.* London and St. Katharine Docks Co. (1868), L. R. 3 C. P. 326; 37 L. J. (C. P.) 217; 18 L. T. 403; 16 W. R. 728 647
—— *v.* Maguire (1858), 1 F. & F. 199; (1858), 3 H. & N. 554; 27 L. J. (EX.) 465; 6 W. R. 726 87, 89, 136, 208, 209
—— *v.* Matham (1824), 4 Dow. & Ry. (K. B.) 738 850
—— *v.* Mules (1852), 9 Hare, 556; 21 L. J. (CH.) 803; 16 Jur. 261 . . . 842
—— *v.* Myers (1871), L. R. 7 Q. B. 139; 41 L. J. (Q. B.) 91; 26 L. T. 103; 20 W. R. 186. 194
—— *v.* Northleach Rural Council, [1902] 1 Ch. 197; 71 L. J. (CH.) 8; 66 J. P. 88 799
—— *v.* Readshaw (1781), 2 Park on Marine Insurance, 7th ed., p. 510 . . 83
—— *v.* Robinson (1879), 13 Ch. D. 148; 49 L. J. (CH.) 20; 41 L. T. 405; 28 W. R. 37 837
—— *v.* St. Lawrence Tow-Boat Co. (1873), L. R. 5 P. C. 308; 28 L. T. 885; 21 W. R. 569; 2 Asp. M. L. C. 41 358, 417, 491, 529
—— *v.* Scott (1811), 4 Taunt. 126 111
—— *v.* Shepherd (1796), cited in Abbott on Shipping, 5th ed., p. 252; 14th ed., p. 578 232, 325
—— *v.* Sieveking (1855), 4 E. & B. 945; 24 L. J. (Q. B.) 257; 1 Jur. (N. S.) 824 . . 176, 286
—— *v.* Stead, *Re* Stead. *See* Stead, *Re*, Smith *v.* Stead.
—— *v.* Voss (1857), 2 H. & N. 97; 26 L. J. (EX.) 233; 5 W. R. 534 . 468, 525
—— *v.* Wills (1885), 34 W. R. 30 805
—— *v.* Wilson (1807), 8 East, 437 105, 199
—— *v.* —— (1817), 6 M. & S. 78 126, 219
—— *v.* Winter, *Ex parte* Hartley (1870), 18 W. R. 447 825
—— & Co. *v.* Bedouin Steam Navigation Co., [1896] A. C. 70; 65 L. J. (P. C.) 8 145
—— and Service *v.* Rosario Nitrate Co., [1894] 1 Q. B. 174; 70 L. T. 68; 9 R. 776; 7 Asp. M. L. C. 417, C. A. 109, 120, 192, 194
——, Edwards & Co. *v.* Tregarthen (1887), 56 L. J. (Q. B.) 437; 57 L. T. 58; 35 W. R. 665; 6 Asp. M. L. C. 137 155, 210, 289
——, Hill & Co. *v.* Pyman, Bell & Co., [1891] 1 Q. B. 742; 60 L. J. (Q. B.) 621; 64 L. T. 436; 39 W. R. 466; 7 Asp. M. L. C. 7, C. A. 312
——, Pinsent & Co., *Re* (1890), 44 Ch. D. 303; 59 L. J. (CH.) 590; 38 W. R. 685 762
Smithett *v.* Blythe (1830), 1 B. & Ad. 509; 9 L. J. (O. S.) (K. B.) 39 . . . 629
Smitton *v.* Orient Steam Navigation Co. (1907), 96 L. T. 848; 23 T. L. R. 359; 12 Com. Cas. 270 225

PAGE
Smout *v.* Ilbery (1842), 10 M. & W. 1; 12 L. J. (EX.) 357 . . . 732, 737, 742
Smurthwaite *v.* Hannay, [1894] A. C. 494; 63 L. J. (Q. B.) 737; 71 L. T. 157; 43 W. R. 113; 6 R. 299; 7 Asp. M. L. C. 485 . . . 270
——— *v.* Wilkins (1862), 11 C. B. (N. S.) 842; 31 L. J. (C. P.) 214; 5 L. T. 842; 7 L. T. 65; 10 W. R. 386 166, 295
Smyrna, The (1860), cited in Lush. 385 383, 389
"Smyrna," The, Imperial Royal Privileged Danubian Steam Navigation Co. *v.* Greek and Oriental Steam Navigation Co. *See* Imperial Royal Privileged Danubian Steam Navigation Co. *v.* Greek and Oriental Steam Navigation Co., The "Smyrna."
Snark, The, [1900] P. 105; 69 L. J. (P.) 41; 82 L. T. 42; 16 T. L. R. 160; 9 Asp. M. L. C. 50, C. A. 383, 534
Sneesby *v.* Lancashire and Yorkshire Rail. Co. (1874), L. R. 9 Q. B. 263; 43 L. J. (Q. B.) 69 511
Snell, *Re* (1877), 5 Ch. D. 815; 36 L. T. 534; 25 W. R. 736, C. A. . . 741, 803
——, *Re* (1877), 6 Ch. D. 105; 46 L. J. (CH.) 627; 37 L. T. 350; 25 W. R. 823 . 816
—— *v.* Marryatt (1808), cited in Abbott on Shipping, 5th ed., p. 213; 14th ed., p. 468 142
Snow, *Ex parte*, *Re* Sherwell. *See* Sherwell, *Re*, *Ex parte* Snow.
Soames *v.* Lonergan (1824), 2 B. & C. 564; 2 L. J. (O. S.) (K. B.) 106; 4 Dow. & Ry. (K. B.) 74 193
Soares *v.* Rahn, The Prince of Saxe Cobourg (1838), 3 Moo. P. C. C. 1 . 71, 72, 243, 244
Soblomsten, The (1866), L. R. 1 A. & E. 293; 36 L. J. (ADM.) 5; 15 L. T. 393; 15 W. R. 591; 2 Asp. M. L. C. 436 237. 254, 307, 315, 589, 624, 625
Societa Anonima Ungherese di Armamenti Marittimo *v.* Hamburg South American Steamship Co. (1912), 106 L. T. 957; 17 Com. Cas. 216; 12 Asp. M. L. C. 228 136, 218, 266, 269
Societa Anonyma Ungherese di Armamento Marittimo Oriente *v.* Tyser Line, Ltd. (1902), 8 Com. Cas. 25. 91, 198, 210
Société Anonyme L'Industrielle Russo-Belge *v.* Scholefield (1902), 7 Com. Cas. 114, C. A. 102
Sodergren *v.* Flight and Jennings (1796), cited 6 East, 622 284
Softley, *Re*, *Ex parte* Hodgkin (1875), L. R. 20 Eq. 746; 44 L. J. (BCY.) 107; 33 L. T. 62; 24 W. R. 68 14, 24, 331
Solicitor, A, *Re* (1875), 1 Ch. D. 445; 24 W. R. 103 838
———, *Re* (1877), 36 L. T. 113 829
———, *Re* (1878), 22 Sol. Jo. 496 839
———, *Re* (1884), 33 W. R. 131 814
———, *Re* (1889), 5 T. L. R. 339 852
———, *Re* (1890), 25 Q. B. D. 17, C. A. 853, 854
———, *Re* (1892), 27 L. J. 121 850
———, *Re* (1894), 38 Sol. Jo. 239 787
———, *Re*, [1895] 2 Ch. 66; 64 L. J. (CH.) 467; 72 L. T. 679; 43 W. R. 490; 13 R. 434 840
———, *Re* (1895), 11 T. L. R. 169 852
———, *Re*, *Ex parte* Hales, [1907] 2 K. B. 539; 76 L. J. (K. B.) 931; 97 L. T. 212; 23 T. L. R. 573 830
———, *Re*, *Ex parte* Incorporated Law Society (1889), 37 W. R. 598, C. A. 849
———, *Re*, *Ex parte* ——— (1890), 63 L. T. 350. . 856
———, *Re*, *Ex parte* ———, [1893] 1 Q. B. 254; 63 L. J. (Q. B.) 313; 70 L. T. 27; 42 W. R. 237; 10 R. 34 . 752, 851
———, *Re*, *Ex parte* ———, [1898] 1 Q. B. 331; 67 L. J. (Q. B.) 245; 77 L. T. 661; 46 W. R. 303; 14 T. L. R. 159 . 851
———, *Re*, *Ex parte* ——— (1905), 22 T. L. R. 127; 93 L. T. 838 851
———, *Re*, *Ex parte* Law Society (1907), 51 Sol. Jo. 212 850
———, *Re*, *Ex parte* ——— (1909), 26 T. L. R. 22 736
———, *Re*, *Ex parte* ——— (1910), 55 Sol. Jo. 49 . . . 848, 851, 852
———, *Re*, *Ex parte* ——— (1911), 27 T. L. R. 535; 55 Sol. Jo. 670. 849
——— (B.), A, *Re*, *Ex parte* Law Society (1911), 28 T. L. R. 59 850
———, *Re*, *Ex parte* ———, [1912] 1 K. B. 302; 81 L. J. (K. B.) 245; 105 L. T. 874; 56 Sol. Jo. 92; 28 T. L. R. 50 850, 856

PAGE
Solicitor, A, *Re, Ex parte* Law Society (1913), 29 T. L. R. 354 . . 848, 850, 856
————, *Re*, and *Re* Simmons (1886), 21 L. J. N. C. 462 856
————, *Re*, Karpeles *v.* Friedlander (1889), 53 J. P. 264 834
Solley *v.* Wood (1852), 16 Beav. 370 844, 847
Solomon, *Ex parte, Re* Aubusson. *See* Aubusson, *Re, Ex parte* Solomon.
Solway Prince, The, [1896] P. 120; 65 L. J. (P.) 45; 74 L. T. 32; 8 Asp. M. L. C. 128 563
Somerville, *Ex parte, Re* South-Eastern Rail. Co. *See* South-Eastern Rail. Co., *Re, Ex parte* Somerville.
———— *v.* Jamieson (1853), 1 W. R. 123 834
Somes *v.* British Empire Shipping Co. (1860), 8 H. L. Cas. 338; 30 L. J. (Q. B.) 229; 2 L. T. 54; 6 Jur. (N. S.) 761; 8 W. R. 707 . . 283, 621, 626
—— *v.* Jenkins (1866), 2 Mar. L. C. 330 304
—— *v.* Sugrue (1830), 4 C. & P. 276 75
Sophia Cook, The (1878), 4 P. D. 30 70, 73, 246
Sophie, The (1842), 1 Wm. Rob. 368 69
Sophie Rebecca, The (1902), *Shipping Gazette*, February 5th 382
Soto, The, [1893] P. 73; 62 L. J. (P.) 17; 69 L. T. 231; 41 W. R. 479; 1 R. 579; 7 Asp. M. L. C. 335 803
South American Export Syndicate *v.* Federal Steam Navigation Co. (1909), 100 L. T. 270; 53 Sol. Jo. 270; 25 T. L. R. 272; 11 Asp. M. L. C. 195; 14 Com. Cas. 228 217
South-Eastern Rail. Co., *Re, Ex parte* Somerville (1883), 23 Ch. D. 167; 52 L. J. (CH.) 438; 48 L. T. 416; 31 W. R. 518 787
South Essex Equitable Investment and Advance Co., *Re* (1882), 46 L. T. 280 . 841
South Wales and Liverpool Steamship Co. *v.* Nevill's Dock and Rail. Co., Nevill's Dock and Rail. Co. *v.* Maatschappij S.S. Bestavaer Rotterdam (1913), 108 L. T. 568; 29 T. L. R. 301; 18 Com. Cas. 124 648
Southampton Guardians *v.* Bell and Tayler (1888), 21 Q. B. D. 297; 59 L. T. 181; 52 J. P. 567; 36 W. R. 924 777, 782
Southampton Steam Colliery Co. *v.* Clarke (1869), L. R. 4 Exch. 73; 38 L. J. (EX.) 54; 19 L. T. 651; 17 W. R. 643; affirmed (1870), L. R. 6 Exch. 53; 40 L. J. (EX.) 8; 19 W. R. 214 100, 197
Southgate, The, [1893] P. 329 115, 117, 190, 202
Southport Corporation *v.* Morriss, [1893] 1 Q. B. 359; 62 L. J. (M. C.) 47; 68 L. T. 221; 57 J. P. 231; 41 W. R. 382; 7 Asp. M. L. C. 279 . . 14, 331
Southwell *v.* Rowley, Rowley *v.* Southwell. *See* Rowley *v.* Southwell, Southwell *v.* Rowley.
Sowell *v.* Champion (1837), 6 Ad. & El. 407; 7 L. J. (Q. B.) 197; 2 Nev. & P. (K. B.) 627; Will. Woll. & Dav. 667 837
Spaight *v.* Farnworth (1880), 5 Q. B. D. 115; 49 L. J. (Q. B.) 346; 42 L. T. 296; 28 W. R. 508; 4 Asp. M. L. C. 251 306, 309
———— *v.* Tedcastle (1881), 6 App. Cas. 217; 44 L. T. 589; 29 W. R. 761; 4 Asp. M. L. C. 406 358, 491, 507, 511, 512, 529
Spalding *v.* Ruding (1843), 6 Beav. 376; 12 L. J. (CH.) 503 . . . 147, 163
Sparks, *Re* (1864), 17 C. B. (N. S.) 727 852
Sparling *v.* Brereton (1866), L. R. 2 Eq. 64; 35 L. J. (CH.) 461; 14 L. T. 166; 12 Jur. (N. S.) 330; 14 W. R. 515 720
Sparrow, *Re* (1881), 8 Q. B. D. 479; 50 L. J. (Q. B.) 675; 44 L. T. 917; 29 W. R. 705, C. A. 796
———— *v.* Hill (1881), 7 Q. B. D. 362; 8 Q. B. D. 479; 50 L. J. (Q. B.) 675; 44 L. T. 917; 29 W. R. 705, C. A. 796
———— *v.* Paris (1862), 7 H. & N. 594; 31 L. J. (EX.) 137; 5 L. T. 799; 8 Jur. (N. S.) 391 94, 135, 207, 210
Spence *v.* Chadwick (1847), 10 Q. B. D. 517; 16 L. J. (Q. B.) 313; 11 Jur. 872 . 108, 109, 110, 224
——— *v.* Union Marine Insurance Co., Ltd. (1868), L. R. 3 C. P. 427; 37 L. J. (C. P.) 169; 18 L. T. 632; 16 W. R. 1010 270
Spencer, *Re* (1869), 39 L. J. (CH.) 841; 21 L. T. 808; 18 W. R. 240 . . . 835
————, *Re*, Spencer *v.* Hart (1881), 51 L. J. (CH.) 271; 45 L. T. 645; 30 W. R. 296, C. A. 784
———— *v.* Newton (1837), 6 Ad. & El. 630, n.; 1 Nev. & P. (K. B.) 818; 6 L. J. (K. B.) 119; 1 Jur. 52 741
———— *v.* Topham (1856), 22 Beav. 573; 2 Jur. (N. S.) 865 750
Spicer *v.* James (1830), cited 3 De G. & Sm. 713 843
Spier *v.* Bernard (1863), 8 L. T. 396 778

PAGE
Spincer *v.* Watts (1889), 23 Q. B. D. 350; 58 L. J. (Q. B.) 383; 61 L. T. 711; 37 W. R. 676, C. A. 743
Spindrift, The, The Jennie S. Barker. *See* Jennie S. Barker, The, The Spindrift.
Spirit of the Age, The (1857), Sw. 286 582
Spirit of the Ocean, The (1865), 12 L. T. 239; 34 L. J. (P. M. & A.) 74; Brown. & Lush. 336 612, 613
Splidt *v.* Bowles (1808), 10 East, 279 299
Spree, The, [1893] P. 147; 69 L. T. 628; 1 R. 584; 7 Asp. M. L. C. 397 . 565, 583
Spring, The (1866), L. R. 1 A. & E. 99; 12 Jur. (N. S.) 788; 14 W. R. 975 . 433, 453
Springall, *Re* (1844), 8 Beav. 63; 14 L. J. (CH.) 12 792
Spurr *v.* Cass, Cass *v.* Spurr (1870), L. R. 5 Q. B. 656; 39 L. J. (Q. B.) 249; 23 L. T. 409 812
Stadacona, The (1847), 5 Notes of Cases, 371 364
"Staffordshire," The, Smith *v.* Bank of New South Wales. *See* Smith *v.* Bank of New South Wales, The "Staffordshire."
Stahlschmidt *v.* Lett (1861), 9 W. R. 830 794
Stainbank *v.* Shepard (1853), 13 C. B. 418; 22 L. J. (EX.) 341; 17 Jur. 1032; 1 W. R. 505; 1 C. L. R. 609 71, 73, 241, 242
Staite *v.* Haddon (1841), 9 Dowl. 995. 831
Stakesby, The (1890), 15 P. D. 166; 59 L. J. (P.) 72; 63 L. T. 115; 39 W. R. 80; 6 Asp. M. L. C. 532 400
Stamma *v.* Brown (1742), Stra. 1173 113
Standard, The (1857), Sw. 267 302
Standing, *Re* (1898), *Times*, January 21st 816
Stanford *v.* Roberts (1884), 26 Ch. D. 155; 53 L. J. (CH.) 338; 50 L. T. 147; 48 J. P. 692; 32 W. R. 404 761, 765
Stanger Leathes *v.* Stanger Leathes, [1879] W. N. 86 802
Staniar *v.* Evans, Evans *v.* Staniar (1886), 34 Ch. D. 470; 56 L. J. (CH.) 581; 56 L. T. 87; 35 W. R. 286 735
Staniforth *v.* Lyall (1830), 7 Bing. 169; 9 L. J. (O. S.) (C. P.) 23; 4 Moo. & P. 329 136, 207, 208
Stanmore, The (1885), 10 P. D. 134; 54 L. J. (P.) 89; 53 L. T. 10; 5 Asp. M. L. C. 441, C. A. 429, 430, 460
Stannard *v.* Ullithorne (1834), 10 Bing. 491; 3 L. J. (C. P.) 307; 4 Moo. & S. 359. 757
Stannard's Estate, *Re*, [1897] 1 I. R. 415 817
Stanton *v.* Austin (1872), L. R. 7 C. P. 651; 41 L. J. (C. P.) 218 186
——— *v.* Richardson (1875), 45 L. J. (Q. B.) 78; 33 L. T. 193; 24 W. R. 324; 3 Asp. M. L. C. 23 . . . 100, 187, 188, 189, 197, 214, 221, 225
——— *v.* ———, Richardson *v.* Stanton (1874), L. R. 7 C. P. 421 . . 144
Star of India, The (1876), 1 P. D. 466; 45 L. J. (P.) 102; 35 L. T. 407; 25 W. R. 377; 3 Asp. M. L. C. 261 541
Star of New Zealand, The (1899), *Shipping Gazette*, November 7th . . . 422
Star of Persia, The (1889), 57 L. T. 839; 6 Asp. M. L. C. 220, C. A. . . . 581
Stavers *v.* Curling (1836), 3 Bing. (N. C.) 355; 6 L. J. (C. P.) 41; 3 Scott, 740; 2 Hodg. 237 143
Stead, *Re*, Smith *v.* Stead, [1913] 1 Ch. 240; 82 L. J. (CH.) 143; 108 L. T. 28; 57 Sol. Jo. 187 766
—— *v.* Smith, [1911] A. C. 688; 81 L. J. (K. B.) 68; 105 L. T. 120; 55 Sol. Jo. 616 790
Stearine etc. Co. *v.* Heintzmann (1864), 17 C. B. (N. S.) 56 152
Stedman *v.* Collett (1854), 17 Beav. 608; 18 Jur. 457 770
——— *v.* Webb (1839), 4 My. & Cr. 346; 8 L. J. (CH.) 193; 3 Jur. 213 . 815
Steel *v.* Cobb (1863), 11 W. R. 298 742
—— *v.* Lester (1877), 3 C. P. D. 121; 47 L. J. (C. P.) 43; 37 L. T. 642; 26 W. R. 212; 3 Asp. M. L. C. 537 34, 86, 503
—— *v.* Schomberg (1855), 4 E. & B. 620; 24 L. J. (Q. B.) 87; 1 Jur. (N. S.) 679; 3 C. L. R. 302 81, 346
—— *v.* State Line Steamship Co. (1877), 3 App. Cas. 72; 37 L. T. 333; 3 Asp. M. L. C. 516 . 107, 116, 186, 187, 188, 189, 190, 211, 212, 213, 214, 217, 218, 225, 233, 367
——, Young & Co. *v.* Grand Canary Coaling Co. (1904), 90 L. T. 729; 20 T. L. R. 542; 9 Com. Cas. 275; 9 Asp. M. L. C. 584 130
Steele, *Ex parte* (1809), 16 Ves. 161 813, 846
——, *Ex parte* (1864), 33 L. J. (Q. B.) 326; 10 Jur. (N. S.) 1254; 12 W. R. 956 710
——, *Re* (1851), 20 L. J. (CH.) 562 788, 792

PAGE
Steele *v.* Scott (1828), 2 Hog. 14 818
—— & Co. *v.* Dixon (1876), 3 R. (Ct. of Sess.) 1003; 13 Sc. L. R. 723 . . 36
Steinman & Co. *v.* Angier Line, Ltd., [1891] 1 Q. B. 619; 60 L. J. (Q. B.) 425; 64 L. T. 613; 39 W. R. 392; 7 Asp. M. L. C. 46, C. A. . . 113, 114, 206, 224
Stella, The (1867), L. R. 1 A. & E. 340; 36 L. J. (ADM.) 13; 16 L. T. 335; 15 W. R. 936 587
————, [1900] P. 161; 69 L. J. (P.) 70; 82 L. T. 390; 16 T. L. R. 306; 9 Asp. M. L. C. 66 328, 613
Stephen & Sons, Ltd. *v.* Allan Line Steamship Co., Ltd., [1911] S. C. 836; 48 Sc. L. R. 745; 1 Scots Law Times, 303 457
Stephens *v.* Broomfield, The Great Pacific (1869), L. R. 2 P. C. 516; 38 L. J. (ADM.) 45; 21 L. T. 38; 17 W. R. 933; 6 Moo. P. C. C. (N. S.) 151 73, 620
———— *v.* Davies (1827), 6 L. J. (O. S.) (CH.) 66 782
———— *v.* Duncan (1862), 1 Macph. (Ct. of Sess.) 146; 35 Sc. Jur. 84 . . 58
———— *v.* Harris & Co. (1887), 56 L. J. (Q. B.) 516; 57 L. T. 618; affirmed (1887), 57 L. J. (Q. B.) 203; 6 Asp. M. L. C. 192, C. A. . 120, 130, 131, 194, 195
———— *v.* Hill (1842), 10 M. & W. 28; 11 L. J. (EX.) 329; 6 Jur. 585; 1 Dowl. (N. S.) 669 849, 850
———— *v.* Newborough (Lord) (1848), 11 Beav. 403; 17 L. J. (CH.) 332; 12 Jur. 319 803
———— *v.* Weston (1824), 3 B. & C. 535 820
———— *v.* Wintringham (1898), 3 Com. Cas. 169 118, 267, 268, 269
————, Mawson and Goss *v.* Macleod & Co. (1891), 19 R. (Ct. of Sess.) 38; 29 Sc. L. R. 30 184
Stephenson *v.* Price (1784), 3 Doug. (K. B.) 353 208
Sterling, *Ex parte* (1809), 16 Ves. 258. 816
Sterry *v.* Clifton (1850), 9 C. B. 110; 19 L. J. (C. P.) 237; 14 Jur. 312 . . 842
Stettin, The (1889), 14 P. D. 142; 58 L. J. (P.) 81; 61 L. T. 200; 38 W. R. 96; 6 Asp. M. L. C. 395 147, 264, 265
Stevens *v.* Gourley, The Cleadon (1860), Lush. 158; 14 Moo. P. C. C. 92; 4 L. T. 157 444, 492, 528
——— *v.* Griffin, [1897] 2 Q. B. 368; 66 L. J. (Q. B.) 698; 76 L. T. 803; 45 W. R. 658, C. A. 796
——— *v.* Taverner, *Re* National Old Age Pensions Trust. *See* National Old Age Pensions Trust, *Re*, Stevens *v.* Taverner.
Stevenson *v.* Blakelock (1813), 1 M. & S. 535 816
———— *v.* Rowand (1830), 2 Dow & Cl. 104 755, 757
———— *v.* York (1790), 2 Chit. 570 124, 125
Stewart, *Re* (1868), L. R. 2 P. C. 88; 37 L. J. (C. P.) 25; 16 W. R. 1000; 5 Moo. P. C. C. (N. S.) 187 851, 852
————, *Re* (1889), 41 Ch. D. 494; 60 L. T. 737; 37 W. R. 484 . . . 766
———— *v.* Greenock Marine Insurance Co. (1848), 2 H. L. Cas. 159; 1 Macq. 382 301
———— *v.* Rogerson (1871), L. R. 6 C. P. 424 178, 184, 261
———— *v.* West India and Pacific Steamship Co. (1873), L. R. 8 Q. B. 362; 42 L. J. (Q. B.) 191; 28 L. T. 742; 21 W. R. 953; 1 Asp. M. L. C. 528 318, 323
———— & Co. *v.* Weber (1903), 89 L. T. 559; 19 T. L. R. 722 . . 768, 800, 805
Stilk *v.* Myrick (1809), 2 Camp. 317 51
Still *v.* Webb, *Re* Webb. *See* Webb, *Re*, Still *v.* Webb.
Stindt *v.* Roberts (1848), 5 Dow. & L. 460; 17 L. J. (Q. B.) 166; 12 Jur. 518; 2 Saund. & C. 212 295
Stocken *v.* Pattrick (1873), 29 L. T. 507 731
Stockton and Darlington Rail. Co. *v.* Barrett (1844), 11 Cl. & Fin. 590 . . 636
Stogdon, *Re*, *Ex parte* Baker (1887), 56 L. J. (CH.) 420; 56 L. T. 355; 51 J. P. 565 787
Stokes *v.* Prance, [1898] 1 Ch. 212; 67 L. J. (CH.) 69; 77 L. T. 595; 46 W. R. 113 757
Stone's Case (1669), 1 Vent. 16 726
Stonehouse *v.* Gent (1841), 2 Q. B. 431, n. 67
Stoomvart Maatschappy Nederland *v.* Peninsular and Oriental Steam Navigation Co. (1880), 5 App. Cas. 876; 52 L. J. (ADM.) 1; 42 L. T. 610; 29 W. R. 173; 4 Asp. M. L. C. 567 . . 361, 362, 364, 365, 366, 370, 454, 456, 457, 458, 460, 472, 485, 503, 504, 510, 512

PAGE

Stoomvaart Maatschappy Nederland *v.* Peninsular and Oriental Steam Navigation Co. (1882), 7 App. Cas. 795; 52 L. J. (P.) 1; 47 L. T. 198; 31 W. R. 249; 5 Asp. M. L. C. 360 521, 617
Storer, *Re* (1884), 26 Ch. D. 189; 53 L. J. (CH.) 872; 50 L. T. 583; 32 W. R. 767...803
——— *v.* Gordon (1814), 3 M. & S. 308 143, 192, 305
——— & Co. *v.* Johnson (1890), 15 App. Cas. 203; 60 L. J. (CH.) 31; 62 L. T. 710; 38 W. R. 756 781, 791, 847
Stormcock, The (1885), 53 L. T. 53; 5 Asp. M. L. C. 470 491, 524
Stornoway, The (1882), 51 L. J. (P.) 27; 46 L. T. 773; 4 Asp. M. L. C. 529 . 171, 172, 286
Stort *v.* Clements (1792), Peake, 144 [107] 525, 526
Story, *Ex parte* (1878), 3 Q. B. D. 166 592
———, *Re, Ex parte* Marwick (1859), 1 L. T. 16; 8 W. R. 15 784
Stott *v.* Milne (1884), 25 Ch. D. 710; 50 L. T. 742, C. A. 734
Stott (Baltic) Steamers, Ltd. *v.* Martin (1913), 48 L. J. 704 111
Strachan (H. W.), *Re*, [1895] 1 Ch. 439; 64 L. J. (CH.) 321; 72 L. T. 175; 60 J. P. 36; 43 W. R. 369, C. A. 736
Straford, *Re* (1852), 16 Beav. 27 791, 792
Strahan *v.* Gabriel (1879), cited in Nelson *v.* Dahl 127, 261
Straker *v.* Hartland (1864), 2 Hem. & M. 570; 34 L. J. (CH.) 122; 11 L. T. 622; 10 Jur. (N. S.) 1143 612
——— *v.* Kidd & Co. (1878), 3 Q. B. D. 223; 47 L. J. (Q. B.) 365; 26 W. R. 511; 4 Asp. M. L. C. 34, n. 121, 124, 272, 274
Strang, Steel & Co. *v.* Scott (A.) & Co. (1889), 14 App. Cas. 601; 59 L. J. (P. C.) 1; 61 L. T. 597; 38 W. R. 452; 6 Asp. M. L. C. 419 . . 187, 218, 316, 317, 318, 322, 323, 586
Strange *v.* Brennan (1846), 2 Coop. *temp.* Cott. 1 772
Strathgarry, The, [1895] P. 264; 72 L. T. 900; 11 R. 783; 8 Asp. M. L. C. 19 . 559, 571, 572, 578, 581
Strathmore (Earl) *v.* Vane, *Re* Bowes. *See* Bowes, *Re*, Strathmore (Earl) *v.* Vane.
"Strathnaver," The (1875), 1 App. Cas. 58; 34 L. T. 148; 3 Asp. M. L. C. 113...558, 562
Street, *Re* (1869), L. R. 10 Eq. 165; 39 L. J. (CH.) 495; 22 L. T. 429 . . 787
Stretton *v.* London and North Western Rail. Co. (1855), 16 C. B. 40 . . . 821
Stringer *v.* English and Scottish Marine Insurance Co. (1870), L. R. 5 Q. B. 599; 10 B. & S. 770; 39 L. J. (Q. B.) 214; 22 L. T. 802; 18 W. R. 1201 . . 109
Ströms Bruks Aktie Bolag *v.* Hutchison (John and Peter), [1905] A. C. 515; 74 L. J. (P. C.) 130; 93 L. T. 562; 21 T. L. R. 718; 10 Asp. M. L. C. 138; 11 Com. Cas. 13 210
Strong, *Re* (1885), 31 Ch. D. 273; 55 L. J. (CH.) 506; 54 L. T. 219; 34 W. R. 420 C. A. 855
———, *Re* (1886), 32 Ch. D. 342; 55 L. J. (CH.) 553; 55 L. T. 3; 51 J. P. 6; 34 W. R. 614, C. A. 838, 839
——— *v.* Hart (1827), 6 B. & C. 160; 5 L. J. (O. S.) (K. B.) 82; 9 Dow. & Ry. (K. B.) 189; 2 C. & P. 55 293, 307
Strother, *Re* (1857), 3 K. & J. 518; 26 L. J. (CH.) 695; 3 Jur. (N. S.) 736; 5 W. R. 797 781, 786
Strousberg *v.* Sanders (1889), 38 W. R. 117, C. A. 795, 796
Strout *v.* Foster (1843), 1 Howard, 89 488
Struck *v.* Tenant (1806), cited in Abbott on Shipping, 5th ed., p. 181; 14th ed., p. 372 273
Strugnell *v.* Friedrichsen (1862), 12 C. B. (N. S.) 452; 9 Jur. (N. S.) 77 . . 199
Stuart, *Re, Ex parte* Cathcart, [1893] 2 Q. B. 201; 62 L. J. (Q. B.) 623; 69 L. T. 334; 41 W. R. 614; 4 R. 506, C. A. 772, 773
——— *v.* British and African Steam Navigation Co. (1875), 32 L. T. 257; 2 Asp. M. L. C. 497 97, 234, 235
Stubbs *v.* Dale, *Re* Dale. *See* Dale, *Re*, Stubbs *v.* Dale.
Stuckey, *Ex parte* (1791), 2 Cox, Eq. Cas. 283 742
Stumore *v.* Campbell & Co., [1892] 1 Q. B. 314; 61 L. J. (Q. B.) 463; 66 L. T. 218; 40 W. R. 101, C. A. 816
———, Weston & Co. *v.* Breen (1886), 12 App. Cas. 698; 56 L. J. (Q. B.) 401...65, 173
Stump *v.* Gaby (1852), 2 De G. M. & G. 623; 22 L. J. (CH.) 352; 17 Jur. 5; 1 W. R. 85 748
Sturge *v.* Dimsdale (1846), 9 Beav. 170; 15 L. J. (CH.) 124; 10 Jur. 277 . . 796
Suart *v.* Haigh (1893), 9 T. L. R. 488 90
Sudlow and Kingdom, *Re* (1849), 11 Beav. 400; 18 L. J. (CH.) 182 . . . 781
Suevic, The, [1908] P. 292; 77 L. J. (P.) 152; 99 L. T. 474; 24 T. L. R. 699; 6 L. G. R. 946 618

PAGE
Suffield and Watts, *Re*, *Ex parte* Brown (1888), 20 Q. B. D. 693; 58 L. T. 911; 36 W. R. 584; 5 Morr. 83, C. A. 826
Sully *v.* Duranty (1864), 3 H. & C. 270; 33 L. J. (EX.) 319 97
Sultan, Cargo ex (1859), Sw. 504; 5 Jur. (N. S.) 1060 . . 231, 241, 243, 244, 247, 620
Summerville, *Re* (1885), 31 Ch. D. 160; 55 L. J. (CH.) 367; 54 L. T. 143; 34 W. R. 185, C. A. 848
Sunlight, The, [1904] P. 100; 73 L. J. (P.) 25; 90 L. T. 32; 9 Asp. M. L. C. 509 442, 499
Sunniside, The (1883) 8 P. D. 137; 52 L. J. (P.) 76; 49 L. T. 401; 31 W. R. 859; 5 Asp. M. L. C. 140 547, 573, 579
"Superior," The (1849), 6 Notes of Cases, 607 368, 448
Supply, H.M.S. (1865), 2 Mar. L. C. 262 408
Suse, *Re*, *Ex parte* Dever (1884), 13 Q. B. D. 766; 51 L. T. 437; 33 W. R. 290, C. A. 162
Sussex, The, [1904] P. 236; 73 L. J. (P.) 73; 90 L. T. 549; 9 Asp. M. L. C. 578...371, 530
Sutlej, H.M.S. (1905), 21 T. L. R. 325, C. A. 449, 450, 453
Sutton, *Ex parte* (1805), 11 Ves. 163 813
———, *Re* (1883), 11 Q. B. D. 377; 52 L. J. (Q. B.) 752; 49 L. T. 436, C. A. . 790
——— & Co. *v.* Ciceri & Co. (1890), 15 App. Cas. 144; 62 L. T. 742 . . 84
Svendsen *v.* Wallace (1884), 13 Q. B. D. 69; 53 L. J. (Q. B.) 385; 50 L. T. 799; 5 Asp. M. L. C. 232, C. A.; (1885), 10 App. Cas. 404; 54 L. J. (Q. B.) 497; 52 L. T. 901; 34 W. R. 369; 5 Asp M. L. C. 453 221, 235, 320, 321, 322, 323
——— *v.* ——— (1885), 16 Q. B. D. 27; 55 L. J. (Q. B.) 65; 53 L. T. 565; 34 W. R. 151 805
Swainston *v.* Garrick (1833), 2 L. J. (EX.) 255 65, 203, 206, 207
Swallow, The (1877), 36 L. T. 231; 3 Asp. M. L. C. 371, C. A. . 374, 380, 381, 482, 494
Swan, The (1839), 1 Wm. Rob. 68 558, 566
Swan, *Re* (1846), 15 L. J. (Q. B.) 402; 10 Jur. 715; 1 Saund. & C. 99 . . 308
—— *v.* Barber (1879), 5 Ex. D. 130; 49 L. J. (Q. B.) 253; 42 L. T. 490; 28 W. R. 563; 4 Asp. M. L. C. 264, C. A. 283, 309
—— and Cleland's Graving Dock and Slipway Co. *v.* Maritime Insurance Co. and Croshaw, [1907] 1 K. B. 116; 76 L. J. (K. B.) 160; 23 T. L. R. 101; 12 Com. Cas. 73 24
"Swanland," The (1855), 2 Ecc. & Ad. 107 501
Swannell *v.* Ellis (1823), 1 Bing. 347; 8 Moore (C. P.), 340; 2 L. J. (O. S.) (C. P.) 8...756
Swansea, The *v.* The Condor (1879), 4 P. D. 115; 48 L. J. (P.) 33; 40 L. T. 442; 27 W. R. 748; 4 Asp. M. L. C. 115, C. A. 381
Swanston *v.* Lishman (1881), 45 L. T. 360; 4 Asp. M. L. C. 450, C. A. . . 36
Sweet *v.* Pym (1800), 1 East, 4 287
Sweeting, *Re*, [1898] 1 Ch. 268; 67 L. J. (CH.) 159; 78 L. T. 6; 46 W. R. 242; 14 T. L. R. 171 720
——— *v.* Darthez (1854), 14 C. B. 538; 23 L. J. (C. P.) 131; 18 Jur. 958; 2 W. R. 414 124, 125, 274, 308
Swift, The, [1901] P. 168; 70 L. J. (P.) 47; 85 L. T. 346; 17 T. L. R. 400 . 506, 547
Swiftsure, The (Owners), Hudson *v.* Swiftsure. *See* Hudson *v.* Swiftsure, The Swiftsure (Owners).
Swinburn *v.* Hewitt (1838), 7 Dowl. 314 808
Swindon, The (1902), 51 W. R. 119; 18 T. L. R. 681, C. A. 136
Swinfen *v.* Swinfen (1857), 24 Beav. 549; 27 L. J. (CH.) 35; 3 Jur. (N. S.) 1109; 6 W. R. 10 744
Swyny *v.* Harland, [1894] 1 Q. B. 707; 63 L. J. (Q. B.) 415; 70 L. T. 227; 42 W. R. 297; 9 R. 210, C. A. 831, 832
Sydney Cove, The (1815), 2 Dods. 11 620, 623
Syeds *v.* Hay (1791), 4 Term Rep. 260 269
Sykes, *Re*, Sykes *v.* Sykes (1887), 56 L. J. (CH.) 238; 56 L. T. 425; 36 W. R. 234 766, 767
"Sylph," The (1854), 2 Ecc. & Ad. 75 . . . 365, 368, 369, 370, 381, 427, 428, 429, 465, 468
Sylph, The (1857), Sw. 233 428, 446
——— (1867), L. R. 2 A. & E. 24; 37 L. J. (ADM.) 14; 17 L. T. 519 . 506, 544
Sylvester *v.* Webster (1832), 9 Bing. 388; 2 L. J. (C. P.) 24; 2 Moo. & S. 506; 1 Dowl. 708 781
Sylvester Hale, The (The Schooner) (1873), 6 Benedict, United States District Court Reports, 529 361

PAGE
Symes, *Re*, *Ex parte* Prideaux (1821), 1 Gl. & J. 28 813
Symonds *v.* Atkinson (1856), 1 H. & N. 146; 25 L. J. (EX.) 313 . . . 837
——— *v.* Incorporated Law Society (1884), 49 J. P. 212 856
Symons *v.* Baker, [1905] 2 K. B. 723; 74 L. J. (K. B.) 965; 93 L. T. 548; 54 W. R. 159; 21 T. L. R. 734; 10 Asp. M. L. C. 129 . . 375, 629
——— *v.* Blake (1835), 2 Cr. M. & R. 416; 4 Dowl. 263; 1 Gale, 182 . . 817
Symrna, The (1864), 11 L. T. 74 496
"Syria," The, and The "American," Union Steamship Co. *v.* "Aracan" (Owners). *See* Union Steamship Co. *v.* "Aracan" (Owners). The "American" and The "Syria."

T.

TABBERNOR *v.* Tabbernor (1836), 2 Keen, 679; 6 L. J. (CH.) 19 . . . 834
Tabram *v.* Horn (1827), 1 Man. & Ry. (K. B.) 228; 6 L. J. (O. S.) (K. B.) 24 . 741, 770
Tactician, The, [1907] P. 244; 76 L. J. (P.) 80; 23 T. L. R. 369, C. A. . 531, 532, 611
Tagart, Beaton & Co. *v.* Fisher (James) & Sons, [1903] 1 K. B. 391; 72 L. J. (K. B.) 202; 88 L. T. 451; 51 W. R. 599; 9 Asp. M. L. C. 381; 8 Com. Cas. 133, C. A. 171, 286
Tagus, The, [1903] P. 44; 72 L. J. (P.) 4; 87 L. T. 598; 19 T. L. R. 82; 9 Asp. M. L. C. 371 12, 13, 26, 53, 623
Tait *v.* Levi (1811), 14 East, 481 213
Talabot, The (1890), 15 P. D. 194; 63 L. T. 812; 6 Asp. M. L. C. 602 . 470, 496
Talbot, The, [1891] P. 184; 64 L. T. 542; 7 Asp. M. L. C. 36 . . 381, 382, 481
Talca, The (1880), 5 P. D. 169; 42 L. T. 61; 29 W. R. 123; 4 Asp. M. L. C. 226...36, 37
Tamvaco *v.* Simpson (1866), L. R. 1 C. P. 363; 35 L. J. (C. P.) 196; 14 L. T. 893; 11 Jur. (N. S.) 926; 14 W. R. 376; 1 Har. & Ruth. 374 . 135, 171, 173, 284, 288, 312, 314
——— & Co. *v.* Timothy and Green (1882), Cab. & El. 1 268
Tanner *v.* Heard (1857), 23 Beav. 555; 3 Jur. (N. S.) 427; 5 W. R. 420 . . 28
——— *v.* Lea (1842), 4 Man. & G. 617; 5 Scott (N. R.), 237 779
——— *v.* Phillips (1872), 42 L. J. (CH.) 125; 27 L. T. 480; 21 W. R. 68; 1 Asp. M. L. C. 448 27, 300
Tapley *v.* Martens (1800), 8 Term Rep. 451 293, 294, 307
Tappenbeck, *Re*, *Ex parte* Banner (1876), 2 Ch. D. 278; 45 L. J. (BCY.) 73; 34 L. T. 199; 24 W. R. 476, C. A. 161
Tapscott *v.* Balfour (1872), L. R. 8 C. P. 46; 42 L. J. (C. P.) 16; 27 L. T. 710; 21 W. R. 245; 1 Asp. M. L. C. 501 182, 183, 184, 260
Tardrew *v.* Howell, Parry *v.* Howell (1861), 3 Giff. 381; 31 L. J. (CH.) 57; 5 L. T. 276; 7 Jur. (N. S.) 1120; 10 W. R. 32 845, 846
Tarleton, *Re*, *Ex parte* Hornby (1819), Buck, 351 820
Tarrabochia *v.* Hickie (1856), 1 H. &. N. 183; 26 L. J. (EX.) 26 . 92, 94, 143, 144, 178
Tartar (1822), 1 Hag. Adm. 1 40
Tasmania, The (1888), 13 P. D. 110; 57 L. J. (P.) 49; 59 L. T. 263; 6 Asp. M. L. C. 305 358, 527, 618, 619
"Tasmania" (Owners and Owners of Freight) *v.* Smith and "City of Corinth" (Owners), The "Tasmania" (1890), 15 App. Cas. 223; 63 L. T. 1; 6 Asp. M. L. C. 517 366, 451, 453
Tate *v.* Crosby, Magee & Co. (1898), unreported. 77, 212
—— *v.* Meek (1818), 2 Moore (C. P.), 278; 8 Taunt. 280 283, 288
Tatham *v.* Ermen, *Re* Ermen. *See* Ermen, *Re*, Tatham *v.* Ermen.
Tatjana, The, Lindsay *v.* Klein. *See* Lindsay *v.* Klein, The Tatjana.
Tattersall *v.* National Steamship Co. (1884), 12 Q. B. D. 297; 53 L. J. (Q. B.) 332; 50 L. T. 299; 32 W. R. 566; 5 Asp. M. L. C. 206 . . 107, 115, 189, 190, 290
Taubman *v.* Pacific Steam Navigation Co. (1872), 26 L. T. 704; 1 Asp. M. L. C. 336 328
Taunton *v.* Goforth (1825), 6 Dow. & Ry. (K. B.) 384; 3 L. J. (O. S.) (K. B.) 229. 848
Taylor, *Re* (1825), 4 B. &. C. 341; 3 L. J. (O. S.) (K. B.) 242; 6 Dow. & Ry. (K. B.) 428 715
———, *Re* (1852), 15 Beav. 145 792
———, *Re* (1854), 18 Beav. 165; 23 L. J. (CH.) 857; 18 Jur. 66; 2 W. R. 249. 752, 783, 844
——— *v.* Burger (1898), 78 L. T. 93; 14 T. L. R. 228; 8 Asp. M. L. C. 364 . 427, 470, 498, 499, 532, 640

PAGE
Taylor *v.* Clay (1846), 9 Q. B. 713; 16 L. J. (Q. B.) 44; 11 Jur. 277 . 128, 200
——— *v.* Curtis (1816), 6 Taunt. 668 319
——— *v.* Dunbar (1869), L. R. 4 C. P. 206; 38 L. J. (C. P.) 178; 17 W. R. 382 . 232
——— *v.* Gates (1895), 72 L. T. 436, C. A. 834
——— *v.* Gorman (1842), 4 I. Eq. R. 550; Fl. & K. 567 833
——— *v.* ——— (1844), 7 I. Eq. R. 259 817
——— *v.* Hodgson (1845), 3 Dow. & L. 115; 14 L. J. (Q. B.) 310; 10 Jur. 355 778
——— *v.* Liverpool and Great Western Steam Co. (1874), L. R. 9 Q. B. 546; 43 L. J. (Q. B.) 205; 30 L. T. 714; 22 W. R. 752; 2 Asp. M. L. C. 275 . 107, 113, 114, 139, 232
——— *v.* Perrin (1883), unreported 176
——— *v.* Popham, Monke *v.* Taylor (1808), 15 Ves. 72 822
——— *v.* Roe, [1894] 1 Ch. 413; 63 L. J. (CH.) 282; 20 L. T. 232; 42 W. R. 426; 8 R. 295 810
———, Sons and Tarbuck, *Re*, [1894] 1 Ch. 503; 63 L. J. (CH.) 290; 70 L. T. 161; 42 W. R. 329; 8 R. 170 790, 792
———, Stileman and Underwood, *Re*, [1891] 1 Ch. 590; 60 L. J. (CH.) 525; 64 L. T. 605; 39 W. R. 417, C. A. 775, 815, 820
Teague, *Re* (1848), 11 Beav. 318 841
Tees, The, The Pentueket (1862), Lush. 505 558
Telegrafo or Restauracion, The, R. *v.* McCleverty. *See* R. *v.* McCleverty, The Telegrafo or Restauracion.
"Telegraph," The, Valentine *v.* Cleugh (1854), 1 Ecc. & Ad. 427 . 365, 488, 501
Temperley Steam Shipping Co. *v.* Smyth & Co., [1905] 2 K. B. 751; 74 L. J. (K. B.) 876; 93 L. T. 471; 54 W. R. 150; 21 T. L. R. 739; 10 Asp. M. L. C. 123; 10 Com. Cas. 301, C. A. 169, 176
Temple, Thomson and Clarke *v.* Runnalls (1902), 18 T. L. R. 822, C. A. . 128, 276
Templeton & Co., *Re* (1909), 101 L. T. 144, C. A. 793
Tempus, The, [1913] P. 166; 109 L. T. 669; 29 T. L. R. 543 475
Tendring Hundred Waterworks Co. *v.* Jones, [1903] 2 Ch. 615; 73 L. J. (CH.) 41; 52 W. R. 61; 19 T. L. R. 720 759
Tennant *v.* Trenchard (1869), 4 Ch. App. 537; 38 L. J. (CH.) 661; 20 L. T. 856 750
Tergeste, The, [1903] P. 26; 72 L. J. (P.) 18; 87 L. T. 567; 19 T. L. R. 62; 9 Asp. M. L. C. 356 620, 621, 623, 624, 625, 626
Terrell, *Re* (1882), 22 Ch. D. 473; 47 L. T. 588; 31 W. R. 208, C. A. . . 768
——— *v.* Hutton (1854), 4 H. L. Cas. 1091; 23 L. J. (CH.) 345; 18 Jur. 707 . 733
"Test," The (1847), 5 Notes of Cases, 276 367, 370, 448
Teutonia, The (1871), L. R. 3 A. & E. 394; 41 L. J. (ADM.) 4; 1 Asp. M. L. C. 32; affirmed (1872), L. R. 4 P. C. 171; 41 L. J. (ADM.) 57; 8 Moo. P. C. C. (N. S.) 411; 26 L. T. 48; 20 W. R. 421 . . . 83, 95, 96, 132, 255, 256, 257, 259, 304, 307, 314
Thacker *v.* Moates (1831), 1 Mood. & R. 79 69
Thames, The (1805), 5 Ch. Rob. 345 489
——— *v.* The Stork (1866), Holt (ADM.), 151 434
Thames and Mersey Marine Insurance Co. *v.* Hamilton, Fraser & Co. (1887), 12 App. Cas. 484; 56 L. J. (Q. B.) 626; 57 L. T. 695; 36 W. R. 337; 6 Asp. M. L. C. 200 110, 111, 112, 139, 232
Thames Haven Rail. Co. *v.* Hall (1843), 5 Man. & G. 274; 7 Jur. 238; 6 Scott (N. R.), 342; 3 Ry. & Can. Cas. 441 732
Thames Iron Works Co. *v.* Patent Derrick Co. (1860), 1 John. & H. 93; 29 L. J. (CH.) 714; 2 L. T. 208; 6 Jur. (N. S.) 1013; 8 W. R. 408 621
Tharsis Sulphur and Copper Co. *v.* Morel Brothers & Co., [1891] 2 Q. B. 647; 61 L. J. (Q. B.) 11; 65 L. T. 659; 40 W. R. 58; 7 Asp. M. L. C. 106, C. A. . 127, 184, 259, 261, 271
Tharsis Sulphur and Copper Mining Co. *v.* Culliford (1873), 22 W. R. 46 . 172, 286
"Theodor Korner," The, Thorsen *v.* M'Dowall and Neilson. *See* Thorsen *v.* M'Dowall and Neilson, The "Theodor Korner."
Theodore, The (1858), Sw. 351 571
"Theodore H. Rand," The, Baker *v.* The "Theodore H. Rand" (Owners). *See* Baker *v.* The "Theodore H. Rand" (Owners), The "Theodore H. Rand."
Theta, The, [1894] P. 280; 63 L. J. (P.) 160; 71 L. T. 25; 43 W. R. 160; 6 R. 712; 7 Asp. M. L. C. 480 544
Thetford, The (1887), 57 L. T. 455; 6 Asp. M. L. C. 179 483, 497
Thetis, H.M.S. (1833), 3 Hag. Adm. 14 564, 565, 575
———, The (1869), L. R. 2 A. & E. 365; 38 L. J. (ADM.) 42; 22 L. T. 276 . 66, 547

PAGE
Thiis *v.* Byers (1876), 1 Q. B. D. 244; 45 L. J. (Q. B.) 511; 34 L. T. 526; 24 W. R. 611; 3 Asp. M. L. C. 147 120, 122, 124, 260, 267, 271, 272, 274
Thin *v.* Liverpool, Brazil and River Plate Steam Navigation Co. (1901), 18 T. L. R. 226 86, 145, 155, 170
—— *v.* Richards & Co., [1892] 2 Q. B. 141; 62 L. J. (Q. B.) 39; 66 L. T. 584; 40 W. R. 617; 7 Asp. M. L. C. 165, C. A. 212, 215
Thomas, *Re* (1844), 8 Beav. 145 783
———, *Re*, [1893] 1 Q. B. 670; 62 L. J. (Q. B.) 474; 68 L. T. 759; 41 W. R. 524; 5 R. 387 773, 793
———, *Re*, Evans *v.* Griffiths, [1900] 1 Ch. 454; 69 L. J. (CH.) 219; 82 L. T. 105; 48 W. R. 299; 16 T. L. R. 196 762
———, *Re*, Jaquess *v.* Thomas, [1894] 1 Q. B. 747; 63 L. J. (Q. B.) 572; 70 L. T. 567; 9 R. 299, C. A. 779, 780
——— *v.* Clarke and Todd (1818), 2 Stark. 450 102, 208
——— *v.* Cross (1864), 11 L. T. 430; 10 Jur. (N. S.) 1163; 13 W. R. 166; 5 New Rep. 148 776
——— *v.* Lewis (1878), 4 Ex. D. 18; 48 L. J. (Q. B.) 7; 39 L. T. 669; 27 W. R. 111; 4 Asp. M. L. C. 31 65, 88
——— *v.* Palin (1882), 21 Ch. D. 360; 47 L. T. 207; 30 W. R. 716, C. A. . 767, 805
——— *v.* Swansea Corporation (1843), 11 M. & W. 83; 12 L. J. (EX.) 281; 2 Dowl. (N. S.) 1003 808
——— *v.* Vandermoolen (1818), 2 B. & Ald. 197 833
Thomas Allen, The (1886) 6 Asp. M. L. C. 99 581
Thomas (T. W.) & Co., Ltd. *v.* Portsea Steamship Co., Ltd., [1912] A. C. 1; 105 L. T. 257; 55 Sol. Jo. 615; 12 Asp. M. L. C. 23; 49 Sc. L. R. 628; *sub nom.* The Portsmouth, 81 L. J. (P.) 17 136, 176
Thomas Blyth, The (1860), Lush. 16 579
Thomas Fielden, The (1862), 32 L. J. (P. M. & A.) 61 576, 578
Thomas Lea, The (1876), 35 L. T. 406; 3 Asp. M. L. C. 260 383
Thomas Powell, The *v.* The Cuba (1866), 14 L. T. 603 535
Thompson, *Ex parte* (1860), 3 L. T. 317 824
———, *Re* (1845), 8 Beav. 237; 14 L. J. (CH.) 137; 9 Jur. 169 772
———, *Re* (1848), 1 Exch. 864 712
———, *Re* (1885), 30 Ch. D. 441; 55 L. J. (CH.) 138; 53 L. T. 479; 34 W. R. 112, C. A. 778, 779, 791, 792
———, *Re*, *Ex parte* Baylis, [1894] 1 Q. B. 462; 63 L. J. (Q. B.) 187; 70 L. T. 238; 42 W. R. 462 771, 772, 787, 788
——— *v.* Brown (1817), 7 Taunt. 656 108
——— *v.* Dominy (1814), 14 M. & W. 403; 14 L. J. (EX.) 320 167
——— *v.* Farrer (1882), 9 Q. B. D. 372; 51 L. J. (Q. B.) 534; 47 L. T. 117; 4 Asp. M. L. C. 562, C. A. 81
——— *v.* Finch (1856), 8 De G. M. & G. 560, C. A. 850
——— *v.* Finden (1829), 4 C. & P. 158 35
——— *v.* Gillespy (1855), 5 E. & B. 209; 24 L. J. (Q. B.) 340; 1 Jur. (N. S.) 779; 3 W. R. 505 219, 220, 312
——— *v.* Gordon (1846), 15 M. & W. 610; 15 L. J. (EX.) 344; 4 Dow. & L. 49 . 830
——— *v.* Hopper (1856), 6 E. & B. 172; 25 L. J. (Q. B.) 240; 2 Jur. (N. S.) 608 215
——— *v.* Inglis (1813), 3 Camp. 428 209
——— *v.* Moore (1890), 25 L. R. Ir. 98 802
——— *v.* Nelson (H. & W.), Ltd., [1913] 2 K. B. 523; 82 L. J. (K. B.) 657; 108 L. T. 847; 29 T. L. R. 422 42, 47
——— *v.* Royal Mail Steam Packet Co. (1875), 5 Asp. M. L. C. 190, n. . 328
——— *v.* Small (1845), 1 C. B. 328; 14 L. J. (C. P.) 157 . . . 101, 199, 284
——— *v.* Smith (1815), 1 Madd. 395 24
——— *v.* Trail (1826), 6 B. & C. 36; 5 L. J. (O. S.) (K. B.) 34; 2 C. & P. 334; 6 Dow. & Ry. (K. B.) 31 152, 153
——— *v.* Whitmore (1810), 3 Taunt. 227 110, 114
Thomson, *Re* (1855), 20 Beav. 545; 24 L. J. (CH.) 599; 1 Jur. (N. S.) 718; 3 W. R. 474 840
——— *v.* Hart (1890), 28 Sc. L. R. 28; 18 Rettie (Justiciary Cases), 3; 2 White, 539 15, 61
——— *v.* Royal Exchange Assurance Co. (1813), 1 M. & S. 30 . . 73, 620
Thorley (Joseph), Ltd. *v.* Orchis Steamship Co., Ltd., [1907] 1 K. B. 660; 76 L. J. (K. B.) 595; 96 L. T. 488; 23 T. L. R. 338; 12 Com. Cas. 251, C. A. . 75, 77, 94, 95, 214, 290

PAGE
Thorman *v.* Burt, Boulton & Co. (1886), Cab. & El. 596; 54 L. T. 349; 5 Asp. M. L. C. 563, C. A. 145, 153, 154
——— *v.* Dowgate Steamship Co., [1910] 1 K. B. 410; 79 L. J. (K. B.) 287; 102 L. T. 242; 15 Com. Cas. 67 132, 139, 195
Thorndike *v.* Hunt, Browne *v.* Butter (1859), 5 Jur. (N. S.) 879 850
Thorne *v.* Heard and Marsh, [1895] A. C. 495; 64 L. J. (CH.) 652; 73 L. T. 291; 44 W. R. 155; 11 R. 254 745
Thornley, The (1843), 7 Jur. 659 488, 536
Thornton, *Re* (1833), 2 Dowl. 156 840
——— *v.* Fairlie (1818), 8 Taunt. 354 307, 315
Thorsen *v.* M'Dowall and Neilson, The "Theodor Korner" (1892), 19 R. (Ct. of Sess.) 743; 29 Sc. L. R. 573 121, 273, 284
Thrift *v.* Youle & Co. (1877), 2 C. P. D. 432; 46 L. J. (Q. B.) 402; 36 L. T. 114; 3 Asp. M. L. C. 357 115, 204, 224, 232
Throckmorton *v.* Crowley (1866), L. R. 3 Eq. 196 822
Thrunscoe, The, [1897] P. 301; 66 L. J. (P.) 173; 77 L. T. 407; 46 W. R. 175; 13 T. L. R. 566; 8 Asp. M. L. C. 313 110, 111, 225, 226, 233
Thurgood, *Re* (1854), 19 Beav. 541; 23 L. J. (CH.) 952; 18 Jur. 821; 2 W. R. 682 791
Thuringia, The (1872), 41 L. J. (ADM.) 44; 26 L. T. 446; 1 Asp. M. L. C. 283 . 372, 538
Thyatira, The (1883), 8 P. D. 155; 52 L. J. (P.) 85; 49 L. T. 406; 32 W. R. 276; 5 Asp. M. L. C. 147 290
Tibbitts, *Re* (1881), 30 W. R. 177 792
Ticonderoga, The (1857), Sw. 215 528, 619
Tigress, The (1863), Brown. & Lush. 38; 32 L. J. (P. M. & A.) 97; 8 L. T. 117; 9 Jur. (N. S.) 361; 11 W. R. 538 147, 158, 159, 167, 265
Tilleard, *Re* (1863), 3 De G. J. & Sm. 519; 32 L. J. (CH.) 765; 8 L. T. 587; 9 Jur. (N. S.) 1217; 11 W. R. 764, C. A.; affirming (1863) 32 Beav. 476; 32 L. J. (CH.) 765; 8 L. T. 142; 9 Jur. (N. S.) 1217; 11 W. R. 476 . . 734, 779
Tillett & Co. *v.* Cwm Avon Works (Proprietors) (1886), 2 T. L. R. 675 . . 121
Tilney *v.* Stansfield (1880), 28 W. R. 582 835
Tilson *v.* Warwick Gas Light Co. (1825), 4 B. & C. 962; 4 L. J. (O. S.) (K. B.) 53; 7 Dow. & Ry. (K. B.) 376 733
Tindall *v.* Taylor (1854), 4 E. & B. 219; 24 L. J. (Q. B.) 12; 1 Jur. (N. S.) 112; 3 C. L. R. 199 144, 199
Tindle *v.* Davison (1892), 61 L. J. (M. C.) 107; 66 L. T. 372; 56 J. P. 390; 7 Asp. M. L. C. 169 52
Tirzah, The (1878), 4 P. D. 33; 48 L. J. (P.) 15; 39 L. T. 547; 27 W. R. 584; 4 Asp. M. L. C. 55 382, 389
Tisdall *v.* Richardson (1887), 20 L. R. Ir. 199 803
Titan, The, The Rambler (1906), 96 L. T. 93; 10 Asp. M. L. C. 350 . . 380, 405, 414, 483, 505
Tobin *v.* Crawford (1842), 9 M. & W. 716; 12 L. J. (EX.) 490 293
Todd *v.* Ritchie (1816), 1 Stark. 240 112
——— *v.* Studholme (1857), 3 K. & J. 324; 26 L. J. (CH.) 271; 5 W. R. 277 . 835
——— *v.* Wilson (1846), 9 Beav. 486; 15 L. J. (CH.) 450; 10 Jur. 626 . . 811
Toghill *v.* Grant, *Re* Boord. *See* Boord, *Re*, Toghill *v.* Grant.
Toivo, The (1853) 1 Ecc. & Ad. 185 70, 71
Toleman and England, *Re*, *Ex parte* Bramble (1880), 13 Ch. D. 885; 42 L. T. 413; 28 W. R. 676 818
Tomkins, *Ex parte* (1837), 6 Dowl. 3; Will. Woll. & Dav. 569 714
Tomlinson *v.* Broadsmith, [1896] 1 Q. B. 386; 65 L. J. (Q. B.) 308; 74 L. T. 265; 44 W. R. 471, C. A. 730
——— *v.* Gell (1837), 6 Ad. & El. 564; 6 L. J. (K. B.) 139; 1 Nev. & P. (K. B.) 588; Will. Woll. & Dav. 229 729
Tomson *v.* Judge (1855), 3 Drew. 306; 24 L. J. (CH.) 785; 1 Jur. (N. S.) 583; 3 W. R. 561 747
Tongariro (Owners of Cargo) *v.* Drumlanrig (Owners), The Drumlanrig, [1911] A. C. 16; 80 L. J. (P.) 9; 103 L. T. 773; 27 T. L. R. 146; 55 Sol. Jo. 138; 11 Asp. M. L. C. 520 522, 537, 541
Tonkin *v.* Hughes (1885), 1 T. L. R. 468 749
Tonnelier and Bolckow, Vaughan & Co. *v.* Smith, Weatherill & Co. (1897), 77 L. T. 277; 13 T. L. R. 560; 8 Asp. M. L. C. 327; 2 Com. Cas. 258, C. A. 105
Topaze, H.M.S. (1864), 10 L. T. 659; 12 W. R. 923; 2 Mar. L. C. 38 . 365, 408, 478
Torbryan, The, [1903] P. 194; 72 L. J. (P.) 76; 89 L. T. 265; 52 W. R. 40; 19 T. L. R. 625; 9 Asp. M. L. C. 450; 9 Com. Cas. 1, C. A. . . . 117

PAGE

Tousey *v.* Sheffield, *Re* Dixon. *See* Dixon, *Re*, Tousey *v.* Sheffield.
Touteng *v.* Hubbard (1802), 3 Bos. & P. 291 305
Tovery *v.* Payne, *Re*, *Ex parte* Hart (1830), 1 B. & Ad. 660 823
"Toward" (Owners) *v.* Turkistan (Owners) (1885), 13 R. (Ct. of Sess.) 342 . 502
Tower Subway Co., *Ex parte*, *Re* Elmslie & Co. *See* Elmslie & Co., *Re*, *Ex parte* Tower Subway Co.
Towle, *Re* (1860), 30 Beav. 170; 3 L. T. 283 789, 790
——— *v.* The Great Eastern (1861), 2 Mar. L. C. 148 . . . 568, 583, 584
Townley, *Ex parte* (1834), 3 Dowl. 39 852
——— *v.* Jones (1860), 8 C. B. (N. S.) 289; 29 L. J. (C. P.) 299; 6 Jur. (N. S.) 1159 754, 756
Townsend *v.* Reade, Dooley *v.* Reade (1835), 4 L. J. (CH.) 233 821
Towse *v.* Henderson (1850), 4 Exch. 890; 19 L. J. (EX.) 163 . 103, 185, 188, 189
Traae and Lennard & Sons, Ltd., *Re*, [1904] 2 K. B. 377; 73 L. J. (K. B.) 553; 90 L. T. 407; 20 T. L. R. 394; 9 Asp. M. L. C. 553; 9 Com. Cas. 235, C. A. 105, 106
Travers (Joseph) & Sons, Ltd. *v.* Cooper (1913), 136 L. T. Jo. 143; 30 T. L. R. 93 116
Trelawney, The (1802), 4 Ch. Rob. 223 566
Tremain *v.* Barrett (1815), 6 Taunt. 88 802
Trenchard, *Ex parte* (1874), L. R. 9 Q. B. 406 714
Trent Navigation (Proprietors) *v.* Wood (1785), 3 Esp. 127 325
Trewhella *v.* Rowe (1809), 11 East, 435 67
"Trident," The (1854), 1 Ecc. & Ad. 217 459, 496
Trindade *v.* Levy (1861), 2 F. & F. 441 180, 198
Trinity House (Masters, Wardens and Assistants) *v.* Clark (1815), 4 M. & S. 288 . . 85, 629, 636
Triston, *Re* (1850), 1 L. M. & P. 74 839
Tronson *v.* Dent (1853), 8 Moo. P. C. C. 419 . 76, 164, 167, 222, 225, 226, 227, 228, 229, 230, 236, 247, 250, 251, 252
Troubadour, The (1866), L. R. 1 A. & E. 302; 16 L. T. 156 26
True Blue, The (1843), 2 Wm. Rob. 176 571, 572
"True Blue," The, Papayanni *v.* Hocquard. *See* Papayanni *v.* Hocquard, The "True Blue."
Try Again, The (1908), *Shipping Gazette*, June 2nd . . 441, 454, 466, 467, 469
Tryon, *Re* (1844), 7 Beav. 496 788, 789
Tryst, The, [1909] P. 333 535
Tucker *v.* Cappes (1625), 2 Roll. Rep. 497 317
——— *v.* Humphrey (1828), 4 Bing. 516; 6 L. J. (O. S.) (C. P.) 92; 1 Moo. & P. 378, n. 160
Tuff *v.* Warman (1857), 2 C. B. (N. S.) 740; affirmed (1858), 5 C. B. (N. S.) 573; 27 L. J. (C. P.) 322; 5 Jur. (N. S.) 222; 6 W. R. 693 . 362, 364, 508, 513, 535
Tugela, The (1913), 30 T. L. R. 101 540
Tully *v.* Howling (1877), 2 Q. B. D. 182; 46 L. J. (Q. B.) 388; 3 L. T. 163; 25 W. R. 290; 3 Asp. M. L. C. 61, C. A. . . . 98, 178, 188, 211
—— *v.* Terry (1873), L. R. 8 C. P. 679; 42 L. J. (C. P.) 240; 29 L. T. 36; 2 Asp. M. L. C. 51 156, 310
Turgot, The (1886), 11 P. D. 21; 54 L. T. 276; 34 W. R. 552; 5 Asp. M. L. C. 548 48, 68, 620
Turliani, The (1875), 32 L. T. 341; 2 Asp. M. L. C. 603 69
Turnbull *v.* Great Eastern and Peninsular Navigation Co. (1885), Cab. & El. 595 . . 312
——— *v.* Janson (1878), 3 C. P. D. 264; 47 L. J. (C. P.) 384; 26 W. R. 815 801
——— *v.* Richardson (1885), 1 T. L. R. 244, C. A. 825
———, Scott & Co. *v.* Cruickshank & Co. (1904), 7 F. (Ct. of Sess.) 265; 42 Sc. L. R. 207; 12 Scots Law Times, 446 124, 273, 277, 278
Turner, *Ex parte*, *Re* Boyle. *See* Boyle, *Re*, *Ex parte* Turner.
———, *Re*, *Re* Emma Silver Mining. *See* Emma Silver Mining, *Re*, *Re* Turner.
———, *Re*, Wood *v.* Turner, [1907] 2 Ch. 126, 539; 76 L. J. (CH.) 492; 96 L. T. 798; 23 T. L. R. 524, C. A. 798, 823, 824, 825
——— *v.* Deane (1849), 3 Exch. 836; 18 L. J. (EX.) 343; 6 Dow. & L. 669 . 816
——— *v.* Haji Goolam Mahomed Azam, [1904] A. C. 826; 74 L. J. (P. C.) 17; 91 L. T. 216; 20 T. L. R. 599; 9 Asp. M. L. C. 588 . 87, 107, 154, 170, 174, 285
——— *v.* Hancock (1882), 20 Ch. D. 303; 51 L. J. (CH.) 517; 46 L. T. 750; 30 W. R. 480, C. A. 798
——— *v.* Hand (1859), 27 Beav. 561 787
——— *v.* Harvey (1821), Jac. 169 751

PAGE

Turner *v.* Letts (1855), 7 De G. M. & G. 243; 24 L. J. (CH.) 638; 1 Jur. (N. S.) 1057; 3 W. R. 494; 3 Eq. Rep. 846, C. A. 816, 841
——— *v.* Liverpool Docks Trustees (1851), 6 Exch. 543; 20 L. J. (EX.) 393 . 162
——— *v.* Owen (1862), 3 F. & F. 176 51
——— *v.* Rookes (1839), 10 Ad. & El. 47; 8 L. J. (Q. B.) 211; 2 Per. & Dav. 29 731
——— *v.* Tennant (1846), 10 Jur. 429, n. 770, 771
——— *v.* Willis, [1905] 1 K. B. 468; 74 L. J. (K. B.) 365; 92 L. T. 412; 53 W. R. 348 775, 776, 788
———, Brightman & Co. *v.* Bannatyne (1903), 91 L. T. 618; 20 T. L. R. 782; 9 Asp. M. L. C. 495; 10 Asp. M. L. C. 1; 9 Com. Cas. 306, C. A. . . 120
Turquoise, The, [1908] P. 148; 77 L. J. (P.) 97; 98 L. T. 588 . 378, 380, 405, 406
Turret Court, The (1900), 69 L. J. (P.) 117 485, 503
Turton *v.* Turton (1889), 42 Ch. D. 128; 61 L. T. 571; 38 W. R. 22, C. A. . 768
Tweed, *Ex parte*, [1899] 2 Q. B. 167; 68 L. J. (Q. B.) 794; 81 L. T. 1; 48 W. R. 5, C. A. 825
Tweedie, *Re*, [1909] W. N. 110; 53 Sol. Jo. 487 788
Tweedsdale, The (1889), 14 P. D. 164; 58 L. J. (P.) 41; 61 L. T. 371; 37 W. R. 783; 6 Asp. M. L. C. 430 397, 445, 459, 472
Twizell *v.* Allen (1839), 5 M. & W. 337; 8 L. J. (EX.) 269; 7 Dowl. 496 . . 325
Two Ellens, The (1871), L. R. 3 A. & E. 345; 40 L. J. (ADM.) 11; 1 Asp. M. L. C. 40 29
"Two Ellens," The, Johnson *v.* Black. *See* Johnson *v.* Black, The "Two Ellens."
Two Friends, The (1799), 1 Ch. Rob. 271 567, 580
——— (1844), 2 Wm. Rob. 349 565
Two Sisters, The (1843), 2 Wm. Rob. 125 61
Two Solicitors and an Unqualified Person, *Re*, *Ex parte* Incorporated Law Society (1909), 53 Sol. Jo. 342, C. A. 849
Twynam *v.* Porter (1870), L. R. 11 Eq. 181; 40 L. J. (CH.) 30; 23 L. T. 551; 19 W. R. 151 825
Tyass *v.* Alsop, Mann & Co. (1889), 5 T. L. R. 242 748
Tylee *v.* Webb, *Re* Hinton. *See* Hinton, *Re*, Tylee *v.* Webb.
Tyler *v.* Drayton (1825), 2 Sim. & St. 309 820
Tyne and Blyth Shipping Co. *v.* Leech, Harrison and Forwood, [1900] 2 Q. B. 12; 69 L. J. (Q. B.) 353; 48 W. R. 590; 16 T. L. R. 197; 5 Com. Cas. 155 126, 128, 195
Tyrer & Co. and Hessler & Co., *Re* (1902), 86 L. T. 697; 18 T. L. R. 589; 7 Com. Cas. 166, C. A. 99, 144
Tyrrell *v.* Bank of London (1862), 10 H. L. Cas. 26; 31 L. J. (CH.) 369; 6 L. T. 1; 8 Jur. (N. S.) 849; 10 W. R. 359 736, 749

U.

UHLA, The (1867), L. R. 2 A. & E. 29; 37 L. J. (ADM.) 16, n.; 19 L. T. 89; 3 Mar. L. C. 148 490, 547
Ulster, The (1862), 1 Mar. L. C. 234 493
———, Laird *v.* Brownlie. *See* Laird *v.* Brownlie, The Ulster.
Ulysses, Cargo ex (1888), 13 P. D. 205; 58 L. J. (P.) 11; 60 L. T. 111; 37 W. R. 270; 6 Asp. M. L. C. 354 569
Umbilo, The, [1891] P. 118; 60 L. J. (P.) 7; 64 L. T. 328; 39 W. R. 336; 7 Asp. M. L. C. 26 19, 615
Umona, The (1913), December 8th 522
Umsinga, The, [1911] P. 234; 80 L. J. (P.) 90; 27 T. L. R. 439 . . . 482
Undaunted, The (1860), Lush. 90; 29 L. J. (P. M. & A.) 176; 2 L. T. 520 . 557, 564
——— (1886), 11 P. D. 46; 55 L. J. (P.) 24; 54 L. T. 542; 34 W. R. 686; 5 Asp. M. L. C. 580 212, 357, 359, 527, 569
Underwood, *Ex parte*, *Re* Hemsworth. *See* Hemsworth, *Re*, *Ex parte* Underwood.
——— *v.* Robertson (1815), 4 Camp. 138 75, 249, 250, 251
———, Son and Piper *v.* Lewis, [1894] 2 Q. B. 306; 64 L. J. (Q. B.) 60; 70 L. T. 833; 42 W. R. 517; 9 R. 440, C. A. 738, 739
———, ——— *v.* ——— (No. 2) (1894), *Times*, July 24th . . 739
Unia O. Vencedora, The (1864), 33 L. J. (P. M. & A.) 195; 11 L. T. 351 . . 75
Union, The (1860), Lush. 128; 30 L. J. (P. M. & A.) 17; 3 L. T. 280 . 246, 623, 624
Union Bank of London *v.* Lenanton (1878), 3 C. P. D. 234; 47 L. J. (Q. B.) 409; 38 L. T. 698; 3 Asp. M. L. C. 600, C. A. 15, 22

PAGE
Union Brick and Cement Co., *Re*, *Ex parte* Purbrook (1869), 4 Ch. App. 627; 21 L. T. 46; 17 W. R. 946 815
Union Cement and Brick Co., *Re* (1872), 26 L. T. 240; 20 W. R. 361 . . 821
Union Dampfschiffsrhederei Actiengesselschaft *v.* S.S. Parisian, S.S. Albano *v.* Allan Line Steamship Co., Ltd. *See* Albano, S.S. *v.* Allan Line Steamship Co., Ltd., Union Dampfschiffsrhederei Actiengesselschaft *v.* S.S. Parisian.
Union Steamship Co. *v.* "Aracan" (Owners), The "American" and The "Syria" (1874), L. R. 6 P. C. 127; 43 L. J. (ADM.) 30; 31 L. T. 42; 22 W. R. 927; 2 Asp. M. L. C. 350 385, 386, 443, 444, 491, 492, 528, 529
United Mining and Finance Corporation, Ltd. *v.* Becher, [1910] 2 K. B. 296; 79 L. J. (K. B.) 1006; 103 L. T. 65 830, 832
United Service, The (1883), 8 P. D. 56; 52 L. J. (P.) 18; 48 L. T. 486; 31 W. R. 614; 5 Asp. M. L. C. 55; affirmed (1883), 9 P. D. 3; 53 L. J. (P.) 1; 49 L. T. 701; 32 W. R. 565; 5 Asp. M. L. C. 170, C. A. . . . 358, 507
United States, The (1865), 12 L. T. 33 484, 510
United States *v.* St. Louis and Mississippi Valley Transportation Co. (1902), 184 United States Reports, 247 488
United States Steel Products Co. *v.* Great Western Rail. Co., [1913] 3 K. B. 357; 82 L. J. (K. B.) 968; 58 Sol. Jo. 31; 29 T. L. R. 643; 18 Com. Cas. 279 . 150, 285
Unity, The (1856), Sw. 101 365, 469
Upcerne, The, [1912] P. 160; 81 L. J. (P.) 110; 107 L. T. 860; 28 T. L. R. 370 360, 375, 547
Upperton, *Re* (1882), 30 W. R. 840 809
——— *v.* Union Castle Mail Steamship Co., Ltd. (1903), 89 L. T. 289; 19 T. L. R. 687; 9 Asp. M. L. C. 475; 9 Com. Cas. 50, C. A. . . . 212, 218
Uppington *v.* Bullen (1842), 2 Dr. & War. 184; 1 Con. & Law. 291 . . 749, 750
Upton *v.* Brown (1882), 20 Ch. D. 731; 47 L. T. 289; 30 W. R. 817, C. A. . 834
Upton Castle, The, [1906] P. 147; 75 L. J. (P.) 77; 93 L. T. 814; 10 Asp. M. L. C. 153 397, 398, 445, 471
"Ursula Bright" Steamship Co. *v.* Ripley (1903), 8 Com. Cas. 171 . . . 102
Ursula Fischer, The (1913), 29 T. L. R. 529 483
Uskmoor, The, [1902] P. 250; 71 L. J. (P.) 103; 87 L. T. 55; 51 W. R. 93; 18 T. L. R. 727; 9 Asp. M. L. C. 316 474, 477
"Utopia" (Owners) *v.* "Primula" (Owners and Master), The "Utopia," [1893] A. C. 492; 62 L. J. (P. C.) 118; 70 L. T. 47; 1 R. 394; 7 Asp. M. L. C. 408 383, 534, 555, 618, 648
Uxbridge (Earl), *Ex parte* (1801), 6 Ves. 425 840

V.

VADERLAND, The (1907), *Shipping Gazette*, November 28th 423
Vale *v.* Oppert (1875), 10 Ch. App. 340; 44 L. J. (CH.) 579; 33 L. T. 41; 23 W. R. 780 816
Valente *v.* Gibbs (1859), 6 C. B. (N. S.) 270; 28 L. J. (C. P.) 229; 5 Jur. (N. S.) 1213; 7 W. R. 500 93, 125, 178, 179, 210
Valentine *v.* Cleugh, "The Telegraph." *See* "Telegraph," The, Valentine *v.* Cleugh.
Valhalla, The (1908), *Times*, July 27th 122
Valiant, The (1839), 1 Wm. Rob. 64 36
Valieri *v.* Bayland (1866), L. R. 1 C. P. 382; 35 L. J. (C. P.) 215; 14 L. T. 362; 12 Jur. (N. S.) 566; 14 W. R. 637 156
"Valkyrie," The, [1910] W. N. 138 583
Vallance, *Re* (1889), 24 L. J. N. C. 638 850
——— *v.* Falle (1884), 13 Q. B. D. 109; 53 L. J. (Q. B.) 459; 51 L. T. 158; 48 J. P. 519; 32 W. R. 769; 5 Asp. M. L. C. 280. 55
——— and Beioley, *Re*, Gregory *v.* Brunswick (Duke) (1844), 7 Man. & G. 511...814
Vallée *v.* Bucknall Nephews (1900), 16 T. L. R. 362 225
Vallejo *v.* Wheeler (1774), 1 Cowp. 143 112, 113
Valpy and Chaplin, *Ex parte*, *Re* Patent Bread Machinery Co. *See* Patent Bread Machinery Co., *Re*, *Ex parte* Valpy and Chaplin.
Van Baggen *v.* Baines (1854), 9 Exch. 523; 23 L. J. (EX.) 213; 2 C. L. R. 543...91, 94, 179
Van Casteel *v.* Booker (1848), 2 Exch. 691; 18 L. J. (EX.) 9 148
Van Eijck (C. A.) and Zoon *v.* Somerville, [1906] A. C. 489; 75 L. J. (P. C.) 67; 95 L. T. 161; 22 T. L. R. 715; 10 Asp. M. L. C. 263. 616
Van Laun, *Re*, *Ex parte* Pattullo, *Ex parte* Chatterton, [1907] 1 K. B. 155; 76 L. J. (K. B.) 142; 95 L. T. 840; 23 T. L. R. 94; 14 Mans. 11; affirmed, [1907] 2 K. B. 23; 76 L. J. (K. B.) 644; 97 L. T. 69; 23 T. L. R. 384; 14 Mans. 91, C. A. 771, 780, 788, 813

PAGE
Van Omeron *v.* Dowick (1809), 2 Camp. 42 76, 247, 249, 251
Van Sandau, *Ex parte*, *Re* Martin. *See* Martin, *Re*, *Ex parte* Van Sandau.
Vanderplank *v.* Miller (1828), Mood. & M. 169 489, 490
Vanderspar & Co. *v.* Duncan & Co. (1891), 8 T. L. R. 30 100
Vandyck, The (1881), 7 P. D. 42; affirmed (1882), 47 L. T. 695; 5 Asp. M. L. C. 17, C. A. 546, 558
Vanner *v.* Frost (1870), 39 L. J. (CH.) 626 35
Vansandau *v.* Browne (1832), 9 Bing. 402; 2 L. J. (P. C.) 34; 1 Dowl. 715; 2 Moo. & S. 543 739
Vardy, *Re*, *Re* Shrewsbury and Leicester Rail. Co. *See* Shrewsbury and Leicester Rail. Co., *Re*, *Re* Vardy.
Vaughan *v.* Campbell, Heatley & Co. (1885), 2 T. L. R. 33 185
——— *v.* Taff Vale Rail. Co. (1860), 5 H. & N. 679; 29 L. J. (EX.) 247; 2 L. T. 394; 6 Jur. (N. S.) 899; 8 W. R. 549 503
——— *v.* Vanderstegen (1854), 2 Drew. 289 811, 818
"Velasquez," The (1867), L. R. 1 P. C. 494; 4 Moo. P. C. C. (N. S.) 426; 36 L. J. (ADM.) 19; 16 L. T. 777; 16 W. R. 89 530
"Velocity," The, General Steam Navigation Co. *v.* Hedley. *See* General Steam Navigation Co. *v.* Hedley, The "Velocity."
Velox, The, [1906] P. 263; 73 L. J. (P.) 81; 97 L. T. 271; 10 Asp. M. L. C. 277 576, 586
Venus, Cargo ex (1866), L. R. 1 A. & E. 50; 12 Jur. (N. S.) 379; 14 W. R. 460 . 560
Vera Cruz, The (No. 1) (1884), 9 P. D. 88; 51 L. T. 24; 5 Asp. M. L. C. 254 . 382, 513
——— (No. 2) (1884), 9 P. D. 96; 53 L. J. (P.) 33; 51 L. T. 104; 32 W. R. 783; 5 Asp. M. L. C. 270, C. A. 518, 523
Veritas, The, [1901] P. 304; 70 L. J. (P.) 75; 85 L. T. 136; 50 W. R. 30; 17 T. L. R. 721; 9 Asp. M. L. C. 237 545, 580, 618, 622, 623
Verity *v.* Wylde, *Re* Downes. *See* Downes, *Re*, Verity *v.* Wylde.
Verlander *v.* Eddolls (1881), 51 L. J. (Q. B.) 55; 45 L. T. 543; 46 J. P. 229; 30 W. R. 104 856
Vertue *v.* Jewell (1814), 4 Camp. 31 163
Vianna, The (1858), Sw. 405 484
Vibilia (1838), 1 Wm. Rob. 1 70, 71
Vice *v.* Anson (Dowager Viscountess) (1827), 7 B. & C. 409; 6 L. J. (O. S.) (K. B.) 24; 3 C. & P. 19; 1 Man. & Ry. (K. B.) 113; Mood. & M. 97 802
Vickerson *v.* Crow, [1913] W. N. 341; 78 J. P. 88; 30 T. L. R. 111 61
Vickerstaff, *Re*, Vickerstaff *v.* Chadwick, [1906] 1 Ch. 762; 75 L. J. (CH.) 419; 94 L. T. 463; 54 W. R. 414 799
Victor, The (1860), Lush. 72; 29 L. J. (ADM.) 110; 2 L. T. 331 . . . 545, 619
——— (1865), 2 Asp. M. L. C. 261 75
Victor Covacevich, The (1885), 10 P. D. 40; 54 L. J. (P.) 48; 52 L. T. 632; 5 Asp. M. L. C. 417 385
Victor Söhne *v.* British and African Steam Navigation Co., [1888] W. N. 84 . 264
Victoria, The (1848), 3 Wm. Rob. 49 379, 381
——— (1859), Sw. 408 36
——— (1887), 12 P. D. 105; 56 L. J. (P.) 75; 56 L. T. 499; 35 W. R. 291; 6 Asp. M. L. C. 120 542
——— (1888), 13 P. D. 125; 57 L. J. (P.) 103; 59 L. T. 728; 37 W. R. 62; 6 Asp. M. L. C. 335 614
Village Belle, The (1874), 30 L. T. 232; 2 Asp. M. L. C. 228 . 130, 131, 195, 200, 201
Ville de l'Oriente, The (1860), 2 L. T. 62 204
Vincent *v.* Venner (1833), 1 My. & K. 212; 2 L. J. (CH.) 49 784
Vindobala, The (1889), 14 P. D. 50; 58 L. J. (P.) 51; 60 L. T. 657; 37 W. R. 409; 6 Asp. M. L. C. 376, C. A. 35, 36, 37
"Vindomora" (Owners) *v.* Lamb and "Haswell" (Owners and Owners of Cargo etc.), The "Vindomora," [1891] A. C. 1; 63 L. T. 749; 6 Asp. M. L. C. 569 424, 425
Vine (1825), 2 Hag. Adm. 1 564, 565
Vines and Hobbs, *Re*, *Ex parte* Shackell (1852), 2 De G. M. & G. 842, C. A. 788
Viney's Trust, *Re* (1868), 18 L. T. 851 824
Vinkestone *v.* Ebden (1698), 1 Salk. 248 638
Vipont *v.* Butler (1893), 28 L. J. 293 752
Virgil, The (1843), 2 Wm. Rob. 201 501, 535, 536

PAGE
Virginia Carolina Chemical Co. *v.* Norfolk and North American Steam Shipping Co., [1912] 1 K. B. 229; 81 L. J. (K. B.) 129; 105 L. T. 810; 28 T. L. R. 85; 12 Asp. M. L. C. 82; 17 Com. Cas. 6, C. A.; [1913] A. C. 52; 82 L. J. (K. B.) 389 112
Virgo, The (1876), 35 L. T. 519; 25 W. R. 397; 3 Asp. M. L. C. 285 . 502, 536
Vivian *v.* Mersey Docks Board (1869), L. R. 5 C. P. 19; 39 L. J. (C. P.) 3; 21 L. T. 362 555
Vivid, The (1849), 7 Notes of Cases, 127 448, 458
——— (1856), Sw. 88; 4 W. R. 504; affirmed, *sub nom.* Churchward *v.* Palmer, The Vivid, 10 Moo. P. C. C. 472; 4 W. R. 755 . . 487
——— (1873), 42 L. J. (ADM.) 57; 28 L. T. 375; 1 Asp. M. L. C. 601 . 489
Vivienne, The (1887), 12 P. D. 185; 56 L. J. (P.) 107; 57 L. T. 316; 36 W. R. 110; 6 Asp. M. L. C. 178 37
Vlierboom *v.* Chapman (1844), 13 M. & W. 230; 13 L. J. (EX.) 384; 8 Jur. 811...251, 254, 305, 315, 589
Vogeman *v.* Bisley (H. & G.) (1897), 2 Com. Cas. 81 304, 305
——— *v.* Zanzibar Steamship Co., Ltd. (1902), 7 Com. Cas. 254, C. A. . . 106
Volant, The (1842), 1 Wm. Rob. 383 613
——— (1864), Brown. & Lush. 321 28
Volcano, The (1844), 2 Wm. Rob. 337 489, 533
Von Freeden *v.* Hull, Blyth & Co. (1906), 75 L. J. (K. B.) 359; 94 L. T. 849; 22 T. L. R. 358; 10 Asp. M. L. C. 247; reversed (1907), 76 L. J. (K. B.) 715; 96 L. T. 590; 23 T. L. R. 335; 10 Asp. M. L. C. 394, C. A. . . 15, 22, 35, 37
Vortigern, The, [1899] P. 140; 68 L. J. (P.) 49; 80 L. T. 382; 47 W. R. 437; 15 T. L. R. 259; 8 Asp. M. L. C. 523; 4 Com. Cas. 152, C. A. . . 212, 214, 215, 217, 222
Vrede, The (1861), Lush. 322; 30 L. J. (P. M. & A.) 209 568
Vrouw Margaretha, The (1801), 4 Ch. Rob. 103 558
Vrow Anna Catharina, The (1806), 6 Ch. Rob. 269 305
Vyse *v.* Foster (1875), 10 Ch. App. 236; 44 L. J. (CH.) 344; 32 L. T. 219; 23 W. R. 413 845

W.

WADE *v.* Cockerline (1905), 53 W. R. 420; 21 T. L. R. 296; 10 Com. Cas. 115, C. A. 117
Wadsworth, *Re*, Rhodes *v.* Sugden (1885), 29 Ch. D. 517; 54 L. J. (CH.) 638; 52 L. T. 613; 33 W. R. 558 . . 824, 826
———, *Re*, ——— (1886), 34 Ch. D. 155; 56 L. J. (CH.) 127; 55 L. T. 596; 35 W. R. 75, C. A. 819, 820
——— *v.* Marshall (1832), 2 Cr. & J. 665 738, 739
Wagstaff *v.* Anderson (1880), 5 C. P. D. 171; 49 L. J. (Q. B.) 485; 42 L. T. 720; 28 W. R. 856, C. A. 90, 148, 170, 173, 247, 248
——— *v.* Wilson (1832), 4 B. & Ad. 339; 1 Nev. & M. (K. B.) 1 . . . 741
Wahlberg *v.* Young (1876), 45 L. J. (Q. B.) 783; 24 W. R. 846; 4 Asp. M. L. C. 27, n. 616
Waikato S.S. (Owners of Cargo) *v.* New Zealand Shipping Co., [1899] 1 Q. B. 56; 68 L. J. (Q. B.) 1; 79 L. T. 326; 15 T. L. R. 33; 4 Com. Cas. 10; 8 Asp. M. L. C. 442, C. A. 358
Waine *v.* Kempster (1859), 1 F. & F. 695 757
Wait *v.* Baker (1848), 2 Exch. 1; 17 L. J. (EX.) 307 160, 162
Wakasa Maru, The (1908), *Shipping Gazette*, June 2nd, C. A. 475
Wake, *Ex parte*, *Re* Booth. *See* Booth, *Re*, *Ex parte* Wake.
——— *v.* Harrop (1862), 1 H. & C. 202; 31 L. J. (EX.) 451; 7 L. T. 96; 8 Jur. (N. S.) 845; 10 W. R. 626 90
Wakefield *v.* Newbon (1844), 6 Q. B. 276; 13 L. J. (Q. B.) 258; 8 Jur. 735 . 817
Walbank *v.* Quarterman (1846), 3 C. B. 94 836
Walford de Baerdemaecker & Co. *v.* Galindez Brothers (1897), 2 Com. Cas. 137 . 212, 318, 322, 323
Walkden *v.* Hartley and Cavell (1886), 81 L. T. Jo. 177 731
Walker, *Ex parte*, *Re* Foster. *See* Foster, *Re*, *Ex parte* Walker.
———, *Re*, Meredith *v.* Walker (1893), 68 L. T. 517 815, 819
——— *v.* Arlett (1831), 1 Dowl. 61 830
——— *v.* Beanlands, *Re* H. *See* H., *Re*, Walker *v.* Beanlands.
——— *v.* Pearce, *Re* an Attorney. *See* Attorney, an, *Re*, Walker *v.* Pearce.
——— *v.* Provincial Homes Investment Co. (1910), 101 L. T. 871, C. A. . . 769

PAGE
Walker *v.* Smith (1861), 29 Beav. 394 752
——— (Thomas) & Co. *v.* Horlock, The Fox. *See* Fox, The, Walker (Thomas) & Co. *v.* Horlock.
Wallace *v.* Fielden, The "Oriental" (1851), 7 Moo. P. C. C. 398 . 71, 230, 245, 253
Waller *v.* Holmes (1860), 1 John. & H. 239; 30 L. J. (CH.) 24; 3 L. T. 289; 6 Jur. (N. S.) 1367; 9 W. R. 32 836, 845, 846
——— *v.* Lacy (1840), 1 Man. & G. 54; 9 L. J. (C. P.) 217; 4 Jur. 435; 1 Scott (N. R.), 186; 8 Dowl. 653 776
Walley *v.* Montgomery (1803), 3 East, 585 160, 161, 166
Wallis, *Ex parte* (1862), 2 B. & S. 416; 31 L. J. (Q. B.) 176; 6 L. T. 242; 8 Jur. (N. S.) 913; 10 W. R. 524 714
Wallsend, The, [1907] P. 302; 76 L. J. (P.) 131; 96 L. T. 851; 23 T. L. R. 356 . 539, 541, 555, 642
Walmesley *v.* Booth (1741), 2 Atk. 27. 751, 811
Walmsley, *Re* (1835), 2 Ad. & El. 575 839
Walsh, *Re* (1850), 12 Beav. 490 789
Walshe, *Re* (1876), 10 I. R. C. L. 165; 10 I. L. T. 143 720
——— *v.* Provan (1853), 8 Exch. 843; 22 L. J. (EX.) 355; 1 C. L. R. 823 . 65, 66, 296, 297
Walters, *Re* (1845), 9 Beav. 299 778, 779
——— *v.* Morgan (1860), 3 De G. F. & J. 718; 4 L. T. 758 751
Walthew *v.* Mavrojani (1870), L. R. 5 Exch. 116; 39 L. J. (EX.) 81; 22 L. T. 310...316, 320
Walton *v.* Fothergill (1835), 7 C. & P. 392 211
——— *v.* London, Brighton and South Coast Rail. Co. (1866), Har. & Ruth. 424 508, 513
Ward, *Re* (1885), 28 Ch. D. 719; 54 L. J. (CH.) 508; 33 W. R. 783 . . 777, 782
———, *Re*, [1896] 2 Ch. 31; 65 L. J. (CH.) 595; 74 L. T. 567; 44 W. R. 484, C. A. 777, 791
———, *Re*, Allen *v.* Aldridge (1844), 5 Beav. 401 781
———, *Re*, Simmons *v.* Rose, Weeks *v.* Ward. *See* Simmons *v.* Rose, Weeks *v.* Ward, *Re* Ward.
——— *v.* Beck (1863), 13 C. B. (N. S.) 668; 32 L. J. (C. P.) 113; 9 Jur. (N. S.) 912 . 24
——— *v.* Carttar (1865), L. R. 1 Eq. 29 749
——— *v.* Eyre (1880), 15 Ch. D. 130; 49 L. J. (CH.) 657; 43 L. T. 525; 28 W. R. 712, C. A. 810, 846, 847
——— *v.* Felton (1801), 1 East, 507 295, 296
——— *v.* Gamgee (1891), 40 W. R. 39; 7 T. L. R. 752 727, 858
——— *v.* Gregg (1837), 5 Dowl. 729; Will. Woll. & Dav. 351 809
——— *v.* Haddrill, [1904] 1 K. B. 399; 73 L. J. (K. B.) 277; 90 L. T. 232; 52 W. R. 398. 822
——— *v.* Hepple (1808), 15 Ves. 297 845
——— *v.* Holmes, *Re* Dean. *See* Dean, *Re*, Ward *v.* Holmes.
——— *v.* Lawson (1872), 8 Ch. App. 65; 42 L. J. (CH.) 273; 21 W. R. 88 . 844, 847
——— *v.* ——— (1890), 43 Ch. D. 353; 59 L. J. (CH.) 323; 62 L. T. 158; 38 W. R. 300, C. A. 846
——— *v.* Proctor (1891), 7 T. L. R. 244 812
——— *v.* Royal Exchange Shipping Co., *Ex parte* Harrison (1887), 58 L. T. 174; 6 Asp. M. L. C. 239 28, 29
——— *v.* Sharp (1884), 53 L. J. (CH.) 313; 50 L. T. 557; 32 W. R. 584 . 748, 751, 811
——— & Co. *v.* Weir & Co. (1899), 4 Com. Cas. 216 137
———, Bowie & Co., *Re* (1910), 102 L. T. 881, C. A. 788
———, Mills, Witham and Lambert, *Re*, De Mora *v.* Concha, [1887] W. N. 194 . 737, 743
Wardell *v.* Mourillyan (1798), 2 Esp. 693 265
Wardle *v.* Nicholson (1833), 4 B. & Ad. 469; 2 L. J. (K. B.) 76; 1 Nev. & M. (K. B.) 355 775
Waring *v.* Cox (1808), 1 Camp. 369 159
Warkworth, The (1883), 9 P. D. 20; 53 L. J. (P.) 4; 49 L. T. 715; 32 W. R. 479; 5 Asp. M. L. C. 194 614
——— (1884), 9 P. D. 145; 53 L. J. (P.) 65; 51 L. T. 558; 33 W. R. 112; 5 Asp. M. L. C. 326, C. A. 117, 502, 613
Warren, *Ex parte* (1835), 1 Har. & W. 113 850
——— *v.* London Road Car Co. (1907), 52 Sol. Jo. 13 834

PAGE
Warren *v.* Peabody (1849), 8 C. B. 800; 19 L. J. (C. P.) 43; 14 Jur. 150 . 100, 191
Warrior, The (1818), 2 Dods. 288 76
——— (1862), Lush. 476; 6 L. T. 133 49, 567
——— (1872), L. R. 3 A. & E. 553; 27 L. T. 101; 21 W. R. 82; 1 Asp. M. L. C. 400 444, 492
Wastwater Steamship Co. *v.* Neale (T. B.) & Co. (1902), 86 L. T. 266; 9 Asp. M. L. C. 282 164, 298
Water Nymph, The *v.* The Carlisle (1865), Holt (ADM.), 121 451
Waterland *v.* Serle (1897), 32 L. J. 582, C. A. 827
Waterloo, The (1820), 2 Dods. 433 565, 566
Waters *v.* Taylor (1837), 2 My. & Cr. 526; 6 L. J. (CH.) 245; 1 Jur. 375 . 790, 811
——— *v.* Thorn (1856), 22 Beav. 547 748, 749
Watkins *v.* Naval Colliery Co. (1897), Ltd., [1912] A. C. 693; 81 L. J. (K. B.) 1056; 107 L. T. 321; 56 Sol. Jo. 719; 28 T. L. R. 569 45
Watkinson *v.* Bernadiston (1726), 2 P. Wms. 367 621
Watson, *Ex parte*, *Re* Onward Building Society. *See* Onward Building Society, *Re*, *Ex parte* Watson.
———, *Re* (1884), 53 L. J. (CH.) 305; 50 L. T. 205; 32 W. R. 477 . . . 818
———, *Re*, *Ex parte* Phillips (1886), 18 Q. B. D. 116; 56 L. J. (Q. B.) 78; 35 W. R. 290 730
———, *Re*, *Ex parte* ——— (1887), 19 Q. B. D. 234; 56 L. J. (Q. B.) 619; 57 L. T. 215; 35 W. R. 709, C. A. 796
——— *v.* Board of Trade (1884), 22 Sc. L. R. 22 592
——— *v.* Borner (H.) & Co., Ltd. (1900), 16 T. L. R. 524; 5 Com. Cas. 377, C. A. 259, 261, 277, 278
——— *v.* Clark (1813), 1 Dow, 336 218
——— *v.* Duncan (1879), 16 Sc. L. R. 791; 6 R. (Ct. of Sess.) 1247 . . 15
——— *v.* Lyon (1855), 7 De G. M. & G. 288; 24 L. J. (CH.) 754; 3 W. R. 543, C. A. 820
——— *v.* Maskell (1834), 1 Bing. (N. C.) 366; 4 L. J. (C. P.) 266; 1 Scott, 658; 3 Dowl. 638; 1 Hodg. 73 823
——— *v.* Rodwell (1879), 11 Ch. D. 150; 48 L. J. (CH.) 209; 39 L. T. 614; 27 W. R. 265, C. A. 790, 811
——— *v.* Swann (1862), 11 C. B. (N. S.) 756; 31 L. J. (C. P.) 210 . . . 90
——— & Co. *v.* Shankland (1873), L. R. 2 Sc. & Div. 304; 11 Macpherson (House of Lords), 51; 45 Sc. Jur. 179 312, 313
——— and Parker *v.* Gregory, The "Cairo," [1908] W. N. 230; 11 Asp. M. L. C. 161 65, 620
——— Brothers Shipping Co., Ltd. *v.* Mysore Manganese Co., Ltd. (1910), 102 L. T. 169; 26 T. L. R. 221; 54 Sol. Jo. 234; 11 Asp. M. L. C. 364; 15 Com. Cas. 159 124, 200, 273
——— Steamship Co., Ltd. *v.* Merryweather & Co. (1913), 108 L. T. 1031; 18 Com. Cas. 294 99, 210
Watt, The (1843), 2 Wm. Rob. 70 564, 568, 588
Watt *v.* Ligertwood (1874), L. R. 2 Sc. & Div. 361; 1 Rettie (House of Lords), 21 828
Watts, *Ex parte* (1832), 1 Dowl. 512 830
———, *Ex parte*, *Re* Schelingser. *See* Schelingser, *Re*, *Ex parte* Watts.
———, *Ex parte*, *Re* Sedgwick. *See* Sedgwick, *Re*, *Ex parte* Watts.
———, *Re*, Davies *v.* Davies (1913), 57 Sol. Jo. 534; 29 T. L. R. 513 . . 856
——— *v.* Porter (1854), 3 E. & B. 743; 23 L. J. (Q. B.) 345; 1 Jur. (N. S.) 133; 2 C. L. R. 1553 757
———, Ward & Co. *v.* Grant & Co. (1889), 26 Sc. L. R. 660 310
Waugh, *Re* (1859), 29 Beav. 666; 30 L. J. (CH.) 796; 9 W. R. 775 . . . 782
——— *v.* Morris (1873), L. R. 8 Q. B. 202; 42 L. J. (Q. B.) 57; 28 L. T. 265; 21 W. R. 438 266, 274, 307
Wavell, *Re* (1856), 22 Beav. 634 791
Waverley, The (1871), L. R. 3 A. & E. 369; 40 L. J. (ADM.) 42; 24 L. T. 713; 1 Asp. M. L. C. 47 572
Wavertree Sailing Ship Co. *v.* Love, [1897] A. C. 373; 66 L. J. (P. C.) 77; 76 L. T. 576; 13 T. L. R. 419; 8 Asp. M. L. C. 276 325
Wayman, *Re*, *Ex parte* Official Receiver (1889), 24 Q. B. D. 68; 59 L. J. (Q. B.) 28; 61 L. T. 644; 38 W. R. 95; 6 Morr. 272 753
Wear Packet, The (1855), 2 Ecc. & Ad. 256 551
Wear River Commissioners *v.* Adamson (1877), 2 App. Cas. 743; 47 L. J. (Q. B.) 193; 37 L. T. 543; 26 W. R. 217 526, 618, 644

PAGE
Weare, *Re*, [1893] 2 Q. B. 439; 62 L. J. (Q. B.) 596; 69 L. T. 522; 58 J. P. 6, C. A. 849, 854
Webb, *Ex parte*, *Re* Dowson. *See* Dowson, *Re*, *Ex parte* Webb.
——, *Re* (1845), 14 L. J. (Q. B.) 244; 9 Jur. 538; 2 Dowl. & L. 932 . . 830
——, *Re*, Lambert *v.* Still, [1894] 1 Ch. 73; 63 L. J. (CH.) 145; 70 L. T. 318, C. A. 753
——, *Re*, Still *v.* Webb, [1897] 1 Ch. 144; 66 L. J. (CH.) 163; 75 L. T. 478; 45 W. R. 170 763
—— *v.* Stone (1793), 1 Anst. 260 808
—— *v.* Thomson (1797), 1 Bos. & P. 5 83
Webb's Estate, *Re*, Webb *v.* Jones (1873), 28 L. T. 726 804
Webster, *Re*, [1891] 2 Ch. 102; 60 L. J. (CH.) 338; 64 L. T. 250; 39 W. R. 535...790, 792
—— *v.* Bray (1849), 7 Hare, 159 842
—— *v.* Jenner, Jenner *v.* Morris. *See* Jenner *v.* Morris, Webster *v.* Jenner.
—— *v.* Le Hunt (1861), 9 W. R. 804 737, 738, 819
—— *v.* Seckamp (1821), 4 B. & Ald. 352 69
—— & Co. and Anderson & Co. *v.* Bond and Storey (1884), Cab. & El. 338. 110
—— and Jones' Contract, *Re*, [1902] 2 Ch. 551; 71 L. J. (CH.) 749; 87 L. T. 213, C. A. 766
Weddall, *Re* (1884), 29 Sol. Jo. 85 766
Wedderburn *v.* Bell (1807), 1 Camp. 1 212
Weeks *v.* Ross, [1913] 2 K. B. 229; 82 L. J. (K. B.) 925; 108 L. T. 423; 77 J. P. 182; 29 T. L. R. 369; 23 Cox, C. C. 337; 12 Asp. M. L. C. 307 ... 14, 331, 375
—— *v.* Ward, *Re* Ward, Simmons *v.* Rose. *See* Simmons *v.* Rose, Weeks *v.* Ward, *Re* Ward.
Wega, The, [1895] P. 156; 64 L. J. (P.) 68; 72 L. T. 332; 11 R. 726; 7 Asp. M. L. C. 597 404, 406, 482
Wegener *v.* Smith (1854), 15 C. B. 285 176
Weguelin *v.* Cellier (1873), L. R. 6 H. L. 286; 42 L. J. (CH.) 758; 22 W. R. 26 29, 150, 292, 302, 308
Wehner *v.* Dene Steam Shipping Co., [1905] 2 K. B. 92; 74 L. J. (K. B.) 550; 21 T. L. R. 339; 10 Com. Cas. 139 . . . 105, 135, 170, 171, 286, 298, 312
Weir *v.* Union Steamship Co., [1900] A. C. 525; 69 L. J. (Q. B.) 809; 82 L. T. 91; 5 Com. Cas. 363; 9 Asp. M. L. C. 111 . . . 86, 185
—— & Co. *v.* Girvin, Roper & Co., [1900] 1 Q. B. 45; 69 L. J. (Q. B.) 168; 81 L. T. 687; 48 W. R. 179; 16 T. L. R. 31; 9 Asp. M. L. C. 7; 5 Com. Cas. 40, C. A. 201, 202, 305, 312
———— *v.* Pirie & Co. (No. 1) (1898), 3 Com. Cas. 263, C. A. . . . 123
———— *v.* Richardson (1897), 14 T. L. R. 80; 3 Com. Cas. 20 . 276, 277, 646
Welch, Perrin & Co. *v.* Anderson, Anderson & Co. (1891), 61 L. J. (Q. B.) 167; 66 L. T. 442; 7 Asp. M. L. C. 177, C. A. 186, 192, 200, 210
Welchman, *Re* (1848), 11 Beav. 319 789
Welfitt, *Re*, *Ex parte* Cheeseman (1763), 2 Eden, 181 287
Wellborne, *Re*, [1900] 1 Ch. 857; 69 L. J. (CH.) 462; 82 L. T. 375; 48 W. R. 375; reversed, [1901] 1 Ch. 312; 70 L. J. (CH.) 172; 83 L. T. 611; 49 W. R. 113, C. A. 784, 790
Wellby *v.* Still, [1894] 3 Ch. 641; 63 L. J. (CH.) 931; 71 L. T. 426; 43 W. R. 73; 8 R. 658 763, 766
—— *v.* ——, [1895] 1 Ch. 524; 64 L. J. (CH.) 495; 72 L. T. 108; 13 R. 165...762
Welles *v.* Middleton (1784), 1 Cox, Eq. Cas. 112. 747
Wellfield (Owners) *v.* Adamson and Short, The Alfred (1884), 5 Asp. M. L. C. 214 559, 581
Wells, *Re* (1845), 8 Beav. 416 778, 783, 789
—— *v.* Gas Float Whitton (No. 2) (Owners), [1897] A. C. 337; 66 L. J. (ADM.) 99; 76 L. T. 663 14, 361, 617, 619
Welsh *v.* Silwell (1847), 11 Jur. 471 778
Wenham, *Ex parte*, *Re* Wood. *See* Wood, *Re*, *Ex parte* Wenham.
Wentworth *v.* Lloyd (1886), L. R. 2 Eq. 607; 35 L. J. (CH.) 642; 14 L. T. 751; 12 Jur. (N. S.) 581 801
———— *v.* Tubb (1843), 2 Y. & C. Ch. Cas. 537; 5 Jur. 1150; 6 Jur. 980; 7 Jur. 738 732
Werldsborgaren, The (1801) 4 Ch. Rob. 17. 305
Werra, The (1886), 12 P. D. 52; 56 L. J. (P.) 53; 56 L. T. 580; 35 W. R. 552; 6 Asp. M. L. C. 115 575, 576, 577, 578, 587

PAGE
West Cock, The, [1911] P. 23; 27 T. L. R. 52; affirmed, [1911] P. 208; 80 L. J. (P.) 97; 104 L. T. 736; 55 Sol. Jo. 329; 27 T. L. R. 301, C. A. . 357, 358, 359, 509, 527
West Friesland, The (1859), Sw. 454; 5 Jur. (N. S.) 658 68
West Ham Union Guardians *v.* St. Matthew, Bethnal Green (Churchwardens etc.), [1896] A. C. 477; 65 L. J. (M. C.) 201; 75 L. T. 286; 60 J. P. 740 . 767
West Hartlepool Steam Navigation Co. *v.* Tagart, Beaton & Co. (1903), 19 T. L. R. 251, C. A. 173, 286, 287
West India Telegraph Co. *v.* Home and Colonial Insurance Co. (1880), 6 Q. B. D. 51; 50 L. J. (Q. B.) 41; 43 L. T. 420; 29 W. R. 92; 4 Asp. M. L. C. 341, C. A. 111
West, King and Adams, *Re, Ex parte* Clough, [1892] 2 Q. B. 102; 61 L. J. (Q. B.) 639; 67 L. T. 57; 40 W. R. 644 774, 779, 787, 788
West of England Bank *v.* Batchelor (1882), 51 L. J. (CH.) 199; 46 L. T. 132; 30 W. R. 364 815
Westacott *v.* Bevan, [1891] 1 Q. B. 774; 60 L. J. (Q. B.) 536; 65 L. T. 263; 39 W. R. 363 824
Westbourne, The (1889), 14 P. D. 132; 58 L. J. (P.) 78; 61 L. T. 156; 38 W. R. 56; 6 Asp. M. L. C. 405, C. A. 571
Westburn, The (1896), 74 L. T. 200; 8 Asp. M. L. C. 130 568
Western Belle, The (1906), 95 L. T. 364; 10 Asp. M. L. C. 279 . . . 490, 495, 503
Western Electric Co. *v.* Great Eastern Rail. Co., [1913] 3 K. B. 15; 82 L. J. (K. B.) 746; 109 L. T. 46; 29 T. L. R. 560; 18 Com. Cas. 250 . . . 107
Western Ocean, The (1870), L. R. 3 A. & E. 38 28
Western Steamship Co. *v.* Amaral Sutherland & Co., [1913] 3 K. B. 366; 82 L. J. (K. B.) 1180; 109 L. T. 217; 58 Sol. Jo. 14; 29 T. L. R. 660 . 122, 125
Westlake, *Re, Ex parte* Willoughby (1881), 16 Ch. D. 604; 44 L. T. 111; 29 W. R. 935 621, 627
Westland *v.* Robinson (undated), cited 2 Vern. 212; Abbot on Shipping, 5th ed., p. 200; 14th ed., p. 678 208
Westminster, The (1841), 1 Wm. Rob. 229 571, 580, 588, 619
Westmoreland, The (1845), 4 Notes of Cases, 173; 2 Wm. Rob. 394 . 625, 626, 631
Westmorland, The (1841), 1 Wm. Rob. 216 42, 60
Westoll *v.* Carter (1898), 14 T. L. R. 281; 3 Com. Cas. 112 321
Weston *v.* Wright (1841), 7 M. &. W. 396; 10 L. J. (EX.) 329 . . . 66, 313
Westport Coal Co. *v.* McPhail, [1898] 2 Q. B. 130; 67 L. J. (Q. B.) 674; 78 L. T. 490; 46 W. R. 566; 14 T. L. R. 388; 8 Asp. M. L. C. 378; 3 Com. Cas. 140, C. A. 116
Westrup *v.* Great Yarmouth Steam Carrying Co. (1889), 43 Ch. D. 241; 59 L. J. (CH.) 111; 61 L. T. 714; 38 W. R. 505; 6 Asp. M. L. C. 443 . 618, 621
Westwick *v.* Theodor (1875), L. R. 10 Q. B. 224; 44 L. J. (Q. B.) 110; 32 L. T. 696; 23 W. R. 620 713
Westzinthus, *Re* (1833), 5 B. &. Ad. 817; 3 L. J. (K. B.) 56; 2 Nev. & M. (K. B.) 644 147, 162, 163
Wetherell, *Ex parte, Re* Barnard. *See* Barnard, *Re, Ex parte* Wetherell.
Weymouth Corporation *v.* Nugent (1865), 6 B. &. S. 22; 34 L. J. (M. C.) 81; 11 L. T. 672; 11 Jur. (N. S.) 465; 13 W. R. 338 636
W. H. No. 1, The, and The Knight Errant, Comet (Owners) *v.* The W. H. No. 1 (Owners). *See* Comet (Owners) *v.* W. H., No. 1 (Owners), The, The W. H. No. 1, and The Knight Errant.
Whalley, *Re* (1855), 20 Beav. 576 779, 782
——— *v.* Glover (1850), 3 Car. & Kir. 13 777, 812
——— *v.* Halley (1829), 8 L. J. (O. S.) (K. B.) 6 820
——— *v.* Williamson (1843), 6 Man. & G. 269; 6 Scott (N. R.), 948 . . 808
Wheatcroft, *Re* (1877), 6 Ch. D. 97; 46 L. J. (CH.) 669; 26 W. R. 69 . . 740
Wheatley *v.* Bastow (1855), 7 De G. M. & G. 261; 24 L. J. (CH.) 727; 1 Jur. (N. S.) 1124; 3 W. R. 540; 3 Eq. Rep. 865, C. A. . 741
——— *v.* ———, *Re* Collins. *See* Collins, *Re*, Wheatley *v.* Bastow.
Wheatsheaf, The *v.* The Intrepide (1866), 13 L. T. 612 461, 464
Wheeler, *Ex parte* (1814), 3 Ves. & B. 21 781
——— *v.* Bavidge (1854), 9 Exch. 668; 23 L. J. (EX.) 221; 2 C. L. R. 1077 . 180, 196
——— *v.* Fradd (1898), 14 T. L. R. 440, C. A. 796, 804

PAGE
Whicher, *Re* (1844), 13 M. & W. 549; 14 L. J. (EX.) 78; 3 Dow. & L. 407 . 785
Whincup *v.* Hughes (1871), L. R. 6 C. P. 78; 40 L. J. (C. P.) 104; 24 L. T. 74; 19 W. R. 439 712
Whitcombe, *Re* (1844), 8 Beav. 140; 14 L. J. (CH.) 19 770
White, *Re* (1870), 23 L. T. 387; 19 W. R. 39 837, 840
——, *Re*, Pennell *v.* Franklin, [1898] 2 Ch. 217; 67 L. J. (CH.) 502; 78 L. T. 770; 46 W. R. 767; 14 T. L. R. 503, C. A. 753
—— *v.* Crisp (1854), 10 Exch. 312; 23 L. J. (EX.) 317 . . . 383, 534, 555
—— *v.* Granada Steamship Co. (1896), 13 T. L. R. 1, C. A. 96
—— *v.* Hillacre (1838), 3 Y. & C. (EX.) 278; 8 L. J. (EX. EQ.) 65 . . . 833
—— *v.* Royal Exchange Assurance (1822), 1 Bing. 20; 7 Moore (C. P.), 249 . 846
—— *v.* Sandell (1835), 3 Dowl. 798 834
—— *v.* Turnbull, Martin & Co. (1898), 3 Com. Cas. 183; 78 L. T. 726; 14 T. L. R. 401; 8 Asp. M. L. C. 406, C. A.. 137, 138
—— *v.* Williams, [1912] A. C. 814; 82 L. J. (P. C.) 11; 107 L. T. 99; 28 T. L. R. 521; 17 Com. Cas. 309 267
—— & Co. *v.* Furness, Withy & Co., [1895] A. C. 40; 64 L. J. (Q. B.) 161; 72 L. T. 157; 11 R. 53; 7 Asp. M. L. C. 574 280, 288, 295, 296
White Star, The (1866), L. R. 1 A. & E. 68 568
Whitecross Wire Co. *v.* Savill (1882), 8 Q. B. D. 653; 51 L. J. (Q. B.) 426; 46 L. T. 643; 30 W. R. 588; 4 Asp. M. L. C. 531, C. A. . . . 316, 318, 319
Whitehead, *Re* (1885), 28 Ch. D. 614; 54 L. J. (CH.) 796; 52 L. T. 703; 33 W. R. 601, C. A. 852
———— *v.* Lord (1852), 7 Exch. 691; 21 L. J. (EX.) 239 . . . 738, 739
Whiteley Exerciser, Ltd. *v.* Gamage, [1898] 2 Ch. 405; 79 L. T. 20; 5 Mans. 249 805
Whiteman *v.* Hawkins (1878), 4 C. P. D. 13; 39 L. T. 629; 27 W. R. 262 . 754, 757
Whites *v.* Steamship (Winchester) Co. (1886), 13 R. (Ct. of Sess.) 524; 23 Sc. L. R. 342 94, 185
Whitfield *v.* Parfitt (1851), 4 De G. & Sm. 240; 15 Jur. 852 24
———— and the Incorporated Law Society, *Ex parte* (1892), 67 L. T. 856; 5 R. 114 854
Whiting *v.* Carpenter (1871), 24 L. T. 576 643
Whitlieburn, The (1900), 9 Asp. M. L. C. 154 377, 466, 469
Whittaker *v.* Howe (1840), 3 Beav. 383 740
Whittal & Co. *v.* Rahtken's Shipping Co., Ltd., [1907] 1 K. B. 783; 76 L. J. (K. B.) 538; 96 L. T. 885; 23 T. L. R. 346; 12 Com. Cas. 226 . . . 122, 218
Whittet *v.* Bush, *Re* Fry, Fry *v.* Lane. *See* Fry, *Re*, Fry *v.* Lane, Whittet *v.* Bush.
Whitwell *v.* Perrin (1858), 4 C. B. (N. S.) 412 35
———— *v.* Scheer (1838), 8 Ad. & El. 301; 7 L. J. (Q. B.) 244; 3 Nev. & P. (Q. B.) 398 178
Wickens *v.* Townsend (1830), 1 Russ. & M. 361 821
Wicksteed *v.* Biggs (1885), 54 L. J. (CH.) 967; 52 L. T. 428 . . . 803, 805
Widgery *v.* Tepper (1877), 5 Ch. D. 516; 46 L. J. (CH.) 579 749
Wiener *v.* Wilsons and Furness-Leyland Line (1910), 103 L. T. 168; 15 Com. Cas. 294, C. A. 139, 149, 199, 202, 216, 291
Wiggins *v.* Johnston (1845), 14 M. & W. 609; 15 L. J. (EX.) 202 . . 89, 308
———— *v.* Peppin (1839), 2 Beav. 403; 3 Jur. 721 729, 730, 734
Wild Ranger, The (1862), Lush. 553; 32 L. J. (P. M. & A.) 49; 7 L. T. 724 . 12
Wildbore *v.* Bryan, *Ex parte* Wildbore (1820), 8 Price, 677 845
Wilde, *Re*, [1910] W. N. 128, C. A. 793
——, *Re*, [1910] 1 Ch. 100; 79 L. J. (CH.) 119; 101 L. T. 734; *sub nom.* *Re* a Solicitor, 54 Sol. Jo. 67 781, 847
—— *v.* Walford, *Re* Harrald. *See* Harrald, *Re*, Wilde *v.* Walford.
Wiles & Co., Ltd. *v.* Ocean Steamship Co., Ltd. (1912), 107 L. T. 825; 57 Sol. Jo. 213 131, 234, 240
Wiley *v.* Crawford (1861), 1 B. & S. 253; 30 L. J. (Q. B.) 319; 4 L. T. 653; 7 Jur. (N. S.) 943; 9 W. R. 741 21
Wilhelm, The (1866), 14 L. T. 636 95, 212, 219
Wilhelm Schmidt, The (1871), 25 L. T. 34; 1 Asp. M. L. C. 82 . . . 96, 141
Wilhelm Tell, The, [1892] P. 337; 61 L. J. (P.) 127; 69 L. T. 199; 41 W. R. 205; 1 R. 551; 7 Asp. M. L. C. 329 573, 574, 626
Wilhelmina, The (1799), 2 Ch. Rob. 101, n. 305
Wilhelmine, The (1842), 1 Notes of Cases, 376 562
Wilkes *v.* Saunion (1877), 7 Ch. D. 188; 47 L. J. (CH.) 150 27

PAGE
Wilkie *v.* Geddes (1815), 3 Dow, 57 212
Wilkins *v.* Greer (1884), 28 Sol. Jo. 535 833
——— *v.* Mure (1784), 1 Cox, Eq. Cas. 150 297
Wilkinson *v.* Smart (1875), 33 L. T. 573 776, 777
——— *v.* Wilson, The "Bonaparte" (1853), 8 Moo. P. C. C. 459 . 230, 245, 253
Willand, *Ex parte* (1851), 11 C. B. 544 840
Willem III., The (1871), L. R. 3 A. & E. 487; 25 L. T. 386; 20 W. R. 216; 1 Asp. M. L. C. 129 559, 561, 586, 619
Willens *v.* Tandy (1842), 5 I. Eq. R. 1 811
Willet *v.* Chambers (1778), 2 Cowp. 814 760
William, The (1806), 6 Ch. Rob. 316 114
——— (1858), Sw. 346; 6 W. R. 871 623
William Beckford, The (1801), 3 Ch. Rob. 355 575
William F. Safford, The (1860), Lush. 69; 29 L. J. (P. M. & A.) 109; 2 L. T. 301 . 69, 623, 624, 626
William Frederick, The, The Byfoged Christensen (1879), 4 App. Cas. 669; 41 L. T. 535; 28 W. R. 233; 4 Asp. M. L. C. 201 367, 453
"William Lindsay," The, Doward *v.* Lindsay. *See* Doward *v.* Lindsay, The "William Lindsay."
William Lushington, The (1850), 7 Notes of Cases, 361 570
Williamina, The (1878), 3 P. D. 97 539
Williams, *Re* (1849), 12 Beav. 510; 19 L. J. (CH.) 422; 14 Jur. 561 . . . 830
———, *Re* (1852), 15 Beav. 417 786
———, *Re* (1860), 28 Beav. 465; 6 Jur. (N. S.) 908; 8 W. R. 645 . . . 818
———, *Re* (1861), 3 De G. F. & J. 104; 30 L. J. (CH.) 610; 4 L. T. 103; 7 Jur. (N. S.) 323; 9 W. R. 393, C. A. 841
———, *Re, Ex parte* Love (1891), 65 L. T. 68 786, 788
——— *v.* Allsup (1861), 10 C. B. (N. S.) 417; 30 L. J. (C. P.) 353; 8 Jur. (N. S.) 57; 4 L. T. 550 26, 29, 621
——— *v.* Dobbie (1884), 11 R. (Ct. of Sess.) 982; 21 Sc. L. R. 667 . . 226
——— *v.* Dunphy, [1889] W. N. 188 807
——— *v.* East India Co. (1802), 3 East, 192 101
——— *v.* Gibbs (1836), 5 Ad. & El. 208; 6 Nev. & M. (K. B.) 788; 2 Har. & W. 241 756
——— *v.* Jones (1826), 5 B. & C. 108; 7 Dow. & Ry. (K. B.) 549 . . . 842
——— *v.* ——— (1855), 4 W. R. 99 834
——— *v.* Lloyd, *Re, Ex parte* Games (1864), 3 H. & C. 294; 33 L. J. (EX.) 317 823
——— *v.* London Assurance Co. (1813), 1 M. & S. 318 322
——— *v.* Piggott (1825), Jac. 598 811
——— *v.* Preston (1882), 20 Ch. D. 672; 51 L. J. (CH.) 927; 47 L. T. 265; 30 W. R. 555, C. A. 743
——— *v.* Smith (1863), 14 C. B. (N. S.) 596 837
——— *v.* Wight, [1890] W. N. 50 798
——— *v.* Williams and Partridge (1910), 54 Sol. Jo. 506, C. A. . . . 831
——— & Co. *v.* Canton Insurance Office, Ltd., [1901] A. C. 462; 70 L. J. (K. B.) 962; 85 L. T. 317; 17 T. L. R. 696; 6 Com. Cas. 256 . . . 134
Williams' Claim, *Re* Great Eastern Steamship Co. *See* Great Eastern Steamship Co., *Re*, Williams' Claim.
Williamson, *Ex parte* (1876), 4 Ch. D. 581; 46 L. J. (CH.) 624; 35 L. T. 695 . 714
——— *v.* Hine, [1891] 1 Ch. D. 390; 60 L. J. (CH.) 123; 63 L. T. 682; 39 W. R. 239; 6 Asp. M. L. C. 559 35, 136
——— *v.* North Staffordshire Rail. Co. (1886), 32 Ch. D. 399; 55 L. J. (CH.) 938; 55 L. T. 452, C. A. 768
Willis *v.* Barron, [1902] A. C. 271; 71 L. J. (CH.) 609; 86 L. T. 805; 18 T. L. R. 602 747
——— *v.* Cooke (1855), 5 E. & B. 641; 25 L. J. (Q. B.) 16; 1 Jur. (N. S.) 1164; 4 W. R. 54 350
——— *v.* Kibble (1839), 1 Beav. 559 753
——— *v.* Maclachlan (1876), 1 Ex. D. 376; 45 L. J. (Q. B.) 689; 35 L. T. 218 . 828
——— *v.* Palmer (1859), 7 C. B. (N. S.) 340; 29 L. J. (C. P.) 194; 2 L. T. 626; 6 Jur. (N. S.) 732; 8 W. R. 295 27, 299, 302
Willoughby, *Ex parte, Re* Westlake. *See* Westlake, *Re, Ex parte* Willoughby.
Wills & Co. *v.* Burrell & Son (1894), 21 R. (Ct. of Sess.) 527; 31 Sc. L. R. 417 . 205
Willson *v.* Emmett (1854), 19 Beav. 233 737, 819
Wilmhurst *v.* Bowker (1844), 7 Man. & G. 882; 12 L. J. (EX.) 475; 8 Scott (N. R.), 571 160

PAGE
Wilmot *v.* Elkington (1833), 2 L. J. (K. B.) 103; 1 Nev. & M. (K. B.) 749 . . 758
Wilson, *Re* (1877), 21 Sol. Jo. 770, C. A. 736
———, *Re* (1885), 29 Ch. D. 790; 55 L. J. (CH.) 627; 53 L. T. 406, C. A. . 766, 767
———, *Re* (1889), 5 T. L. R. 654 854
——— *v.* Bank of Victoria (1867), L. R. 2 Q. B. 203; 36 L. J. (Q. B.) 89; 16 L. T. 9; 15 W. R. 693 221, 319
——— *v.* Birchall, *Re* Birchall. *See* Birchall, *Re*, Wilson *v.* Birchall.
——— *v.* Canada Shipping Co. (1877), 2 App. Cas. 389; 36 L. T. 155; 3 Asp. M. L. C. 361 452, 488, 492, 493
——— *v.* Carter (1863), 7 L. T. 676; 11 W. R. 337 642
——— *v.* Dickson (1818), 2 B. & Ald. 2 76, 613
——— *v.* Ford (1868), L. R. 3 Exch. 63; 37 L. J. (EX.) 60; 17 L. T. 605; 16 W. R. 482 731
——— *v.* Gabriel (1863), 4 B. & S. 243; 8 L. T. 502; 11 W. R. 803 . . 302
——— *v.* Gutteridge (1824), 3 B. & C. 157 780
——— *v.* Hicks (1857), 26 L. J. (EX.) 242 208, 209
——— *v.* Hood, *Re* Seaman. *See* Seaman, *Re*, Wilson *v.* Hood.
——— *v.* Knapp (1840), 8 Dowl. 426 808
——— *v.* Kymer (1813), 1 M. & S. 157 287, 296
——— *v.* London, Italian and Adriatic Steam Navigation Co. (1865), L. R. 1 C. P. 61; 13 L. T. 465; 12 Jur. (N. S.) 522; 1 Har. & Ruth. 29...279, 280
——— *v.* Millar (1816), 2 Stark. 1 249
——— *v.* R. (1866), L. R. 1 P. C. 405 33
——— *v.* Rankin (1865), L. R. 1 Q. B. 162; 6 B. & S. 208; 35 L. J. (Q. B.) 87; 13 L. T. 564; 14 W. R. 198 66, 213
——— *v.* Robertson (1855), 4 E. & B. 923; 24 L. J. (Q. B.) 185; 1 Jur. (N. S.) 755 636
——— *v.* Round (1863), 4 Giff. 416; 9 L. T. 675; 10 Jur. (N. S.) 34; 12 W. R. 402; 3 New Rep. 288 824, 825, 826
——— *v.* Tucker (1822), 3 Stark. 154 757
——— *v.* Wilson (1820), 1 Jac. & W. 457 729, 834
——— *v.* ——— (1872), L. R. 14 Eq. 32; 41 L. J. (CH.) 423; 26 L. T. 346; 20 W. R. 436 27, 29, 299, 300, 302
——— and Coventry *v.* Thoresen's Linie (1910), 79 L. J. (K. B.) 1048; 103 L. T. 112; 26 T. L. R. 546; 54 Sol. Jo. 655; 15 Com. Cas. 262 . 124, 125, 190, 200
———, Sons & Co. *v.* Currie, [1894] A. C. 116; 6 R. 162; 20 R. (Ct. of Sess.) 876 426, 429, 461
——————— *v.* Killick (1893), 68 L. T. 312; 7 Asp. M. L. C. 275 . . 88
——————— *v.* The "Xantho" (Cargo Owners) (1887), 12 App. Cas. 503; 56 L. J. (P.) 116; 57 L. T. 701; 36 W. R. 353; 6 Asp. M. L. C. 207...110, 111, 114, 157, 232, 233, 326
Wilsons, The (1841), 1 Wm. Rob. 172 569
Wilton, *Re* (1843), 13 L. J. (Q. B.) 17; 7 Jur. 1133 785, 790
——— *v.* Atlantic Royal Mail Steam Navigation Co. (1861), 10 C. B. (N. S.) 453; 30 L. J. (C. P.) 369; 4 L. T. 706; 8 Jur. (N. S.) 232; 9 W. R. 748 . . 328
Wiltshire *v.* Marshall, [1866] W. N. 80 802
Windham *v.* Bainton (1888), 21 Q. B. D. 199; 57 L. J. (Q. B.) 519; 36 W. R. 832 . 802, 805
Windram *v.* Robertson (1905), 42 Sc. L. R. 602; 7 F. (Ct. of Sess.) 665; 13 Scots Law Times, 157 456, 458, 459
Winestead, The, [1895] P. 170; 64 L. J. (P.) 51; 72 L. T. 91; 11 R. 720; 7 Asp. M. L. C. 547 611
Wingfield and Blew, *Re*, [1904] 2 Ch. 665; 73 L. J. (CH.) 797; 91 L. T. 783, C. A. 791
Winkfield, The, [1902] P. 42; 71 L. J. (P.) 21; 85 L. T. 688; 50 W. R. 246; 18 T. L. R. 178; 9 Asp. M. L. C. 259, C. A. 542
Winstanley, The, [1896] P. 297; 65 L. J. (P.) 121; 75 L. T. 133; 8 Asp. M. L. C. 170, C. A. 440, 441, 467, 481, 511, 514, 515
Winter *v.* Trimmer (1762), 1 Wm. Bl. 395 136, 207
Winterbottom, *Re* (1851), 15 Beav. 80 791
Wirrall, The (1848), 3 Wm. Rob. 56 486
Withall, *Re*, [1891] 3 Ch. 8; 61 L. J. (CH.) 14; 64 L. T. 704; 39 W. R. 529, C. A. 764, 766
Withers *v.* Parker (1860), 5 H. & N. 725; 29 L. J. (EX.) 320; 2 L. T. 602; 6 Jur. (N. S.) 1033; 8 W. R. 550 846, 847
Withington *v.* Neumann, *Re* Marsden's Estate. *See* Marsden's Estate, *Re*, Withington *v.* Neumann.

PAGE
Woburn Abbey, The (1869), 3 Mar. L. C. 240 489, 490
Wolf *v.* Summers (1811), 2 Camp. 631 283, 329
Wollison *v.* Hodgson (1834), 2 Dowl. 360 809
Wontner & Sons, *Re*, *Ex parte* Scheyer (1888), 52 J. P. 183 818
Wood, *Re*, [1891] W. N. 203 791
——, *Re*, *Ex parte* Fanshawe, [1897] 1 Q. B. 314; 66 L. J. (Q. B.) 69; 75 L. T. 387; 3 Mans. 299 827
——, *Re*, *Ex parte* Wenham (1872), 21 W. R. 104 744
—— *v.* Calvert (1886), 55 L. T. 53; 34 W. R. 732 766, 767
—— *v.* Downes (1811), 18 Ves. 120 749
—— *v.* Smith, The "City of Cambridge." *See* "City of Cambridge," The.
—— *v.* Turner, *Re* Turner. *See* Turner, *Re*, Wood *v.* Turner.
—— *v.* Wood (1828), 4 Russ. 558 835
—— & Co. *v.* Atlantic Transport Co. (1900), 5 Com. Cas. 121 . . . 164, 262
Woodard, *Re* (1869), 18 W. R. 37 787
Woodbridge & Sons *v.* Bellamy, [1911] 1 Ch. 326; 80 L. J. (CH.) 265; 55 Sol. Jo. 204, C. A. 712, 843
Woodfin and Wray, *Re* (1882), 51 L. J. (CH.) 427; 30 W. R. 422 . . . 832
Woodford, The (1905), *Shipping Gazette*, March 13th, C. A. 536
Woodham *v.* Peterson (1871), 25 L. T. 26; 1 Asp. M. L. C. 93 643
Woodhorn, The (1891), 92 L. T. Jo. 113 49
Wooding, *Re*, *Ex parte* Coates (1834), 3 Deac. & Ch. 626 729
Woodley *v.* Michell (1883), 11 Q. B. D. 47; 52 L. J. (Q. B.) 325; 48 L. T. 599; 31 W. R. 651; 5 Asp. M. L. C. 71, C. A. 111, 114
Woodrop-Sims, The (1815), 2 Dods. 83 373, 508, 509
Woods, *Re*, *Ex parte* Ditton (1880), 13 Ch. D. 318; 42 L. T. 160; 28 W. R. 402, C. A. 781, 782, 813
—— *v.* Russell (1822), 5 B. & Ald. 942 18
Woodward *v.* Humpage, Bevan's Case, *Re* Holmes' Estate. *See* Holmes' Estate, *Re*, Woodward *v.* Humpage, Bevan's Case.
Woolf *v.* Claggett (1800), 3 Esp. 257 212
Woollett, *Ex parte* (1844), 12 M. & W. 504 808, 809
Woolley *v.* Reddelieu (1843), 5 Man. & G. 316; 12 L. J. (C. P.) 152; 6 Scott (N. R.), 199; 7 Jur. 930 178, 181
Woollison *v.* Hodgson (1834), 2 Dowl. 360 776
Woosung, Cargo ex (1876), 1 P. D. 260; 35 L. T. 8; 25 W. R. 1; 3 Asp. M. L. C. 45, C. A. 569, 571, 573
Working Men's Mutual Society, *Re* (1882), 21 Ch. D. 831; 51 L. J. (CH.) 850; 47 L. T. 645; 30 W. R. 938 802
Workman and Army and Navy Auxiliary Co-operative Supply, Ltd. *v.* London and Lancashire Fire Insurance Co. (1903), 19 T. L. R. 360 . . . 736, 737
Worms *v.* Storey (1855), 11 Exch. 427; 25 L. J. (EX.) 1 221
Worrall *v.* Johnson (1820), 2 Jac. & W. 214 815, 820
Worsley *v.* Labouchere (1893), 28 L. J. 879 783
Wortham, *Ex parte* (1851), 4 De G. & Sm. 415 840
Wray, *Re* (1887), 36 Ch. D. 138; 56 L. J. (CH.) 1106; 57 L. T. 605; 36 W. R. 67, C. A. 839
—— *v.* Kemp (1884), 26 Ch. D. 169; 53 L. J. (CH.) 1020; 50 L. T. 552; 32 W. R. 334 741, 848
Wright *v.* Campbell (1767), 4 Burr. 2046 147, 157, 159, 163
—— *v.* Carter, [1903] 1 Ch. 27; 72 L. J. (CH.) 138; 87 L. T. 624; 51 W. R. 106; 19 T. L. R. 29, C. A. 748, 749, 752
—— *v.* Castle (1817), 3 Mer. 12 729, 741, 833
—— *v.* Dee Estates, Ltd., *Re* Dee Estates, Ltd. *See* Dee Estates, Ltd., *Re*, Wright *v.* Dee Estates, Ltd.
—— *v.* London Dock Co. (1859), 5 Jur. 1411, C. A. 146
—— *v.* Marwood (1881), 7 Q. B. D. 62; 50 L. J. (Q. B.) 643; 45 L. T. 297; 29 W. R. 673; 4 Asp. M. L. C. 451, C. A. . . . 75, 205, 315, 317, 318
—— *v.* Mudie (1823), 1 Sim. & St. 266 822
—— *v.* New Zealand Shipping Co. (1878), 4 Ex. D. 165; 40 L. T. 413; 4 Asp. M. L. C. 118, C. A. 121, 183, 267, 275, 276, 277, 278
——, Crossley & Co., *Re* (1902), 86 L. T. 280, C. A. 769
Wright's Trust, *Re*, Wright *v.* Sanderson, [1901] 1 Ch. 317; 70 L. J. (CH.) 119; 83 L. T. 515, C. A. 820, 821

PAGE
Wyatt *v.* Metropolitan Board of Works (1862), 11 C. B. (N. S.) 744; 31 L. J. (C. P.) 217 733
Wyche, *Re* (1848), 11 Beav. 209 788
Wyllie *v.* Harrison & Co. (1885), 13 R. (Ct. of Sess.) 92; 23 Sc. L. R. 62 . 121, 277

X.

X., *Re* (1886), 54 L. T. 634 798

Y.

Y., *Re* (1910), 54 Sol. Jo. 459 780, 838
Yalden, *Ex parte*, *Re* Austin. *See* Austin, *Re*, *Ex parte* Yalden.
Yan Yean, The (1883), 8 P. D. 147; 52 L. J. (P.) 67; 49 L. T. 186; 31 W. R. 950; 5 Asp. M. L. C. 135 577
Yarmouth, The, [1909] P. 293; 25 T. L. R. 746 614
Yates *v.* Duff (1832), 5 C. & P. 369 83, 328
——— *v.* Freckleton (1781), 2 Doug. (K. B.) 623 743
——— *v.* Meynell (1818), 8 Taunt. 302 283
——— *v.* Railston (1818), 2 Moore (C. P.), 294; 8 Taunt. 293 . . 284, 288, 304
——— *v.* Whyte (1838), 4 Bing. (N. C.) 272; 7 L. J. (C. P.) 116; 5 Scott, 640 . 291
Ydun, The, [1899] P. 236; 68 L. J. (P.) 101; 81 L. T. 10; 15 T. L. R. 361; 8 Asp. M. L. C. 551, C. A. 648
Yea *v.* Yea (1794), 2 Anst. 494 808
Yeo *v.* Tatem, The "Orient" (1871), L. R. 3 P. C. 696; 40 L. J. (ADM.) 29; 8 Moo. P. C. C. (N. S.) 74; 24 L. T. 918; 20 W. R. 6; 1 Asp. M. L. C. 108 . . 619
Yeoman *v.* R., [1904] 2 K. B. 429; 73 L. J. (K. B.) 905; 52 W. R. 627; 20 T. L. R. 524; 9 Com. Cas. 269, C. A. 120, 123
Yetts, *Re* (1864), 33 Beav. 412; 3 New Rep. 598 791
Yglesias *v.* Royal Exchange etc. Corporation (1870), L. R. 5 C. P. 141; 39 L. J. (C. P.) 173; 22 L. T. 269; 18 W. R. 381 796
Yonge *v.* Toynbee, [1910] 1 K. B. 215; 79 L. J. (K. B.) 208; 102 L. T. 57, C. A. 730, 732, 737, 740, 742, 831, 833, 834, 836
York, *Re*, Atkinson *v.* Powell (1887), 36 Ch. D. 233; 56 L. J. (CH.) 552; 56 L. T. 704; 35 W. R. 609 735, 736
Young, *Ex parte* (1813), 2 Rose, 78, n.; 2 Ves. & B. 242 34
——— *v.* Canning Jarrah Timber Co. (1899), 4 Com. Cas. 96 . . . 209, 309
——— *v.* English (1843), 7 Beav. 10; 13 L. J. (CH.) 76 817
——— *v.* Kitchin (1878), 3 Ex. D. 127; 47 L. J. (Q. B.) 579; 26 W. R. 403 625
——— *v.* Moeller (1855), 5 E. & B. 755 121, 176, 295
——— *v.* Redhead (1833), 2 Dowl. 119 823
——— *v.* S.S. "Scotia," [1903] A. C. 501; 72 L. J. (P. C.) 115; 89 L. T. 374; 9 Asp. M. L. C. 485 560, 569, 619
——— *v.* Walker (1847), 16 M. & W. 446 781, 798
——— *v.* Wallingford (1883), 52 L. J. (CH.) 590; 48 L. T. 756; 31 W. R. 838 754
"Yourri," Russian S.S. *v.* British S.S. "Spearman" (1885), 10 App. Cas. 276; 53 L. T. 29; 5 Asp. M. L. C. 458 425, 469, 470, 481
Yrazu *v.* Astral Shipping Co. (1904), 20 T. L. R. 153; 9 Com. Cas. 100 . 83, 96, 215
Ysabel, La (1812), 1 Dods. 273 71, 230, 244

Z.

ZADOK, The (1883), 9 P. D. 114; 53 L. J. (P.) 72; 50 L. T. 695; 32 W. R. 1003; 5 Asp. M. L. C. 252 411, 415, 416, 418, 419, 452, 454
Zanzibar, The, [1892] P. 233; 61 L. J. (P.) 81; 68 L. T. 297; 40 W. R. 702; 7 Asp. M. L. C. 258 19, 615
Zephyr, (1827), 2 Hag. Adm. 43 566
——— The (1864), 2 Asp. M. L. C. 352, n. 471
Zephyrus, The (1842), 1 Wm. Rob. 329 563

PAGE
Zeta, The (1875), L. R. 4 A. & E. 460; 44 L. J. (ADM.) 22; 33 L. T. 477; 24 W. R. 180; 3 Asp. M. L. C. 73 551, 556, 560
————, Mersey Docks and Harbour Board *v.* Turner. *See* Mersey Docks and Harbour Board *v.* Turner, The "Zeta."
Zillah Shipping Co. *v.* Midland Rail. Co. (1902), 19 T. L. R. 63, C. A. . . 274, 278
Zipsey *v.* Hill (1858), 1 F. & F. 570 203
Zodiac (1825), 1 Hag. Adm. 320 40
Zollverein, The (1856), Sw. 96 12, 486
Zwilchenbart *v.* Henderson (1854), 9 Exch. 722; 23 L. J. (EX.) 234 . . 297, 298

SHIPPING AND NAVIGATION.

PAGE

PART I. OBJECTS AND APPLICATION OF LAW AS TO MERCHANT SHIPPING - - - - - - - 10

SECT. 1. APPLICATION OF MERCHANT SHIPPING ACTS GENERALLY 10

SECT. 2. APPLICATION OF MERCHANT SHIPPING ACTS TO FOREIGNERS - - - - - - - - - 12

SECT. 3. APPLICATION OF MERCHANT SHIPPING ACTS TO COLONIES 13

SECT. 4. DEFINITIONS - - - - - - - - - - - 14

PART II. OWNERSHIP AND CONTROL OF BRITISH SHIPS - 15

SECT. 1. OWNERSHIP - - - - - - - - - - 15

SECT. 2. REGISTRATION - - - - - - - - - 16

Sub-sect. 1. Obligation to Register and Effect of Registration 16
Sub-sect. 2. Procedure and Requirements on Registration - 17
Sub-sect. 3. Measurement of Ship and Tonnage - - - 19
Sub-sect. 4. Ports of Registry - - - - - - - 20
Sub-sect. 5. Certificate of Registry - - - - - 20

SECT. 3. TRANSFER AND TRANSMISSION OF PROPERTY IN SHIPS - 21

Sub-sect. 1. Mode of Transfer - - - - - - 21
Sub-sect. 2. Transmission of Title - - - - - 22
Sub-sect. 3. Prohibition of Transfer - - - - - 23
Sub-sect. 4. Transfer by Way of Mortgage - - - - - 23
(i.) Formalities - - - - - - - - - 23
(ii.) Rights of Mortgagees - - - - - - 24
(iii.) Discharge of Mortgage - - - - - - 30
(iv.) Dealings with Mortgagee's Interest - - - 30
Sub-sect. 5. Certificates of Mortgage and Sale - - - 30
Sub-sect. 6. Equitable Interests - - - - - - 30

SECT. 4. REGISTRATION OF ALTERATIONS AND RENEWAL OF REGISTRATION - - - - - - - - - 31

SECT. 5. RETURNS BY REGISTRARS - - - - - - - 31

SECT. 6. ADMISSIBILITY OF DOCUMENTS AS EVIDENCE - - - 31

SECT. 7. OFFENCES AND PENALTIES - - - - - - - 32

SECT. 8. LIABILITY OF OWNERS OF SHIPS AS SUCH - - - 34

Sub-sect. 1. Who are Liable as Owners - - - - 34
Sub-sect. 2. Liability while the Ship is Chartered - - 34
Sub-sect. 3. Liability as between Part Owners - - - 34

PART III. MASTER AND CREW - - - - - - - - 38

SECT. 1. QUALIFICATIONS OF OFFICERS AND MEN - - - 38

Sub-sect. 1. Officers - - - - - - - - - 38
Sub-sect. 2. Seamen - - - - - - - - - 39

SECT. 2. CONTRACTS OF SERVICE BY MASTER AND CREW - - 40

Sub-sect. 1. Engagement of Master - - - - - 40
Sub-sect. 2. Apprenticeship to Sea Service - - - - 41
Sub-sect. 3. Engagement of Seamen - - - - - 41

PART III. MASTER AND CREW—*continued.* PAGE

SECT. 3. CARE OF SEAMEN DURING CURRENCY OF AGREEMENT - 44
SECT. 4. WAGES - - - - - - - - - - 46
Sub-sect. 1. When Whole Wages Payable - - - - 46
Sub-sect. 2. Time and Mode of Payment - - - - 47
Sub-sect. 3. Loss of Right to Wages - - - - - 49
Sub-sect. 4. Agreement for Extra Remuneration - - 50
Sub-sect. 5. Payment in Case of Seaman's Death - - 51
Sub-sect. 6. Advance and Allotment of Wages - - - 51
Sub-sect. 7. Remittance of Wages - - - - - 52
Sub-sect. 8. Compensation for Premature Discharge - - 52
Sub-sect. 9. Proceedings to Recover Wages - - - 52
SECT. 5. PROTECTION OF SEAMEN FROM IMPOSITION - - - 54
Sub-sect. 1. Assignment of Salvage and Wages - - - 54
Sub-sect. 2. Lodging-house Keepers - - - - - 54
SECT. 6. DISCHARGE OF SEAMEN - - - - - - 55
SECT. 7. DESTITUTE AND DISTRESSED SEAMEN - - - - 56
SECT. 8. RELIEF TO FAMILIES OF SEAMEN- - - - - 57
SECT. 9. PROPERTY OF DECEASED SEAMEN - - - - 58
SECT. 10. DISCIPLINE - - - - - - - - - 59
Sub-sect. 1. Authority of Master - - - - - 59
Sub-sect. 2. General Duties of Seamen - - - - 60
Sub-sect. 3. Offences against Discipline - - - - 60
Sub-sect. 4. Other Offences - - - - - - 62
Sub-sect. 5. Entry of Offences - - - - - - 63
SECT. 11. SEAMEN VOLUNTEERING FOR ROYAL NAVY - - - 63
SECT. 12. REGISTRATION AND RETURNS RESPECTING SEAMEN - 63

PART IV. AUTHORITY AND LIABILITY OF MASTER AS CUSTODIAN OF SHIP AND CARGO - - - 64

SECT. 1. GENERAL AUTHORITY AS TO CONTRACTS FOR EMPLOYMENT OF SHIP - - - - - - - - - 64
SECT. 2. LIMITATIONS ON GENERAL AUTHORITY - - - 65
SECT. 3. AUTHORITY OF MASTER AS TO NECESSARIES - - 66
Sub-sect. 1. Authority to make Owner Liable - - - 66
Sub-sect. 2. Authority to make Ship Liable - - - 67
Sub-sect. 3. What are Necessaries - - - - - 68
SECT. 4. AUTHORITY TO HYPOTHECATE SHIP AND FREIGHT - 69
SECT. 5. AUTHORITY TO TRANSHIP - - - - - - - 74
SECT. 6. AUTHORITY TO JETTISON - - - - - - - 74
SECT. 7. AUTHORITY TO SELL SHIP OR CARGO - - - - 75

PART V. GENERAL STATUTORY PROVISIONS FOR SAFETY OF SHIP AND CARGO - - - - - - 77

SECT. 1. SEAWORTHINESS OF SHIP - - - - - - 77
SECT. 2. EQUIPMENT - - - - - - - - - - 77
SECT. 3. MARKING OF SHIPS - - - - - - - - 78
SECT. 4. CARRIAGE OF DANGEROUS GOODS - - - - 79
SECT. 5. DECK CARGOES - - - - - - - - - 79
SECT. 6. STOWAGE OF GRAIN CARGO - - - - - - 80
SECT. 7. DETENTION OF UNSAFE SHIPS - - - - - 81

PART VI. CONDUCT OF THE VOYAGE - - - - - 81

SECT. 1. CLEARANCES - - - - - - - - - - 81
SECT. 2. OFFICIAL LOGS - - - - - - - - - 82
SECT. 3. COMPLIANCE WITH WARRANTIES - - - - - 83
SECT. 4. PROTESTS - - - - - - - - - - 84

PAGE

PART VII. CARRIAGE OF GOODS - - - - - - - 84

SECT. 1. CHARTERPARTIES - - - - - - - - - 84

Sub-sect. 1. General Nature of the Contract - - - 84
Sub-sect. 2. The Parties - - - - - - - - 88
Sub-sect. 3. Usual Stipulations - - - - - - - 91
(i.) As to the Ship - - - - - - - - 91
(ii.) As to the Voyage or Time - - - - - 92
(iii.) As to the Cargo - - - - - - - 99
(iv.) As to the Freight or Hire - - - - - 103
(v.) As to Signing Bills of Lading - - - - 105
(vi.) As to Excepted Perils Relieving the Shipowner - 107
(vii.) As to Loading and Discharge - - - - 118
(viii.) As to the Time for Loading and Discharge - - 119
(ix.) Demurrage and Damages for Detention - - - 124
(x.) Exceptions Relieving the Charterer - - - 129
(xi.) Cesser of Liability Clause - - - - - 133
(xii.) Lien Clause - - - - - - - - 134
(xiii.) Penalty Clause - - - - - - - 135
(xiv.) Other Stipulations - - - - - - 136
Sub-sect. 4. The Construction of Charterparties - - - 138
(i.) General Principles of Construction - - - 138
(ii.) Conditions Precedent - - - - - - 142

SECT. 2. BILLS OF LADING - - - - - - - - - 144

Sub-sect. 1. The Nature of a Bill of Lading - - - 144
Sub-sect. 2. The Form of a Bill of Lading - - - - 150
Sub-sect. 3. The Delivery of the Bill of Lading: the Mate's Receipt - - - - - - - - 151
Sub-sect. 4. The Signature of the Bill of Lading - - - 153
Sub-sect. 5. The Transfer of the Bill of Lading - - - 157
Sub-sect. 6. The Effect of the Transfer of a Bill of Lading - 164
Sub-sect. 7. The Bill of Lading where the Ship is Chartered 168
(i.) In General - - - - - - - - - 168
(ii.) The Inconsistency, if any, between the Charterparty and the Bill of Lading - - - - - 168
(iii.) The Authority of the Master - - - - - 173
(iv.) The Incorporation of the Bill of Lading - - - 175

SECT. 3. THE LOADING - - - - - - - - - 177

Sub-sect. 1. The Readiness of the Ship - - - - 177
Sub-sect. 2. The Provision of a Cargo - - - - 190
Sub-sect. 3. The Delivery and Stowage of the Cargo - - 195
Sub-sect. 4. The Measure of Damages - - - - 207

SECT. 4. THE VOYAGE - - - - - - - - - 211

Sub-sect. 1. The Seaworthiness of the Ship - - - 211
Sub-sect. 2. The Prosecution of the Voyage - - - 218
Sub-sect. 3. The Preservation of the Cargo - - - 224
Sub-sect. 4. Transhipment of the Cargo - - - - 233
Sub-sect. 5. Hypothecation of the Cargo - - - - 240
Sub-sect. 6. Sale of the Cargo - - - - - - 247

SECT. 5. THE UNLOADING - - - - - - - - - 254

Sub-sect. 1. The Arrival of the Ship - - - - - 254
Sub-sect. 2. The Delivery of the Cargo - - - - 264
(i.) The Person to whom Delivery should be Made - 264
(ii.) The Method of Discharging the Cargo - - - 265
(iii.) The Time within which the Delivery must Take Place - - - - - - - - - 271
Sub-sect. 3. The Warehousing of the Cargo - - - 279
Sub-sect. 4. Lien - - - - - - - - - 283
Sub-sect. 5. The Measure of Damages - - - - 288

PART VII. CARRIAGE OF GOODS—*continued.* PAGE

SECT. 6. THE PAYMENT OF FREIGHT - - - - - - 291

Sub-sect. 1. The Person by whom Payment is to be Made - 291
Sub-sect. 2. The Person to whom Payment should be Made 296
Sub-sect. 3. When the Freight is Payable- - - - 303
Sub-sect. 4. The Amount Payable - - - - - 307
Sub-sect. 5. Advance Freight - - - - - - 311
Sub-sect. 6. *Pro Ratâ* Freight - - - - - - 314

SECT. 7. GENERAL AVERAGE - - - - - - - 315

Sub-sect. 1. Definitions - - - - - - - 315
Sub-sect. 2. When the Right to Contribution Arises - - 316
Sub-sect. 3. The Liability to Contribution- - - - 322

SECT. 8. THE SHIPOWNER AS A COMMON CARRIER - - - 325

PART VIII. CARRIAGE OF PASSENGERS - - - - - 327

SECT. 1. THE CONTRACT OF CARRIAGE - - - - - 327

SECT. 2. STATUTORY REQUIREMENTS - - - - - - 331

Sub-sect. 1. Definitions - - - - - - - 331
Sub-sect. 2. Survey of Ships - - - - - - 332
(i.) Passenger Steamers - - - - - - 332
(ii.) Emigrant Ships - - - - - - - 335
Sub-sect. 3. Equipment of Ships - - - - - 336
Sub-sect. 4. Passenger's Contract - - - - - 336
Sub-sect. 5. Number of and Accommodation for Passengers 337
Sub-sect. 6. Provisions, Water, and Stores - - - 338
Sub-sect. 7. Medical Officer and Crew - - - - 341
Sub-sect. 8. Requirements before Sailing - - - - 342
(i.) Medical Inspection - - - - - - 342
(ii.) Master's Bond - - - - - - - 343
(iii.) Passenger Lists - - - - - - - 344
Sub-sect. 9. Carriage of Cattle and Dangerous Cargo - 345
Sub-sect. 10. Breach of Contract of Carriage - - - 346
Sub-sect. 11. Requirements on Arrival - - - - 347
Sub-sect. 12. Provisions in Case of Wreck - - - - 348
Sub-sect. 13. Passage Brokers - - - - - - 350
Sub-sect. 14. Emigrant Runners - - - - - 351
Sub-sect. 15. Frauds in Procuring Passages - - - 352
Sub-sect. 16. Emigration Officers - - - - - 353
Sub-sect. 17. Legal Proceedings - - - - - 353

PART IX. CARRIAGE OF MAILS - - - - - - - 354

SECT. 1. APPLICATION OF MAIL SHIPS ACT, 1891, TO CERTAIN MAIL SHIPS - - - - - - - - - - 354

SECT. 2. PROHIBITION OF CONVEYANCE OF LETTERS BY CREW AND PASSENGERS - - - - - - - - - 354

SECT. 3. EXEMPTIONS ENJOYED BY MAIL SHIPS - - - - 355

PART X. CONTRACT OF TOWAGE - - - - - - - 357

SECT. 1. ORDINARY OBLIGATIONS - - - - - - 357
Sub-sect. 1. Efficiency of Tug - - - - - - 357
Sub-sect. 2. Mutual Obligation to Use Due Care - - 357
Sub-sect. 3. Tug under Control of Tow - - - - 358

SECT. 2. SPECIAL CONDITIONS RELIEVING THE TUG - - - 358

PAGE

PART XI. COLLISIONS - - - - - - - - - - 359

SECT. 1. STATUTORY PROVISIONS AS TO THE SEA REGULATIONS; AND CONSTRUCTION AND OBSERVANCE OF THESE REGULATIONS - - - - - - - - - 359

Sub-sect. 1. Authority to Make the Regulations - - - 359
Sub-sect. 2. Principles of Construction - - - - 360
Sub-sect. 3. Statutory Provisions as to Observance of the Sea Regulations, and the Enforcement thereof - 362
Sub-sect. 4. Principles as to Observance of the Sea Regulations, and as to Exceptions thereto - - 363
Sub-sect. 5. Subsidiary Statutory Provisions - - - 371
(i.) As to Rendering Assistance after Collision - - 371
(ii.) As to Entry in Log - - - - - - - 372

SECT. 2. REGULATIONS FOR PREVENTING COLLISIONS ETC. - - 372

Sub-sect. 1. History of General Collision Regulations - 372
Sub-sect. 2. The Sea Regulations, 1910:— - - - 373

Preliminary Article - - - - - - - - 373
Rules concerning Lights etc.: Articles 1—14 - - 379
Sound-Signals for Fog, etc.: Article 15 - - - 409
Speed of Ships to be Moderate in Fog, etc.: Article 16 - 414
Steering and Sailing Rules: Articles 17—27 - - 425
Sound Signals for Vessels in Sight of one Another: Article 28 - - - - - - - - - 473
No Vessel under any circumstances to neglect proper Precautions: Article 29 - - - - - - - 477
Reservation of Rules for Harbours and Inland Navigation: Article 30 - - - - - - - 477
Distress Signals: Article 31 - - - - - 479

Sub-sect. 3. Local Rules of Navigation - - - - 479
Sub-sect. 4. Rules of Good Seamanship - - - - 483

(i.) Scope of Rules - - - - - - - 483
(ii.) Usual Events - - - - - - - 484

(a) Launching a Vessel - - - - - 484
(b) Getting Under Way - - - - - 484
(c) Carrying and Dropping Anchor - - - 484
(d) Steering Gear - - - - - - 485
(e) Taking Tug Assistance - - - - 485
(f) Officers and Watch on Look-out - - - 485
(g) Speed - - - - - - - - 487
(h) Keeping Clear of Vessel at Anchor - - 488
(i) Standing too Close, and Speaking - - - 488
(j) Coming to Anchor, and Foul Berth - - 489
(k) Anchor Watch - - - - - - 489

(iii.) Special Vessels - - - - - - - 490

(a) Tug and Tow - - - - - - 490
(b) Sailing Vessels - - - - - - 492
(c) Dangerous Vessels - - - - - 493
(d) Small Vessels - - - - - - 494
(e) Dumb Barges - - - - - - 494

(iv.) Special Weather - - - - - - - 495
(v.) Navigation in Rivers and Narrow Waters - - 496

(a) Tide and Current - - - - - 496
(b) Waiting at Bend - - - - - - 496
(c) Dredging Stern First - - - - - 496
(d) Difficulties of Warping, or Smelling the Ground 497
(e) Crossing or Turning in a River - - - 497
(f) Anchoring or Aground in Fairway - - 498
(g) Incoming Vessel to Wait for Outgoing - - 498
(h) Obeying Orders of Dock Master or Harbour Master - - - - - - - - 499

PART XI. COLLISIONS—*continued.* PAGE

SECT. 3. NEGLIGENCE CAUSING DAMAGE; AND THE RULE OF DIVISION OF DAMAGE OR LOSS IN PROPORTION TO FAULT - - - - - - - - - - - - 499

Sub-sect. 1. Negligence Causing Damage by Collision between Vessels: Preliminary Rules as Regards Negligence - - - - - - - - 499

(i.) Negligence must cause Collision and Damage - 499
(ii.) Burden of Proof of Negligence in Collision Cases - 500
(iii.) Rules as to Proof of Negligence in Collision Cases - 501
(iv.) Negligence in Equipment - - - - - - 502
(v.) Negligent Navigation - - - - - - - 502
(a) In General - - - - - - - - 502
(b) Responsibility of Owner - - - - 502
(c) Nature of Negligence in Navigation - - 503

Sub-sect. 2. Negligence Causing Damage in Exceptional Cases - - - - - - - - - 505

Sub-sect. 3. Cases of Negligent Navigation - - - 506

(i.) In General - - - - - - - - - 506
(ii.) Negligence of One Vessel - - - - - 506
(iii.) Negligence of Two Vessels - - - - - 507
(iv.) Negligence of more than Two Vessels - - - 516

Sub-sect. 4. The Rule of Division of Damage or Loss in Proportion to Fault - - - - - - 516

SECT. 4. GENERAL INCIDENCE AND EXTENT OF LIABILITY - - 525

Sub-sect. 1. Parties Liable - - - - - - - 525

(i.) In General - - - - - - - - - 525
(ii.) In Case of Chartered Ship - - - - - 526
(iii.) In Case of a Vessel in Tow - - - - - 527
(iv.) In Case of Compulsory Pilotage - - - - 529
(v.) In Case of Ship Acting under Harbour Authority etc. 532
(vi.) In Case of National Ship - - - - - - 533
(vii.) In Case of Collision with a Wreck - - - 533

Sub-sect. 2. Presumption of Fault - - - - - 534

(i.) For Breach of the Sea Regulations - - - 534
(ii.) For Failure to Stay by and Render Assistance - 535

Sub-sect. 3. Inevitable Accident - - - - - - 535
Sub-sect. 4. Measure of Damages - - - - - 536

SECT. 5. RIGHTS AND REMEDIES OF INJURED PARTIES - - 542

Sub-sect. 1. Persons Entitled to Recover - - - - 542

(i.) Owners of Injured Ship - - - - - - 542
(ii.) Owners of Cargo - - - - - - - - 542
(a) Rights against the Carrying Vessel for Damage by Collision - - - - - - - - 542
(b) Rights against the other Vessel for Damage by Collision - - - - - - - - - 542
(iii.) Crews on Vessels - - - - - - - - 543
(iv.) Personal Sufferers and their Representatives - - 543

Sub-sect 2. Rights *in Rem* - - - - - - - 545

(i.) Maritime Lien - - - - - - - - 545
(ii.) Statutory Powers of Arrest - - - - - 546

Sub-sect. 3. Rights *in Personam* - - - - - - 546

SECT. 6. COLLISION AS AFFECTING SALVAGE - - - - 546

SECT. 7. COLLISION WITH A PIER ETC. - - - - - 547

PART XII. WRECK - - - - - - - - - - - - 548

SECT. 1. DEFINITIONS - - - - - - - - - - 548

SECT. 2. RECEIVERS OF WRECK - - - - - - - - 549

SECT. 3. VESSELS IN DISTRESS - - - - - - - - 549

PART XII. WRECK—*continued.* PAGE

SECT. 4. DEALING WITH WRECK - - - - - - - - 551
Sub-sect. 1. Duties of Finders of Wreck - - - - 551
Sub-sect. 2. Duties of Receiver - - - - - - 551
Sub-sect. 3. Claims of Owners to Wreck - - - - 552
Sub-sect. 4. Dealing with Unclaimed Wreck - - - 552

SECT. 5. REMOVAL OF WRECK - - - - - - - - 554
Sub-sect. 1. Authorities Empowered to Remove Wreck - 554
Sub-sect. 2. Extent of Powers - - - - - - 554

SECT. 6. OFFENCES IN RESPECT OF WRECK - - - - 556

PART XIII. SALVAGE - - - - - - - - - - 557

SECT. 1. NATURE OF SALVAGE - - - - - - - 557

SECT. 2. SUBJECTS OF SALVAGE - - - - - - - 559
Sub-sect. 1. Maritime Property - - - - - - 559
Sub-sect. 2. Life - - - - - - - - - 561

SECT. 3. CONDITIONS OF A SALVAGE SERVICE - - - - 562

SECT. 4. SALVORS - - - - - - - - - - 564
Sub-sect. 1. General Rule - - - - - - - 564
Sub-sect. 2. Personal Service - - - - - - 565
Sub-sect. 3. Voluntary Service - - - - - - 566

SECT. 5. AGREEMENTS AS TO SALVAGE - - - - - 570
Sub-sect. 1. Salvage Agreement - - - - - 570
Sub-sect. 2. Persons Bound by a Salvage Agreement - - 572
Sub-sect. 3. Agreements for Apportionment - - - 573

SECT. 6. SALVAGE REWARD - - - - - - - - - 574
Sub-sect. 1. General Principles - - - - - - 574
Sub-sect. 2. Circumstances Affecting the Reward - - 575
Sub-sect. 3. Recovery of Salvage Reward - - - - 579
Sub-sect. 4. Appeals - - - - - - - - 581

SECT. 7. APPORTIONMENT - - - - - - - - - 582
Sub-sect. 1. By the Court - - - - - - - 582
Sub-sect. 2. To the Owners of Salving Vessels - - - 582
Sub-sect. 3. To the Master, Crew, and Passengers - - 583
Sub-sect. 4. To Officers and Men of the Royal Navy and Other Services - - - - - - 584
Sub-sect. 5. To Independent Salvors - - - - - 584
Sub-sect. 6. To Separate Sets of Salvors - - - - 584

SECT. 8. CONTRIBUTION - - - - - - - - - 586
Sub-sect. 1. General Principles - - - - - - 586
Sub-sect. 2. Values of Ship, Cargo, and Freight - - - 587

PART XIV. SHIPPING CASUALTIES - - - - - - - 590

SECT. 1. REPORT OF ACCIDENTS AND LOSS OF SHIP - - - 590

SECT. 2. INQUIRIES AND INVESTIGATIONS - - - - - 591

PART XV. PILOTAGE - - - - - - - - - - 596

SECT. 1. THE PILOTAGE ACT, 1913 - - - - - - 596

SECT. 2. REVISION OF PILOTAGE ORGANISATION - - - - 596

SECT. 3. PILOTAGE ORDERS - - - - - - - - 597

SECT. 4. PILOTAGE AUTHORITIES AND DISTRICTS - - - - 598
Sub-sect. 1. In General - - - - - - - - 598
Sub-sect. 2. The Trinity House - - - - - - 599

PART XV. PILOTAGE—*continued.* PAGE

SECT. 5. POWERS AND DUTIES OF PILOTAGE AUTHORITIES - - 599
Sub-sect. 1. Bye-laws - - - - - - - - 599
Sub-sect. 2. Licences - - - - - - - - 600
Sub-sect. 3. Pilotage Certificates - - - - - 601
Sub-sect. 4. Receipts and Expenditure - - - - 603
Sub-sect. 5. Pilotage Rates or Dues - - - - - 603
Sub-sect. 6. Returns - - - - - - - - - 604

SECT. 6. PILOTS - - - - - - - - - - - 604
Sub-sect. 1. Rights and Obligations - - - - - 604
Sub-sect. 2. Unqualified Person Acting as Pilot - - - 605

SECT. 7. PILOT BOATS, FLAGS, AND SIGNALS - - - - 605

SECT. 8. OFFENCES - - - - - - - - - - 606
Sub-sect. 1. Offences by Pilots - - - - - - 606
Sub-sect. 2. Offences by Masters - - - - - 607
Sub-sect. 3. Offences by Other Persons - - - - 608
Sub-sect. 4. Further Penalties - - - - - - 608

SECT. 9. APPEALS - - - - - - - - - - 608

SECT. 10. COMPULSORY PILOTAGE - - - - - - 609
Sub-sect. 1. Obligation under Compulsory Pilotage - - 609
Sub-sect. 2. Excepted Ships - - - - - - - 610
Sub-sect. 3. Shipowner's Liability - - - - - 611

PART XVI. LIMITATION OF LIABILITY OF OWNERS AND OTHERS - - - - - - - - - - - 612

SECT. 1. PERSONS IN WHOSE FAVOUR THE LIMITATIONS APPLY - 612

SECT. 2. LOSSES IN RESPECT OF WHICH THE LIMITATIONS APPLY 613

SECT. 3. STATUTORY LIMITS OF LIABILITY - - - - - 614

SECT. 4. PROCEDURE - - - - - - - - - - 616

PART XVII. LIENS ON SHIP, FREIGHT, AND CARGO - - 617

SECT. 1. NATURE AND EXTENT OF MARITIME LIENS - - - 617

SECT. 2. STATUTORY RIGHTS IN REM - - - - - 621

SECT. 3. POSSESSORY LIENS - - - - - - - 621

SECT. 4. RANKING OF LIENS - - - - - - - 621

SECT. 5. ENFORCEMENT OF LIENS - - - - - - 625
Sub-sect. 1. Maritime Liens - - - - - - 625
Sub-sect. 2. Statutory Rights *in Rem* - - - - - 626
Sub-sect. 3. Possessory Liens - - - - - - 626

SECT. 6. EXTINCTION OF LIENS - - - - - - - 626

PART XVIII. LIGHTHOUSES - - - - - - - - 627

SECT. 1. LIGHTHOUSE AUTHORITIES - - - - - - 627

SECT. 2. CONSTRUCTION OF LIGHTHOUSES - - - - - 628

SECT. 3. LIGHT DUES - - - - - - - - - 629

SECT. 4. INSPECTION AND CONTROL OF LOCAL LIGHTHOUSES - 632

SECT. 5. EXPENSES: GENERAL LIGHTHOUSE FUND - - - 632

PART XIX. HARBOURS, DOCKS, AND PIERS - - - - 634

SECT. 1. DEFINITIONS - - - - - - - - - 634

SECT. 2. COLLECTION AND RECOVERY OF RATES - - - - 634
Sub-sect. 1. Liability - - - - - - - - 634
Sub-sect. 2. Duties of Master of a Vessel - - - - 637
Sub-sect. 3. Duties of Owner of Goods - - - - 638
Sub-sect. 4. Enforcement - - - - - - - - 638
Sub-sect. 5. Disputes - - - - - - - - 639

PART XIX. HARBOURS, DOCKS, AND PIERS—*continued.* PAGE

SECT. 3. MANAGEMENT OF VESSELS IN HARBOURS - - - 639
Sub-sect. 1. Requirements for Vessels Entering and Remaining in Harbour - - - - - - 639
Sub-sect. 2. Powers of Harbour Master - - - - 640
Sub-sect. 3. Discharge of Cargo - - - - - 642

SECT. 4. PROVISIONS FOR SAFETY OF HARBOUR - - - - 643
Sub-sect. 1. Protection of Works from Fire etc. - - - 643
Sub-sect. 2. Liability of Owner and Wrongdoer for Damage 644

SECT. 5. BUOYS, LIGHTS, BEACONS ETC. - - - - - 645

SECT. 6. POWER TO MAKE BYE-LAWS - - - - - 645

SECT. 7. LIABILITIES OF HARBOUR AUTHORITIES - - - 647

PART XX. MARINE AUTHORITIES - - - - - - 649

SECT. 1. THE BOARD OF TRADE AND OTHER AUTHORITIES - - 649

SECT. 2. LOCAL MARINE BOARDS - - - - - - 652

SECT. 3. MERCANTILE MARINE OFFICES - - - - - 655

SECT. 4. REGISTRATION AUTHORITIES - - - - - - 657

PART XXI. PLEASURE YACHTS - - - - - - - 659

SECT. 1. EXEMPTIONS AND SPECIAL PROVISIONS UNDER STATUTE 659

SECT. 2. PRIVILEGES ACCORDED TO YACHTS CARRYING SPECIAL FLAG - - - - - - - - - - - 661

SECT. 3. MEASURE OF LIABILITY IN CASE OF COLLISION - - 661

PART XXII. NAVAL AND MARINE COURTS - - - - 662

APPENDIX. TABLE OF COLLISION REGULATIONS, 1840—1910 i—xii

For Admiralty - - - -	*See title*	ADMIRALTY; CONSTITUTIONAL LAW.
Admiralty Courts - - -	,,	ADMIRALTY.
Alien Immigration - - -	,,	ALIENS.
Anchors, Marking of - - -	,,	TRADE AND TRADE UNIONS.
Arbitration - - - -	,,	ARBITRATION.
Blockade - - - - -	,,	CONSTITUTIONAL LAW; PRIZE LAW AND JURISDICTION.
Blowing up Ship - - -	,,	CRIMINAL LAW AND PROCEDURE.
Canal Boats - - - -	,,	PUBLIC HEALTH AND LOCAL ADMINISTRATION.
Canals - - - - -	,,	RAILWAYS AND CANALS.
Carriers - - - - -	,,	CARRIERS; RAILWAYS AND CANALS.
Casting away Ship - - -	,,	CRIMINAL LAW AND PROCEDURE.
Chain Cables, Marking of - -	,,	TRADE AND TRADE UNIONS.
Compensation for Injury - -	,,	MASTER AND SERVANT.
Concealing Buoys, Lights etc. -	,,	CRIMINAL LAW AND PROCEDURE.
Consuls and Consular Officers -	,,	CONSTITUTIONAL LAW.
Contraband of War - - -	,,	PRIZE LAW AND JURISDICTION.
Courts of Survey - - -	,,	COURTS.
Criminal Law - - - -	,,	CRIMINAL LAW AND PROCEDURE
Customs - - - - -	,,	REVENUE.
Cutting away Buoys - - -	,,	CRIMINAL LAW AND PROCEDURE
Damages - - - - -	,,	DAMAGES.
Duties and Liabilities of Masters under Customs Acts - -	,,	REVENUE.
Embargo - - - - -	,,	CONSTITUTIONAL LAW.
Excise - - - - -	,,	REVENUE.

For False Lights	*See title*	CRIMINAL LAW AND PROCEDURE.
Fishing Boats	,,	FISHERIES.
Forgery of Documents	,,	CRIMINAL LAW AND PROCEDURE.
Impeding Life Saving	,,	CRIMINAL LAW AND PROCEDURE.
Inland Waters	,,	WATERS AND WATERCOURSES.
Insurance of Seamen	,,	INSURANCE; WORK AND LABOUR.
Insurance of Ships etc.	,,	INSURANCE.
Licences to Trade	,,	REVENUE.
Marine Insurance	,,	INSURANCE.
Marine Store Dealers	,,	TRADE AND TRADE UNIONS.
Master and Servant	,,	MASTER AND SERVANT.
National Health Insurance	,,	WORK AND LABOUR.
Naval Discipline	,,	ROYAL FORCES.
Negligence	,,	NEGLIGENCE.
Old Metal Dealers	,,	TRADE AND TRADE UNIONS.
Piracy	,,	CRIMINAL LAW AND PROCEDURE.
Pleasure Boats	,,	PUBLIC HEALTH AND LOCAL ADMINISTRATION.
Possessory Liens	,,	LIEN.
Prize	,,	PRIZE LAW AND JURISDICTION.
Protection of Public Officers	,,	PUBLIC AUTHORITIES AND PUBLIC OFFICERS.
Quarantine	,,	PUBLIC HEALTH AND LOCAL ADMINISTRATION.
Railway Steamboats	,,	RAILWAYS AND CANALS.
Royal Navy	,,	ROYAL FORCES.
Sealing	,,	FISHERIES.
Through Traffic	,,	CARRIERS; RAILWAYS AND CANALS.
Waterways	,,	EASEMENTS AND PROFITS À PRENDRE; HIGHWAYS, STREETS, AND BRIDGES; WATERS AND WATERCOURSES.
Whaling	,,	FISHERIES.
Wreck, Stealing from	,,	CRIMINAL LAW AND PROCEDURE.
Wrecking	,,	CRIMINAL LAW AND PROCEDURE.

Part I.—Objects and Application of Law as to Merchant Shipping.

SECT. 1.—*Application of Merchant Shipping Acts Generally.*

Object of Merchant Shipping Acts.

1. The laws of England relating to shipping and navigation form part of the general common law of England. The common law has, however, been almost entirely superseded by statutes, the most important now in force being the Merchant Shipping Act, 1894 (*a*), and its successors.

(*a*) 57 & 58 Vict. c. 60. Subsequent Acts are the Merchant Shipping Act, 1897 (60 & 61 Vict. c. 59); Merchant Shipping (Exemption from Pilotage) Act, 1897 (60 & 61 Vict. c. 61); Merchant Shipping (Liability of Shipowners) Act, 1898 (61 & 62 Vict. c. 14); Merchant Shipping (Mercantile Marine Fund) Act, 1898 (61 & 62 Vict. c. 44); Merchant Shipping (Liability of Shipowners and Others) Act, 1900 (63 & 64 Vict. c. 32); Merchant Shipping Act, 1906 (6 Edw. 7, c. 48); Merchant Shipping Act, 1907 (7 Edw. 7, c. 52); Merchant Shipping Act, 1911 (1 & 2 Geo. 5, c. 42), all of which Acts may be cited together as the Merchant Shipping Acts, 1894—1911; and the Merchant Shipping (Seamen's Allotment) Act, 1911 (1 & 2 Geo. 5, c. 8); Merchant Shipping (Stevedores and Trimmers) Act, 1911 (1 & 2 Geo. 5, c. 41); Maritime

SECT. 1. Application of Merchant Shipping Acts Generally.

The chief aim which the legislature has, by the passing of the Merchant Shipping Acts (*b*), set out to achieve may be said to be the establishment of a system of national identification in shipping. Upon the achievement of this aim must depend the achievement of all subsidiary aims, since the efficiency of legislation in respect of such matters as the safety of mariners, or the protection from discomfort or imposition of emigrants, must necessarily depend on the certainty with which the vessels upon which the legislature has conferred privileges or imposed liabilities can be identified.

The method by which the legislature has sought to achieve the identification of shipping is by the enactment of stringent regulations as to the registration of British ships, and as to the methods of proof of national character (*c*).

Use of colours.

2. A ship may be forfeited which improperly uses the British flag and assumes the British national character, unless the assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right (*d*). A similar penalty attaches to the improper concealment of British nationality (*e*) and to the acquirement of an interest in a British ship by an unqualified person (*f*).

National colours.

The proper national colours for a British ship, other than one of His Majesty's ships or other specially exempted ships, are the red ensign usually used by merchant ships (*g*).

A ship belonging to a British subject must, under penalty (*h*), hoist proper national colours, on a signal being made to her by one of His Majesty's ships, on entering and leaving any foreign port, and, if of fifty tons gross tonnage or upwards, on entering or leaving any British port (*i*).

Conventions Act, 1911 (1 & 2 Geo. 5, c. 57); and the Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), which by *ibid.*. s. 62, may be cited with the Merchant Shipping Acts, 1894—1907, as the Merchant Shipping Acts, 1894—1913. As to construing these latter Acts together, see note (*f*), p. 518, *post*. Throughout this title the abbreviation "M. S. Act" is employed for "Merchant Shipping Act," and to avoid constant repetition the regnal year and chapter are omitted.

(*b*) See note (*a*), p. 10, *ante*.

(*c*) For the statutory regulations with regard to registration, see pp. 19, 20, *post*. As to clearance, see p. 81, *post*.

(*d*) M. S. Act, 1894, s. 69 (1); see also p. 33, *post*.

(*e*) M. S. Act, 1894, s. 70; see also p. 33, *post*.

(*f*) M. S. Act, 1894, s. 71; see also *ibid.*, s. 72, and p. 33, *post*, as to liabilities of ships not recognised as British.

(*g*) M. S. Act, 1894, s. 73 (1). The exemption is granted by warrant (*ibid.*). The Union Jack with a white border may also be shown without penalty (*ibid.*, s. 73 (2)). This is a signal for pilots; see note (*p*), p. 606, *post*. For penalties attaching to improper use of a flag, see M. S. Act, 1894, s. 73 (3), and pp. 32, 33, *post*. As to what is meant by the "Union Jack," see title CONSTITUTIONAL LAW, Vol. VI., p. 362.

(*h*) Penalty, not exceeding £100 (M. S. Act, 1894, s. 74 (2)); see also title CONSTITUTIONAL LAW, Vol. VI., pp. 362, 363.

(*i*) M. S. Act, 1894, s. 74. These provisions do not apply to fishing boats (*ibid.*, s. 74 (3)), and do not affect any other power of the Admiralty as regards colours (*ibid.*, s. 75). As to the law in relation to the use of the British flag generally, see *The Minerva* (1800), 3 Ch. Rob. 34; *R.* v. *Miller* (1823), 1 Hag. Adm. 197; *R.* v. *Benson* (1833), 3 Hag. Adm. 96;

SECT. 2. **Application of Merchant Shipping Acts to Foreigners.**

SECT. 2.—*Application of Merchant Shipping Acts to Foreigners.*

3. The provisions of the Merchant Shipping Acts (*k*) are of so varied a character that general rules for their application to ships of foreign countries can only be formulated subject to all qualifications required by the particular case. Subject to such qualifications, the following classes of provisions may be said to apply to foreign ships (*l*):—

Foreign ships.

(1) Provisions applying in terms to such ships. Such are those relating to the carriage of deck cargo (*m*), to the inspection and regulation of emigrant ships (*n*), to the observance of the regulations for the prevention of collisions at sea (*o*), and to the detention of vessels not complying with the regulations as to loading (*p*).

(2) Provisions general in terms and applicable to foreign vessels: (a) where the foreign vessel is situated or the occurrence takes place within the jurisdiction (*q*), provided such application may be inferred (*r*) to have been intended by the legislature (*s*): such provisions are those directed against crimping (*t*); (b) where the foreign vessel is situated or the occurrence takes place outside the jurisdiction, provided such application may be inferred from the language used to have been intended by the legislature (*a*), or where such application is not in terms excluded and is demanded by public policy (*b*), or where the subject dealt with is remedy or procedure, and is, as such, part of the *lex fori* (*c*).

R. v. *Ewen* (1856), 2 Jur. (N. S.) 454; title CONSTITUTIONAL LAW, Vol. VI., pp. 362, 363.

(*k*) See note (*a*), p. 10, *ante*.

(*l*) See, generally, title CONFLICT OF LAWS, Vol. VI., pp. 177 *et seq.* As to torts committed on the high seas, see *ibid.*, pp. 251, 252.

(*m*) M. S. Act, 1894, s. 85; see pp. 79 *et seq.*, *post*.

(*n*) M. S. Act, 1894, s. 268; see pp. 335 *et seq.*, *post*.

(*o*) M. S. Act, s. 418; see pp. 359 *et seq.*, *post*. This provision is only applicable with regard to foreign vessels within the jurisdiction.

(*p*) M. S. Acts, 1894, s. 462; 1906, ss. 1, 5, 6; see pp. 177 *et seq.*, *post*.

(*q*) The distinction between considerations applicable in accordance with whether the foreign vessel is or is not within the jurisdiction has been constantly insisted upon (*The Zollverein* (1856), Sw. 96, *per* Dr. LUSHINGTON ("The laws of Great Britain affect her own subjects everywhere—foreigners only when within her own jurisdiction")); see also *Cope* v. *Doherty* (1858), 4 K. & J. 367, C. A.; *General Iron Screw Collier Co.* v. *Schurmanns* (1860), 1 John. & H. 180; *The Saxonia*, *The Eclipse* (1862), Lush. 410, P. C.; *The Wild Ranger* (1862), Lush. 553. As to jurisdiction, see titles ADMIRALTY, Vol. I., pp. 57 *et seq.*; COURTS, Vol. IX., pp. 1 *et seq.*; CONFLICT OF LAWS, Vol. VI., pp. 180 *et seq.*; PRIZE LAW AND JURISDICTION, Vol. XXIII., pp. 275 *et seq.*

(*r*) The application will not be inferred where the subject-matter of the provisions is specifically left to be dealt with by international agreement (*Poll* v. *Dambe*, [1901] 2 K. B. 579).

(*s*) *R.* v. *Stewart*, [1899] 1 Q. B. 964.

(*t*) M. S. Act, 1894, ss. 215, 216; see p. 54, *post*.

(*a*) As in the case of limitation of liability (*The Amalia* (1863), 9 Jur. (N. S.) 1111). As to limitation of liability, see pp. 612 *et seq.*, *post*.

(*b*) As in the case of a vessel which may be compelled to take on board a compulsory pilot (*The Annapolis*, *The Johanna Stoll* (1861), Lush. 295). As to pilotage, see pp. 596 *et seq.*, *post*.

(*c*) As in the case of *The Milford* (1858), Sw. 362; *The Tagus*, [1903] P. 44; see also *The Zollverein*, *supra*. The general rule is complicated

(3) Provisions in fact applied to ships of a foreign country by agreement with the Government of that foreign country (*d*). Special provision has been made for the application to ships of foreign countries of the English statute law relating to the tonnage regulations (*e*), deserters (*f*), the prevention of unauthorised persons from going on board ships (*g*), the load-line (*h*), collision regulations (*i*), and life salvage (*j*).

SECT. 2. Application of Merchant Shipping Acts to Foreigners.

SECT. 3.—*Application of Merchant Shipping Acts to Colonies.*

4. The legislature of any British possession may by any Act or ordinance, confirmed by His Majesty in Council, repeal wholly or in part any of the provisions of the Merchant Shipping Acts (*k*) relating to ships registered in that possession (except those contained in the Merchant Shipping Act, 1894, Part III., which relate to emigrant ships), but no such Act or ordinance can take effect until the approval of His Majesty has been proclaimed in the possession or until such time thereafter as may be fixed by the Act or ordinance for the purpose (*l*).

Colonial ships.

in regard to all the provisions of the M. S. Act, 1894, Part II., which deals with masters and seamen, by a special provision relating to conflict of laws. It is laid down by *ibid.*, s. 265, that where in any matter relating to a ship there appears to be a conflict of laws, then, if there is any provision on the subject in this part of the Act which is expressly made to extend to that ship, the case shall be governed by that provision, but if there is no such provision then the case shall be governed by the law of the port at which the ship is registered. There appears to be some difficulty in reconciling the judgments in *The Milford* (1858), Sw. 362, and *The Tagus*, [1903] P. 44, with the terms of this provision; see, in this connexion. the judgment of CHANNELL, J., in *R.* v. *Stewart*, [1899] 1 Q. B. 964. Even although the court has jurisdiction to entertain both actions for wages and actions for disbursements against foreign ships, it may refuse to exercise the jurisdiction where the representative of the State to which the ship belongs objects on reasonable grounds to the court proceeding to adjudicate; see title ADMIRALTY, Vol. I., p. 70. The question whether the M. S. Act, 1894, s. 419, which imposes the duty of obedience to the collision regulations on foreign vessels which have not entered into any treaty in respect of *ibid.*, Part V., applies in respect of collisions happening outside the jurisdiction has never been decided. The following cases, however, appear to be in point:—*The Saxonia, The Eclipse* (1862), Lush. 410, P. C.; *The Koning Willem I.*, [1903] P. 114; *The Astrakhan* (1909), *Shipping Gazette*, 4th November. As to conflict of laws generally, see title CONFLICT OF LAWS, Vol. VI., pp. 177 *et seq.* As to the effect of foreign judgments *in rem*, see *ibid.*, p. 295, and as to the effect of *lis alibi pendens*, see *ibid.*, p. 298.

(*d*) Any of the provisions of the M. S. Acts may be so applied by Order in Council (M. S. Act, 1894, s. 734).

(*e*) *Ibid.*, s. 84; see p. 19, *post.*

(*f*) M. S. Act, 1894, s. 238; see p. 61, *post.*

(*g*) M. S. Act, 1894, s. 219; see p. 54, *post.* The provisions of the M. S. Acts with regard to this matter are deemed to be extended to countries to which the provisions of the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (43 & 44 Vict. c. 16), have been extended (*R.* v. *Abrahams*, [1904] 2 K. B. 859).

(*h*) M. S. Act, 1906, s. 1; see p. 79, *post.*

(*i*) M. S. Act, 1894, s. 424; see pp. 360 *et seq.*, *post.*

(*j*) M. S. Act, 1894, s. 545; see pp. 561, 562, *post.*

(*k*) See note (*a*), p. 10, *ante.*

(*l*) M. S. Act, 1894, s. 735 (1). As to the application of English law in the colonies generally, see titles CONSTITUTIONAL LAW, Vol. VI., pp. 421 *et seq.*; DEPENDENCIES AND COLONIES, Vol. X., pp. 565 *et seq.*

SECT. 4, Definitions.

SECT. 4.—*Definitions.*

"Vessel"; "ship."

5. So far as the statute law is concerned, a distinction is to be drawn between "vessel" and "ship." Both the Merchant Shipping Act, 1894 (*m*), and the Admiralty Court Act, 1861 (*n*), define the expression "ship" as including "every description of vessel used in navigation not propelled by oars." The former Act also defines "vessel" as including "any ship or boat, or any other description of vessel used in navigation" (*o*). The statutory definitions do not purport to be exhaustive, and regard must in all cases be had to the context (*p*).

"Seaman."

So far as the Merchant Shipping Acts (*a*) are concerned, the term "seaman" includes every person employed in any capacity on board any ship (*b*), except masters, pilots, and apprentices duly indentured and registered (*c*). Although this definition is not exhaustive, it seems to include all persons covered by the expression "seaman" in the ordinary use of language (*d*).

(*m*) M. S. Act, 1894, s. 742.

(*n*) 24 & 25 Vict. c. 10, s. 2.

(*o*) M. S. Act, 1894, s. 742; see also Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 31.

(*p*) *The Mac* (1882), 7 P. D. 126, C. A. (hopper barge), distinguishing *Ex parte Ferguson* (1871), L. R. 6 Q. B. 280 (fishing coble), and followed in *The Mudlark*, [1911] P. 116 (sea-going hopper); *The C. S. Butler* (1874), L. R. 4 A. & E. 238 (lighter). It seems that a dumb barge, while being solely propelled by oars, is never a ship (*Everard* v. *Kendall* (1870), L. R. 5 C. P. 428; *Gapp* v. *Bond* (1887), 19 Q. B. D. 200, C. A.; see also *The Owen Wallis* (1874), L. R. 4 A. & E. 175, and the cases cited in reference to Admiralty jurisdiction under title ADMIRALTY, Vol. I., pp. 71, 128). The question whether a barge incapable of propelling herself except by oars can be considered a ship while in tow of another vessel has not been decided. The term "ship" has been held not to include an electric launch exclusively used on a small artificial lake (*Southport Corporation* v. *Morris*, [1893] 1 Q. B. 359), nor a raft (*Raft of Timber* (1844), 2 Wm. Rob. 251); nor a gas-buoy moored as a beacon (*Wells* v. *Gas Float Whitton No. 2* (*Owners*), [1897] A. C. 337), nor a "blow boat" or non-sea-going dredger (*The "Blow Boat,"* [1912] P. 217); but a sprit-sail barge navigated only on tidal waters has been held to be a ship (*Corbett* v. *Pearce*, [1904] 2 K. B. 422). The expression "ship" does not cover a vessel which has for four years been used as a coal hulk (*European and Australian Royal Mail Co.* v. *Peninsular and Oriental Steam Navigation Co.* (1866), 14 L. T. 704); as to a motor-boat, see *Weekes* v. *Ross*, [1913] 2 K. B. 229. Vessels fitted with sails which enabled them to run before the wind, but not to be navigated by means of their sails in the ordinary way, have, for the purpose of interpreting a Pilotage Act, been held to be ships (*St. John Pilot Commissioners* v. *Cumberland Railway and Coal Co.*, [1910] A. C. 208, P. C.). So far as limitation of liability is concerned, an unfinished ship has been deemed to be a ship (*The Andalusian* (1878), 3 P. D. 182), as also a sea-going hopper barge without means of propulsion, but with a rudder (*The Mudlark*, *supra*); see note (*a*), p. 612, *post*. As to the mortgage of an unfinished ship, see *Re Softley, Ex parte Hodgkin* (1875), L. R. 20 Eq. 746. For a definition of "sea-going ship," see *Salt Union* v. *Wood*, [1893] 1 Q. B. 370. A landing stage is not a "vessel" so as to make it obligatory upon her owners to file a preliminary act in an action relating to a collision with it (*The Craighall*, [1910] P. 207, C. A.); and see pp. 374, 375, *post*.

(*a*) See note (*a*), p. 10, *ante*.

(*b*) M. S. Act, 1894, s. 742.

(*c*) See p. 41, *post*.

(*d*) The following persons have been regarded as "seamen" for various purposes:—With regard to the payment of wages: a woman employed as

Part II.—Ownership and Control of British Ships.

SECT. 1.—*Ownership.*

SECT. 1. **Ownership.**

6. Ownership in a British ship or share therein may be acquired in any of three ways—by transfer from a person entitled to transfer (*e*), by transmission, or by building. Acquisition by transfer and transmission have been the subject of statutory enactment (*f*). Acquisition by building is governed by the common law (*g*).

How acquired.

Ownership in a British ship or share therein is a question of fact, and does not depend upon registration of title (*h*). Whether registered or unregistered, the person in whom ownership in fact vests is regarded in law as the owner—if registered, as the legal owner; if unregistered, as the beneficial owner (*i*).

Ownership a question of fact.

shipkeeper, steward and cook (*Jane and Matilda* (1823), 1 Hag. Adm. 187); a crew engaged for a voyage in respect of which the ship had never left port (*Re Great Eastern Steamship Co., Williams' Claim* (1885), 5 Asp. M. L. C. 511); a storekeeper who had not been actually engaged for a voyage (*Thomson* v. *Hart* (1890), 28 Sc. L. R. 28); a stevedore (*R.* v. *City of London Court Judge and SS. Michigan (Owners)* (1890), 25 Q. B. D. 339); see pp. 46 *et seq.*, *post*. With regard to the regulations in respect of the accommodation of seamen: lascars (*Peninsular and Oriental Steam Navigation Co.* v. *R.*, [1901] 2 K. B. 686). For the purposes of the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), persons whose natural calling was the sea, but were not at the time actually employed or engaged as seamen, were held not to be "seamen" (*R.* v. *Lynch*, [1898] 1 Q. B. 61, C. C. R.). For cases under the Employers' Liability and Workmen's Compensation Acts, see title MASTER AND SERVANT, Vol. XX., pp. 128 *et seq.*, and as to the insurance of seamen under the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), see title WORK AND LABOUR.

(*e*) A ship is not like an ordinary chattel which passes by delivery, and there is no market overt for ships (*Hooper* v. *Gumm*, *McLellan* v. *Gumm* (1867), 2 Ch. App. 282).

(*f*) For definition of "ship," see p. 14, *ante*. As to transfer and transmission of ships, see, generally, pp. 21 *et seq.*, *post*. As to transfer to the sheriff where execution is levied on a ship or share, see *Chasteauneuf* v. *Capeyron* (1882), 7 App. Cas. 127, P. C.; *Harley* v. *Harley* (1860), 11 I. Ch. R. 451; see also title EXECUTION, Vol. XIV., p. 48; and as to sheriffs generally, see title SHERIFFS AND BAILIFFS, Vol. XXV., pp. 791 *et seq.*

(*g*) For the law relating to the passing of property in regard to the building of ships, see title BUILDING CONTRACTS, ENGINEERS, AND ARCHITECTS, Vol. III., pp. 165, 260, 263, 271; *Laing (Sir James) & Sons, Ltd* v. *Barclay, Curle & Co., Ltd.*, [1908] A. C. 35. For form of contract to repair a ship, see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 40, 41.

(*h*) *Union Bank of London* v. *Lenanton* (1878), 3 C. P. D. 243, C. A.; *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521, C. A.; *Von Freeden* v. *Hull, Blyth & Co.* (1906), 10 Asp. M. L. C. 247.

(*i*) Beneficial ownership in ships, which is now recognised by the M. S. Act, 1894, s. 57, was first recognised in English law by the M. S. Amendment Act, 1862 (25 & 26 Vict. c. 63), s. 3; see *Union Bank of London* v. *Lenanton*, *supra*, and M. S. Act, 1894, s. 57. As regards Scotland, see *Watson* v. *Duncan* (1879), 16 Sc. L. R. 791 (equitable title good as against assignee in bankruptcy). The court may look behind the register and ascertain the real character of transactions between co-owners (*The Innisfallen* (1866), L. R. 1 A. & E. 72; *The Cathcart* (1867), L. R. 1 A. & E. 314). Persons beneficially interested in a ship otherwise than by

SECT. 1. **Ownership.**

Who may be owner.

7. Only persons and corporations qualified under statute may become and remain either legal or beneficial owners of a British ship or share therein, and no ship is deemed a British ship unless entirely owned by qualified persons (*k*). Persons and corporations so qualified are natural-born or naturalised British subjects; persons made denizens by letters of denization (*l*); corporate bodies established under and subject to the laws of some part of the British dominions, and having their principal place of business in those dominions (*m*), provided that persons naturalised or made denizens, or persons originally British born, who have become subjects of a foreign State are not qualified unless they take the oath of allegiance and also, during the period of ownership, are resident in the British dominions or are partners in a firm carrying on business in the British dominions (*n*).

SECT. 2.—*Registration.*

SUB-SECT. 1.—*Obligation to Register and Effect of Registration.*

Obligation to register.

8. Every ship must, unless specially exempted, be registered (*o*), and no ship required to be registered which is left unregistered will be recognised as, or enjoy the privileges of, a British ship (*p*).

Ships not exceeding fifteen tons net register (*a*), employed solely in navigation on the rivers or coasts of the United Kingdom or of some British possession, within which the managing owners reside; ships not exceeding thirty tons net register, and not having a whole or fixed deck, engaged in fishing or trading coastwise on the coasts of Newfoundland or in the Gulf of St. Lawrence (*b*), and Government vessels (*c*) are exempted from registration. A ship

way of mortgage are subject to all pecuniary penalties imposed by statute (M. S. Act, 1894, s. 58).

(*k*) *Ibid.*, s. 1.

(*l*) As to letters of denization, see title ALIENS, Vol. I., pp. 312, 313.

(*m*) A corporation may be qualified to own a British ship although some of its members are foreigners (*R.* v. *Arnaud* (1846), 9 Q. B. 806). As to ownership by corporations generally, see title CORPORATIONS, Vol. VIII., pp. 365 *et seq.* As to the establishment of a place of business in the United Kingdom by a company incorporated elsewhere, see title COMPANIES, Vol. V., p. 758.

(*n*) See *Compagnie Générale Transatlantique* v. *Law* (*Thomas*) *& Co.*, *La "Bourgogne,"* [1899] A. C. 431; *Dunlop Pneumatic Tyre Co.* v. *Actien-Gesellschaft für Motor und Motorfahrzeugbau vorm. Cudell & Co*, [1902] 1 K. B. 342, C. A. As to the oath of allegiance, see Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72); and title CONSTITUTIONAL LAW, Vol. VII., pp. 24, 25.

(*o*) M. S. Act, 1894, s. 2 (1). As to the objects and policy of registration, see *Liverpool Borough Bank* v. *Turner* (1860), 1 John. & H. 159. As to the Fishing Boat Register, see title FISHERIES, Vol. XIV., pp. 628, 629.

(*p*) M. S. Act, 1894, s. 2 (2). An exception to the rule may be made in the case of a British ship wishing to pass unregistered from one part of the British dominions to another (*ibid.*, s. 23). As to an exception to this rule in regard to the limitation of liability in the case of British-built ships, see pp. 612, 613, *post.*

(*a*) M. S. Act, 1894, s. 3 (1); *The Brunel*, [1900] P. 24, C. A.

(*b*) M. S. Act, 1894, s. 3 (2). For the law regulating fishing boats and vessels engaged in whale and seal fisheries, see titles CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 561, 562; FISHERIES, Vol. XIV., pp. 628 *et seq.*

(*c*) M. S. Act, 1894, s. 741. Power is, however, given to the King in Council to order registration in the case of any special class of Government ships (M. S. Act, 1906, s. 80). As to His Majesty's ships generally, see title ROYAL FORCES, Vol. XXV., pp. 3 *et seq.*

required to be registered may be detained until the master produces a certificate of registration (*d*).

Effect of registration.

9. No notice of any trust, express, implied, or constructive, may be entered in the register book, and, subject to any rights and powers appearing by the register to be vested in any other person, the registered owner has absolute power to deal with a ship or share and to give effectual receipts in respect thereof (*e*). Subject to these provisions, persons claiming under or through a registered owner, provided they are qualified to be owners of British ships, may acquire and enforce a beneficial interest in respect of a ship as in respect of any other personal property (*f*).

SUB-SECT. 2.—*Procedure and Requirements on Registration.*

Survey.

10. Before registration every ship must be surveyed by a surveyor of ships (*g*), an official who is appointed and controlled by the Board of Trade (*h*). After survey the surveyor will grant a certificate specifying the tonnage (*i*) and build of the ship and any other particulars required at the time by the Board of Trade. This certificate must, before registration, be delivered to the registrar.

Marking.

11. Every British ship, unless specifically exempted (*k*), must be marked (*l*) permanently and conspicuously to the satisfaction of the Board of Trade with her name on each bow, and with her name and her port of registry (*m*) on her stern. Her official number and

(*d*) M. S. Act, 1894, s. 2 (3); as to the certificate of registration, see pp. 20, 21 *post*.

(*e*) M. S. Act, 1894, s. 56; title MORTGAGE, Vol. XXI., p. 133. The court will not look behind the title of a *bonâ fide* purchaser who has been duly registered as part owner (*The Horlock* (1877), 2 P. D. 243); but in order to be effectual the disposal must be in the manner provided by statute; see *Black* v. *Williams*, [1895] 1 Ch. 408; *Burgis* v. *Constantine*, [1908] 2 K. B. 484, C. A.; *Barclay & Co., Ltd.* v. *Poole*, [1907] 2 Ch. 284. As to trusts generally, see title TRUSTS AND TRUSTEES.

(*f*) M. S. Act, 1894, s. 57. As to beneficial interests, see pp. 30, 31, *post*; as to the effect of the M. S. Act, 1894, ss. 56, 57, see *Black* v. *Williams*, *supra*; *Barclay & Co., Ltd.* v. *Poole*, *supra*; as to the proof of the contents of such register, see title EVIDENCE, Vol. XIII., pp. 474, 477; as to personal property generally, see title PERSONAL PROPERTY, Vol. XXII., pp. 385 *et seq.*

(*g*) M. S. Act, 1894, s. 6. The ship must, it seems, be complete before survey; see *The Andalusian* (1878), 3 P. D. 182; but see note (*i*), p. 613, *post*; as to surveys of emigrant and passenger ships, see pp. 332 *et seq.*, *post*; and as to Courts of Survey, see title COURTS, Vol. IX., p. 107.

(*h*) M. S. Acts, 1894, s. 724; 1906, s. 75. As to the power of the Board of Trade to instruct surveyors to refuse certificates where the materials used in the construction of a ship are not of a specified kind, see *Denny and Brothers, etc.* v. *Board of Trade* (1880), 7 R. (Ct. of Sess.) 1019.

(*i*) The form of the certificate is prescribed by the Commissioners of Customs and sanctioned by the Board of Trade (M. S. Act, 1894, s. 65, and Sched. I., Part II.). As to the Commissioners of Customs and their powers and duties generally, see title REVENUE, Vol. XXIV., pp. 544 *et seq.*, 592, 593; as to the methods prescribed for ascertaining tonnage, see p. 19, *post*; as to the general functions of the Board of Trade, see title CONSTITUTIONAL LAW, Vol. VII., pp. 102, 103.

(*k*) Fishing boats are so exempted, but are the subject of special regulations; see M. S. Act, 1894, ss. 7 (2), 373—375; title FISHERIES, Vol. XIV., pp. 628, 629. For the exemption of pleasure yachts, see p. 659, *post*.

(*l*) The letters must be of a particular size and colour (M. S. Act, 1894, s. 7).

(*m*) The port of registry of a British ship is the port where she is registered for the time being (*ibid.*, s. 13). For regulations respecting the application for and the granting of a name to a British ship, see *ibid.*,

SECT. 2. Registration.

registered tonnage must be cut on her main beam. A scale of feet denoting her draught must be marked on each side of her stem and of her stern-post (*n*).

Application to register.

12. Application for registry must be made by the person or persons requiring to be registered as owners, or by their agents duly authorised in writing, or, in the case of a corporation, by its agent appointed under seal (*o*).

Formalities required.

A person (*p*) desiring to be registered as owner must before registration make a declaration of ownership, stating his qualifications to own a British ship, when and where the ship was built, the master's name, the number of shares held by each registered owner, and that, to the best of his knowledge and belief, no unqualified person is entitled to any legal or beneficial interest in the ship or to any share therein (*q*).

Builder's certificate.

In addition to the declaration of ownership there must be produced in evidence, on the first registration of a British-built ship, a builder's certificate showing her denomination and tonnage, the date of her building, the name of the person for whom she was built, and particulars of any sale which has taken place. In the case of a foreign-built ship the same evidence must, if possible, be given (*r*).

The register book.

13. On registration the registrar must enter in the register book, which he is bound to keep (*s*), particulars of the name of the ship and of the name of the port to which she belongs, the details comprised in the surveyor's certificate, her origin, and the names and descriptions of her owners (*t*).

Division into shares.

14. The property in a ship must be divided into sixty-four shares, and no more than sixty-four persons may be registered as owners of any one ship. This does not prevent persons being joint

s. 47. The name must not be so similar to that of another registered British ship as to be calculated to deceive (M. S. Act, 1906, s. 50; and Regulations made by the Board of Trade, issued 28th August, 1907, and having effect 1st January, 1908). For form of notice of change of name, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 88. The name of a ship can only be changed with the written permission of the Board of Trade. Where such permission is obtained, notice of the alteration must be published in such manner as the Board of Trade may think fit, and the name must forthwith be altered in the register book and certificate of registry, and also on the bows and stern of the ship (M. S. Act, 1894, s. 4).

(*n*) M. S. Act, 1894, s. 7. For other markings of the ship necessary before she can proceed to sea, see pp. 78, 79, *post*.

(*o*) M. S. Act, 1894, s. 8. As to corporations generally, see title CORPORATIONS, Vol. VIII., pp. 299 *et seq*.

(*p*) "Person" includes persons (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 1 (1) (b)), and any body of persons corporate or unincorporate (*ibid.*, s. 19).

(*q*) M. S. Act, 1894, s. 9.

(*r*) *Ibid.*, s. 10. The registrar may in suitable cases dispense with the declarations and evidence (*ibid.*, s. 60).

(*s*) *Ibid.*, s. 5. The book may be inspected by any person at reasonable times for a fee of 1*s*. (*ibid.*, s. 64). It would seem that in some circumstances the builder's certificate may be given for the purpose of obtaining registration before the ship is complete; see *Goss* v. *Quinton* (1842), 4 Scott (N. R.), 471; *Woods* v. *Russell* (1822), 5 B. & Ald. 942.

(*t*) M. S. Act, 1894, s. 11. The name and address of every managing owner for the time being must be registered at the custom-house of the ship's port of registry (*ibid.*, s. 59). As to the registration of fishing boats, see title FISHERIES, Vol. XIV., pp. 628, 629.

owners of a share, nor does it affect the beneficial title of any number of persons or of any company represented by or claiming under or through any registered owner or joint owner. A joint owner may not dispose in severalty of any interest he possesses. A corporation may be registered as owner by its corporate name (*a*).

Closing the registry.

15. When a ship is actually or constructively lost, taken by the enemy, burnt, or broken up, or has by passing into the hands of unqualified persons, or otherwise, ceased to be a British ship, notice must at once be given to the registrar, who must enter the fact in the book, and the registry of the ship is considered closed, except so far as relates to any unsatisfied mortgages or certificates of mortgage entered therein (*b*).

SUB-SECT. 3.—*Measurement of Ship and Tonnage.*

Tonnage.

16. The registered tonnage of a ship is based on her cubic capacity. The various dimensions of the ship duly ascertained and multiplied together yield a figure from which, after certain deductions have been made (*c*), the registered tonnage of a ship may be calculated, one ton being considered the equivalent of every hundred cubic feet (*d*).

(*a*) M. S. Act, 1894, s. 5. As to the effect of transactions by a corporation under its corporate name, see title CORPORATIONS, Vol. VIII., p. 308.

(*b*) M. S. Act, 1894, s. 21; M. S. Act, 1906, s. 52.

(*c*) As to the deductions to be made in calculating the tonnage for the purposes of limitation of liability, see *The Umbilo*, [1891] P. 118; and p. 615, *post;* and as to limitation of liability generally, see pp. 612 *et seq.*, *post.*

(*d*) The rules for the measurement of ships may be found in detail in the M. S. Act, 1894, ss. 77—81, Sched. II.; in the M. S. Act, 1906, s. 54; and in the provisions of the M. S. Act, 1907. They may be modified or altered from time to time by the Board of Trade (M. S. Act, 1894, s. 77 (7)), but not in such a way as to affect the deductions allowed in ascertaining registered tonnage (*City of Dublin Steam Packet Co.* v. *Thompson* (1866), L. R. 1 C. P. 355, Ex. Ch.). As to details, see *Lord Advocate* v. *Clyde Steam Navigation Co.* (1875), L. R. 2 Sc. & Div. 409 (what is a "spar deck"), and *Leith, Hull and Hamburg Steam-Packet Co.* v. *Lord Advocate* (1873), 11 Macph. (Ct. of Sess.) 597. The spaces, of which the cubic capacity may be deducted from the total cubic capacity of the ship, are the spaces occupied by the propelling power, such deduction not to exceed 55 per cent. after other deductions have been made (M. S. Act, 1907, s. 1); those framed in above the upper deck for the machinery, or for the admission of light and air (in certain cases only); those used exclusively for the accommodation of the master, or occupied by seamen and apprentices; those used exclusively for the working of the helm, capstan and anchor gear, or for keeping charts, signals, or other instruments of navigation and boatswain's stores; those occupied by the donkey boiler and engine, if connected with the main pumps; those adapted only for water ballast, other than a double bottom; and, in the case of a sailing ship, any space set apart and used exclusively for the storage of sails (M. S. Acts, 1894, ss. 78—81; 1906, s. 54 (1)). As to the measurement of ships with double bottoms, see M. S. Act, 1894, s. 81, and *The Zanzibar*, [1892] P. 233. As to the correction of errors in the registered tonnage, see M. S. Act, 1894, s. 82, and *The Recepta* (1889), 14 P. D. 131. Where the British system of measurement has been adopted by a foreign country the re-measurement of a vessel belonging to such country for any of the purposes of the M. S. Acts may be dispensed with by Order in Council, and the capacity of any spaces in respect of which deductions are allowed by British law may be taken to be as stated in the foreign certificate of registry (M. S. Acts, 1894, s. 84 (1); 1906, s. 55; see also *The Cordilleras*, [1904] P. 90). The countries in respect of which these provisions have been applied are:—Austria-Hungary (19th August, 1871);

SECT. 2. Registration.

SUB-SECT. 4.—*Ports of Registry.*

Port of registry.

17. Registration must be effected at a port of registry through a registrar of British ships, that is to say, at any port in the United Kingdom or Isle of Man approved by the Commissioners of Customs, through the chief officer of customs; at any port in a British dominion approved by the governor, through the chief officer of customs or the governor or his deputies (*e*); and at certain other ports through specified officials (*f*).

How changed.

18. A ship's port of registry may be changed on application to the registrar of the existing port of registry, made by declaration in writing of all persons appearing on the register to be interested therein as owners or mortgagees. The registrar of the existing port of registry will, on such application being made, communicate the particulars relating to the ship to the registrar of the intended port of registry, who will grant a fresh certificate of registry (*g*).

SUB-SECT. 5.—*Certificate of Registry.*

Certificate of registry.

19. On the completion of the registry the registrar grants a certificate of registry containing the particulars entered in the register book, with the name of the master (*h*). This certificate must be used only for the lawful navigation of the ship, must be delivered up on request to the person entitled to the custody of it (*i*), and

Belgium (17th October, 1884); Denmark (29th February, 1868; 30th December, 1878; 20th April, 1883; 21st November, 1895); France (10th August, 1904); Germany (23rd July, 1889; 22nd February, 1896); Greece (14th August, 1879); Hayti (3rd May, 1882); Italy (11th May, 1906); Japan (27th January, 1885); Netherlands (3rd May, 1888); Norway (27th June, 1894); Russia and Finland (20th November, 1880); Sweden (18th August, 1882); United States of America (30th July, 1868; 19th March, 1883; 3rd October, 1895). Orders given under these provisions may be revoked by Order (M. S. Act, 1894, s. 84 (2)), as has been done in the case of Spain (29th January, 1904). For these Orders, see Stat. R. & O. Rev., Vol. VIII., Merchant Shipping, pp. 1 *et seq.*

(*e*) M. S. Act, 1894, s. 4 (1). The term "chief officer of customs" covers a number of officials; for definition, see *ibid.*, s. 742. "Port" includes place (*ibid.*). As to the Commissioners of Customs and their powers and duties generally, see title REVENUE, Vol. XXIV., pp. 544 *et seq.*, 592, 593.

(*f*) The ports or officials may be specified either by statute or by Order in Council. Ports in which officials have been specified by statute are Guernsey, Jersey, Malta, Gibraltar, Calcutta, Madras and Bombay (*ibid.*, s. 4 (1)). Ports specified by Order in Council are so specified in virtue of the M. S. Act, 1894, s. 88, which deals with ports over which His Majesty has jurisdiction in accordance with the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37); as to this jurisdiction generally, see title CONSTITUTIONAL LAW, Vol. VI., pp. 448 *et seq.* Orders have been made in the cases of Shanghai (15th July, 1904); Old Calabar (7th March, 1904); Larnaca (29th June, 1900). Officials specified by Order in Council are so specified in virtue of the M. S. Act, 1894, s. 4 (2), which deals with all British possessions other than the Channel Islands or the Isle of Man. Officials have been appointed for the following places:—Singapore, Penang and Malacca (9th July, 1869); Gibraltar (11th July, 1877); Tasmania (23rd November, 1893).

(*g*) M. S. Act, 1894, s. 53.

(*h*) *Ibid.*, s. 14. As to the register book, see p. 18, *ante*. The certificate of registry is *primâ facie* evidence that the ship is British (*R.* v. *Bjornsen* (1865), 12 L. T. 473). As to the admissibility of the certificate of registry as evidence, see title EVIDENCE, Vol. XIII., p. 477.

(*i*) As to when refusal to deliver is reasonable, see *Arkle* v. *Henzell* (1858), 8 E. & B. 828; *R.* v. *Walsh* (1834), 1 Ad. & El. 481.

cannot be made subject to detention by reason of any title, lien, charge or interest (*j*).

Provisional certificate.

20. Provisional certificates may be granted by registrars and consular officers where the certificate of the ship has been mislaid, lost or destroyed (*k*). Such provisional certificates must, when the opportunity arises, be delivered up to the registrar of the ship's port of registry to be exchanged for a fresh permanent certificate (*l*). Provisional certificates, good for six months or until the arrival of the ship at a port where there is a registrar, may be granted by a British consular officer where a ship becomes British owned while situated outside British dominions (*m*).

Indorsements.

21. The certificate of registry must, where there is a change of master (*n*) or a change of ownership (*o*), have notification of the change indorsed upon it by the proper official.

Delivery up of certificate.

22. Where a registered ship is actually or constructively lost, taken by the enemy, burnt or broken up, or passes into the hands of unqualified persons, the certificate of registry must, unless lost or destroyed, be delivered up to a registrar (*p*). The certificate must also be produced to the registrar when an alteration is made in the ship, or when re-registration is necessary either by reason of the vessel changing ownership or because her port of registry is altered (*q*).

SECT. 3.—*Transfer and Transmission of Property in Ships.*

SUB-SECT. 1.—*Mode of Transfer.*

Transfer by bill of sale.

23. A registered ship or share therein, when disposed of to a person qualified to own a British ship, must be transferred by bill of sale (*r*). This document must be as nearly as possible in the

(*j*) M. S. Act, 1894, s. 15; see *Gibson* v. *Ingo* (1847), 6 Hare, 112 (attempt to establish lien by master and shipbrokers); *Wiley* v. *Crawford* (1861), 30 L. J. (Q. B.) 319 (pledge of certificate); *The St. Olaf* (1876), 3 Asp. M. L. C. 268; *The Celtic King*, [1894] P. 175 (delivery of certificate ordered by court to purchaser from mortgagee, where mortgagor had placed certificate in the hands of other persons under a working agreement without notice to mortgagees). The court will only order the delivery of a certificate to persons with a clear title to it; see *The Frances* (1820), 2 Dods. 420. Provisions are contained in the M. S. Act, 1894, ss. 16—23, as to the furnishing of new certificates in lieu of one lost, or when there is a change of master or owner; and as to delivery up of certificates when the ship becomes the property of unqualified persons, see also M. S. Act, 1906, s. 52 (1). As to lien generally, see pp. 617 *et seq. post.*

(*k*) M. S. Act, 1894, s. 18 (2).

(*l*) *Ibid.*, s. 18 (1), (2).

(*m*) *Ibid.*, s. 22. As to the powers and duties of consular officers generally, see title CONSTITUTIONAL LAW, Vol. VI., pp. 435 *et seq.*

(*n*) M. S. Act, 1894, s. 19.

(*o*) *Ibid.*, s. 20; as to transfer of ownership, see the text, *infra.*

(*p*) M. S. Act, 1894, s. 21. In these circumstances the registry of the ship is considered closed, except as regards unsatisfied mortgages or existing certificates of mortgage entered therein (*ibid.*, s. 21; M. S. Act, 1906, s. 52 (1); see p. 19, *ante*).

(*q*) M. S. Act, 1894, ss. 49—53.

(*r*) *Ibid.*, s. 24 (1). As to the exemption of such transfers from the Bills of Sale Acts, see title BILLS OF SALE, Vol. III., p. 17. For definitions of "ship," see M. S. Act, 1894, s. 742; and p. 14, *ante.* As to proof of ownership by the production of a bill of sale, see title EVIDENCE, Vol. XIII., p. 426. In the case of a sale, as in the case of a mortgage,

SECT. 3. Transfer and Transmission of Property in Ships.

prescribed form, and must be executed by the transferor and attested by at least one witness (*s*). Before being registered as owner the transferee must make a declaration of transfer stating his qualifications as to ownership and that, to the best of his knowledge and belief, no unqualified person is entitled as owner to any legal or beneficial interest in the ship or any share therein (*t*). The executed bill of sale and the declaration must then be produced to the registrar of the ship's port of registry, and the name of the transferee is entered on the register (*u*).

Transfer without bill of sale.

An unregistered ship (*v*), or a registered ship when disposed of to an unqualified person (*a*), may be transferred without a bill of sale or any special formality, but notice must be given at the ship's port of registry of a transfer to an unqualified person (*b*).

SUB-SECT. 2.—*Transmission of Title.*

Transmission on death etc.

24. Where property in a registered ship or share is transmitted to a qualified person on marriage, death, bankruptcy or otherwise by operation of law (*c*), such person must make a declaration of trans-

it seems that all the gear necessary to the ship would pass, having regard to the adventure on which she is engaged at the time of her transfer (*Coltman* v. *Chamberlain* (1890), 25 Q. B. D. 328); but this does not include appurtenances (*Re Salmon and Woods, Ex parte Gould* (1885), 2 Morr. 137). Where "appurtenances" are expressly included in the sale, these do not include oil acquired by a whaler during a voyage (*Langton* v. *Horton* (1842), 5 Beav. 9); or gear not appropriated to the sole use of the ship (*Re Salmon and Woods, Ex parte Gould, supra*); see note (*n*), p. 24, *post*. As to fees, see *Harrowing S.S. Co.* v. *Toohey*, [1900] 2 Q. B. 28.

(*s*) M. S. Act, 1894, s. 24 (2). The form is that marked "A" in *ibid.*, Sched. I., Part I., but is subject to alteration by the Commissioners of Customs with the consent of the Board of Trade (*ibid.*, s. 65). For statutory form of a bill of sale, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 53.

(*t*) M. S. Act, 1894, s. 25.

(*u*) *Ibid.*, s. 26.

(*v*) This mode of transfer is not required in the case of an unregistered ship, even, apparently, where such ship ought to have been registered (*Union Bank of London* v. *Lenanton* (1878), 3 C. P. D. 243, C. A.; see p. 15, *ante*), nor in the case of a ship which has been registered, although not required to be so (*Benyon* v. *Cresswell* (1848), 12 Q. B. 899), nor in the case of a ship which, from long and continued use as a coal hulk, has ceased to rank as a ship (*European and Australian Royal Mail Co.* v. *Peninsular and Oriental Steam Navigation Co.* (1866), 2 Mar. L. C. 351). A transfer or assignment of a ship or vessel, or any share thereof, need not be registered under the Bills of Sale Acts; see title BILLS OF SALE, Vol. III., p. 17. This mode of transfer is required in the case of ships sold by order of the court (M. S. Act, 1894, s. 29; see title ADMIRALTY, Vol. I., pp. 123, 124). An agreement to transfer a ship need not be registered (*Batthyany* v. *Bouch* (1881), 4 Asp. M. L. C. 380). For definitions of "ship" see p. 14, *ante*.

(*a*) The M. S. Acts (see note (*a*), p. 10, *ante*) make no provision for this case, but no interest, either legal or beneficial, can be acquired in a ship which continues to assume the British character, or if acquired may be forfeited (M. S. Act, 1894, s. 71). An unqualified person who is equitable owner of a share in a ship is subject to all liabilities of equitable owners despite liability to forfeiture (*Von Freeden* v. *Hull, Blyth & Co.* (1906), 10 Asp. M. L. C. 247). For form of agreement to sell a British ship to a foreigner, see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 49, 50.

(*b*) M. S Acts, 1894, s. 21 (1); 1906, s. 52 (1).

(*c*) The words in this provision are, "by any lawful means other than by a transfer under this Act" (M. S. Act, 1894, s. 27). As to the meaning and extent of this phrase, see *Chasteauneuf* v. *Capeyron* (1882), 7 App. Cas. 127, P. C.

mission, identifying the ship and containing the statements required in a declaration of transfer (*d*), or as near thereto as circumstances admit, and an account of the manner in which the property is transmitted, together with evidence to support such account. The registrar will then enter in his book the name of the person to whom the property is transmitted as that of the owner (*e*).

Transmission to unqualified person.

25. Where property in an unregistered ship or share is transmitted to an unqualified person on marriage, death, bankruptcy, or otherwise, the appropriate court having jurisdiction in the place of registry may, on application by or on behalf of the unqualified person, order a sale of the ship or share for his benefit (*f*).

Incapacitated persons.

26. Where by reason of infancy, lunacy, or any other cause, any person interested in a ship or share is incapable of making any declaration or complying with other statutory formalities in connexion with the registry of the ship or share, the guardian or committee, if any, of the incapacitated person may act for him, or if there is none, any person appointed on application made on behalf of the incapacitated person (*g*).

SUB-SECT. 3.—*Prohibition of Transfer.*

Power of court to prohibit transfer.

27. Any interested person may apply to the appropriate court having jurisdiction in the place of registry for an order prohibiting for a specified time any dealing with a ship or share, and such order may be made by such court on such conditions with regard to costs or otherwise as the justice of the case demands (*h*).

SUB-SECT. 4.—*Transfer by Way of Mortgage.*

(i.) *Formalities.*

Mortgage.

28. A charge as security for repayment of money on a ship or a share therein may either be registered as a mortgage, in which case it is subject to various statutory provisions relating to statutory mortgages (*i*), or unregistered, in which case, although recognised as valid as against the grantor, it will only rank as an equitable charge upon the ship (*k*). No special formalities are required for

(*d*) See the text, *infra*.

(*e*) M. S. Act, 1894, s. 27.

(*f*) *Ibid.*, s. 28. The court may order either a sale generally or a particular sale (*British Ship The Santon* (1878), 26 W. R. 810). For penalties attaching to failure to make application under this provision, see p. 33, *post*, and *The Millicent*, [1891] W. N. 162.

(*g*) M. S. Act, 1894, s. 55 (1). The power thus given to a guardian does not extend to enable him to sell or mortgage the ship or share on behalf of the infant (*Michael* v. *Fripp* (1868), L. R. 7 Eq. 95). As to the position of infants and lunatics generally, see titles INFANTS AND CHILDREN, Vol. XVII., pp. 39 *et seq.*; LUNATICS AND PERSONS OF UNSOUND MIND, Vol. XIX., pp. 389 *et seq.*

(*h*) M. S. Act, 1894, s. 30. The appropriate court is, in England or Ireland, the High Court; in Scotland, the Court of Session; and elsewhere, the court having the principal civil jurisdiction (*ibid.*).

(*i*) M. S. Act, 1894, ss. 31—46; see also title MORTGAGE, Vol. XXI., p. 133. All disputes concerning duly registered mortgages are within the jurisdiction of the Admiralty Division; see title ADMIRALTY, Vol. I., p. 65. For statutory form of mortgage, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 55; and for deed of covenant accompanying such a mortgage, see *ibid.*, p. 60.

(*k*) M. S. Act, 1894, s. 57; see p. 30, *post*.

SECT. 3. Transfer and Transmission of Property in Ships.

the creation of an unregistered, or equitable, charge, and the court may treat as a mortgage that which is on the face of it an absolute transfer, if it should appear that such was the intention of the parties (*l*). Where, however, a mortgage is registered, the instrument creating it should be as nearly as possible in the specified form (*m*), and this, on production, is recorded by the registrar in the register book, the day and hour of registration being stated (*n*).

It is not necessary that the whole of the agreement between the parties should be contained in the instrument registered, and further stipulations may be contained in a separate instrument (*o*).

(ii.) *Rights of Mortgagees.*

Nature of mortgage.

29. The rights of mortgagees of ships are, so far as the special nature of the security permits, governed by the rules of law laid down in respect of the mortgages of other chattels (*p*). Inasmuch, however, as a ship differs in many respects from other forms of security (*q*), these rights have been the subject of special statutory enactments and numerous decisions which are now to be dealt with.

Position of mortgagor and mortgagee.

Except so far as may be necessary for making a mortgaged ship or share available as a security for the mortgage, the mortgagee is not deemed the owner of the ship or share, nor is the mortgagor deemed to have ceased to be the owner thereof (*r*). The result is

(*l*) *Langton* v. *Horton* (1842), 5 Beav. 9; *Whitfield* v. *Parfitt* (1851) 4 De G. & Sm. 240; *The Innisfallen* (1866), L. R. 1 A. & E. 72; see also *Ward* v. *Beck* (1863), 13 C. B. (N. S.) 668. An equitable charge may be created by the deposit of a builder's certificate (*Re Softley, Ex parte Hodgkin* (1875), L. R. 20 Eq. 746), or by the deposit of a mortgage deed (*Lacon* v. *Liffen* (1862), 4 Giff. 75); and see title MORTGAGE, Vol. XXI., p. 134, note (*p*).

(*m*) See M. S. Act, 1894, s. 65, Sched. I., Part II. A mortgage executed in blank was ordered to be expunged from the register (*Burgis* v. *Constantine*, [1908] 2 K. B. 484, C. A.); a similar order may be made where a mortgage has been fraudulently registered by a person alleging himself to be a mortgagee (*Brond* v. *Broomhall*, [1906] 1 K. B. 571; see also *Holderness* v. *Lamport* (1861), 29 Beav. 129). A mistake in the name of the vessel will not invalidate a mortgage, provided there is no question as to identity (*Bell* v. *Bank of London* (1858), 3 H. & N. 730).

(*n*) M. S. Act, 1894, s. 31. Where a ship and her "appurtenances" are mortgaged it is usually understood that the mortgage extends to everything on board her necessary to the prosecution of the adventure on which she is engaged (*Coltman* v. *Chamberlain* (1890), 25 Q. B. D. 328); but in order to rank as "appurtenances" gear must be actually appropriated to the mortgaged ship (*Re Salmon and Woods, Ex parte Gould* (1885), 2 Morr. 137); and the mortgage of a whaler does not include oil acquired during the voyage (*Langton* v. *Horton, supra*); and see note (*r*), p. 21, *ante*. A policy of insurance upon a ship may be mortgaged as a separate security (*Swan and Cleland's Graving Dock and Slipway Co.* v. *Maritime Insurance Co. and Croshaw*, [1907] 1 K. B. 116); and see title MORTGAGE, Vol. XXI., p. 134.

(*o*) *The Innisfallen, supra; The Cathcart* (1867), L. R. 1 A. & E. 314; *The Benwell Tower* (1895), 8 Asp. M. L. C. 13. An agreement to give a "legal mortgage" has been construed as an agreement to give a first mortgage; compare title MORTGAGE, Vol. XXI., pp. 75, 76.

(*p*) *Thompson* v. *Smith* (1815), 1 Madd. 395; *The Benwell Tower, supra;* and see, generally, title MORTGAGE, Vol. XXI., pp. 65 *et seq.*

(*q*) *Hooper* v. *Gumm, McLellan* v. *Gumm* (1867), 2 Ch. App. 282; and see p. 23, *ante*.

(*r*) M. S. Act, 1894, s. 34.

that while as between the parties to the mortgage the property in the ship has passed (*s*), yet so far as regards third parties the mortgagor remains *dominus* with regard to everything connected with the employment of the ship (*t*), and the mortgagee is protected from liabilities connected therewith (*u*).

Possession.

30. The chief right of a mortgagee of a ship (*a*), or of a majority of shares in a ship, is the right in proper circumstances to take possession. This he may do even before any part of the mortgage debt has become due (*b*) if his security is being impaired (*c*) in some material way (*d*).

Possession may be either actual (*e*) or constructive. To obtain constructive possession the mortgagee must clearly indicate his intention to assume the rights of ownership (*f*).

Where the mortgagee is justified in taking possession, and in so doing has been compelled to pay off claims for wages or disbursements, or to incur other expenses to avoid the exercise of a maritime

(*s*) *The Blanche* (1887), 6 Asp. M. L. C. 272.

(*t*) *Keith* v. *Burrows* (1877), 2 App. Cas. 636; see also *Collins* v. *Lamport* (1864), 4 De G. J. & Sm. 500.

(*u*) *Dickinson* v. *Kitchen* (1858), 8 E. & B. 789. As between himself and the mortgagor, the mortgagee may assume some of the liabilities of the owner of a ship (*Hudson* v. *Barge Swiftsure* (*Owners*), *The Swiftsure* (1900), 9 Asp. M. L. C. 65).

(*a*) *Japp* v. *Campbell* (1887), 57 L. J. (Q. B.) 79.

(*b*) In considering whether any part of the mortgage debt is due the court will enforce all the equities between the parties (*The Cathcart* (1867), L. R. 1 A. & E. 314).

(*c*) *The Blanche, supra*; *The Manor*, [1907] P. 339, C. A. The security may be impaired by the action of the mortgagor himself, as by the carriage of contraband (*Law Guarantee and Trust Society* v. *Russian Bank for Foreign Trade*, [1905] 1 K. B. 815, C. A.), or by so working the ship as to render her constantly liable to arrest (*The Manor, supra*), or by the action of other persons, such as creditors, who may desire to seize the ship (*Dickinson* v. *Kitchen, supra*; see also *The Celtic King*, [1894] P. 175; *Jackson* v. *Vernon* (1789), 1 Hy. Bl. 114; *Baker* v. *Buckle* (1822), 7 Moore (C. P.), 349; *Briggs* v. *Wilkinson* (1827), 7 B. & C. 30). In the following cases the security was held not to be impaired:—*De Mattos* v. *Gibson* (1859), 5 Jur. (N. S.) 347; *Collins* v. *Lamport, supra*; *The Innisfallen* (1866), L. R. 1 A. & E. 72; *The Cathcart, supra*; *The Maxima* (1878), 4 Asp. M. L. C. 21; *Cory Brothers & Co.* v. *Stewart* (1886), 2 T. L. R. 508, C. A.; *The Blanche, supra*.

(*d*) It is not enough merely to show that the enforcement of the security is about to be rendered difficult by the removal of the ship from the jurisdiction (*The Fanchon* (1880), 5 P. D. 173); nor will the mortgagee be entitled to bail in such a case (*The Highlander* (1843), 2 Wm. Rob. 109); nor is it enough to show that the ship is not profitably employed (*Keith* v. *Burrows, supra*). As to failure to insure, see *Laming & Co.* v. *Seater* (1889), 16 R. (Ct. of Sess.) 828; *The Heather Bell*, [1901] P. 272, C. A.; *Law Guarantee and Trust Society* v. *Russian Bank for Foreign Trade, supra*.

(*e*) Actual possession may be taken either by putting a man in possession without the assistance of the court, or by the arrest of the ship in a mortgagee's action; and see title ADMIRALTY, Vol. I., p. 65. A mortgagee of shares cannot bring a restraint action (*The Innisfallen, supra*). As to costs, see *The Kestrel* (1866), L. R. 1 A. & E. 78 (mortgagee allowed party and party costs). For form of authority to take possession of a ship on behalf of a mortgagee, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 65.

(*f*) *The Benwell Tower* (1895), 8 Asp. M. L. C. 13; see also *Rusden* v. *Pope* (1868), L. R. 3 Exch. 269; *Beynon* v. *Godden* (1878), 3 Ex. D. 263, C. A. As to ownership, see pp. 15, 16, *ante*.

SECT. 3. Transfer and Transmission of Property in Ships.

lien (*g*) by third parties, he can recover the amount expended from the mortgagor (*h*).

Position of mortgagee in possession.

31. The mortgagee on taking possession becomes entitled to enjoy any contractual rights relating to the employment of the ship which the mortgagor may have entered into (*i*). On the other hand the mortgagee, in addition to being liable for expenses incurred in the future working of the ship (*k*), is bound (*l*) to perform contractual duties incurred by the mortgagor of a kind usually incurred by a person who has the apparent ownership and control of a vessel (*m*), provided such engagements relate solely to the future (*n*) and are not of such a nature as to impair the security (*o*).

Freight.

Until the mortgagee takes possession the earnings of the ship, apart from special stipulation, remain the property of the mortgagor (*p*), but directly the mortgagee takes possession he

(*g*) As to maritime lien, see pp. 617 *et seq., post.*

(*h*) The mortgagee recovers on the principle that he has paid a debt for which another was liable by compulsion of law (*Johnson* v. *Royal Mail Steam Packet Co.* (1867), L. R. 3 C. P. 38; *The Orchis* (1890), 15 P. D. 38; *The Heather Bell*, [1901] P. 272, C. A.). As to this principle, generally, see title CONTRACT, Vol. VII., pp. 465 *et seq.* The principle appears to cover both the payment off of claims for wages and of those for disbursements (*The Blazer* (1911), Admiralty Court, 6th February (unreported)). It appears that the correct course for a mortgagee who has paid off liens or who desires to do so is to obtain leave from the court to stand in the shoes of the lien-holder as against the mortgagor (*ibid.*). To what extent the mortgagee can recover moneys so paid *in rem* in addition to the mortgage debt seems doubtful (*The Cornelia Henrietta* (1866), L. R. 1 A. & E. 51; *The St. Lawrence* (1880), 5 P. D. 250; *The Tagus*, [1903] P. 44). Mortgagees of shares in a ship will not be held liable to contribute to the paying off of liens by other part-owners, and will not be held impliedly to have authorised such payment merely from the fact that their property may have been thereby benefited (*The Ripon City*, [1898] P. 78).

(*i*) *Gumm* v. *Tyrie* (1865), 6 B. & S. 298; *Keith* v. *Burrows* (1877), 2 App. Cas. 636.

(*k*) *Re Litherland, Ex parte Howden* (1842), 2 Mont. D. & De G. 574.

(*l*) *Collins* v. *Lamport* (1864), 4 De G. J. & Sm. 500; *Cory Brothers & Co.* v. *Stewart* (1886), 2 T. L. R. 508, C. A.

(*m*) *Williams* v. *Allsup* (1861), 10 C. B. (N. S.) 417; *Johnson* v. *Royal Mail Steam Packet Co., supra;* and see title MORTGAGE, Vol. XXI., p. 134. For form of guarantee by a mortgagee for payment of averages and contributions, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 64.

(*n*) Neither the mortgagee, nor the ship when it has passed into his possession, is liable to the creditors of the mortgagor, unless such creditors are in a position to exercise a maritime lien (*The Troubadour* (1866), L. R. 1 A. & E. 302; *The El Argentino*, [1909] P. 236); as to maritime lien, see pp. 617 *et seq., post.* Although not personally liable, the mortgagee may always come in and defend the ship when sued, but only such defences are open to him as would have been open to the mortgagor (*The Chieftain* (1863), Brown. & Lush. 104; *The "Julindur"* (1853), 1 Ecc. & Ad. 71).

(*o*) *Law Guarantee and Trust Society* v. *Russian Bank for Foreign Trade*, [1905] 1 K. B. 815, C. A. It appears that the mortgagee will not be bound even though the contract was entered into before the mortgagee came into existence, provided he cannot be considered to have had notice or its equivalent (*The Celtic King*, [1894] P. 175; but see *Law Guarantee and Trust Society* v. *Russian Bank for Foreign Trade, supra*). If the mortgagee takes his mortgage with knowledge of a contract, he is bound (*De Mattos* v. *Gibson* (1859), 5 Jur. (N. S.) 347). As to impairment of the security, see the cases cited in note (*c*), p. 25, *ante.*

(*p*) *Keith* v. *Burrows, supra; Rusden* v. *Pope* (1868), L. R. 3 Exch.

becomes entitled to all the freight (*q*) not already due and payable (*r*). When the freight has once come into the hands of the mortgagor, the mortgagee, unless by some right other than that afforded by the mere mortgage (*s*), cannot recover it from him (*t*).

Sale.

A registered mortgagee in possession has, in addition to complete control over the ship (*a*), a right to sell the ship or share in respect of which he is mortgagee, and to give effectual receipts for the purchase-money (*b*). He may recover the expenses of the sale from the mortgagor (*c*).

Bankruptcy of mortgagor.

The rights of a mortgagee are not affected by an act of bankruptcy committed by the mortgagor, either before (*d*) or after (*e*) the date of the mortgage, provided that in the former case the mortgagee has no notice of the act of bankruptcy.

269; *Brown* v. *Tanner* (1868), 3 Ch. App. 597; *Liverpool Marine Credit Co.* v. *Wilson* (1872), 7 Ch. App. 507; *Wilson* v. *Wilson* (1872), L. R. 14 Eq. 32; *Anderson* v. *Butler's Wharf Co.* (1879), 48 L. J. (CH.) 824; *The Benwell Tower* (1895), 8 Asp. M. L. C. 13. As to mortgage of freight, see title MORTGAGE, Vol. XXI., p. 134.

(*q*) The freight to which the mortgagee is entitled is the gross freight without any deduction of sums which may be due to the charterer from the mortgagor (*Tanner* v. *Phillips* (1872), 42 L. J. (CH.) 125), or of any expenditure not authorised by him incurred in the earning of the freight (*El Argentino*, [1909] P. 236). As to the payment of freight generally, see pp. 291 *et seq.*, *post*.

(*r*) If possession be taken before the voyage is concluded by the delivery of the cargo, the mortgagee is entitled to freight (*Cato* v. *Irving* (1852), 5 De G. & Sm. 210; *Brown* v. *Tanner*, *supra*). Whether the mortgagee is entitled to the freight where the mortgagor has landed the goods retaining a lien for freight is doubtful (*The Edward Cardwell* (1865), 2 Mar. L. C. 236). The mortgagee is not entitled to freight, even though unpaid at the time of taking possession, if he has not taken possession until the cargo is delivered and the freight earned (*Shillito* v. *Biggart*, [1903] 1 K. B. 683) A mortgagee of shares is entitled to his proper share of freight earned and received after taking possession (*Alexander* v. *Simms* (1854), 5 De G. M. & G. 57, C. A.; *Essarts* v. *Whinney* (1903), 9 Asp. M. L. C. 363, C. A.). In certain cases the court may appoint a receiver (*Burn* v. *Herlofson and Siemensen, The Faust* (1887), 6 Asp. M. L. C. 126, C. A.; and see, generally, title RECEIVERS, Vol. XXIV., pp. 348 *et seq.*).

(*s*) *Willis* v. *Palmer* (1859), 7 C. B. (N. S.) 340.

(*t*) *Gardner* v. *Cazenove* (1856), 1 H. & N. 423.

(*a*) *The Fairport* (1884), 10 P. D. 13 (dismissal of master).

(*b*) M. S. Act, 1894, s. 35. The court may grant a sale to a mortgagee of shares (*The Fairlie* (1868), 37 L. J. (ADM.) 66). A mortgagee in possession is not bound to sell the ship, but may employ her in such a way as not to impair her value, and must not sell her disadvantageously (*European and Australian Royal Mail Co.* v. *Royal Mail Steam Packet Co.* (1858), 4 K. & J. 676; *Havilland, Routh & Co.* v. *Thomson* (1864), 3 Macph. (Ct. of Sess.) 313; *Marriott* v. *Anchor Reversionary Co.* (1861), 3 De G. F. & J. 177, C. A.). The mortgagee cannot be compelled by other persons interested to employ the ship instead of selling her (*Samuel* v. *Jones* (1862), 7 L. T. 760). As between the mortgagor and mortgagee, the latter may agree to terms limiting his powers of sale (*Dickinson* v. *Kitchen* (1858), 8 E. & B. 789; *Brouard* v. *Dumaresque* (1841), 3 Moo. P. C. C. 457). The mortgagee out of possession may be restrained by injunction from dealing with the ship in a manner which interferes with the execution of a charterparty; see title INJUNCTION, Vol. XVII., p. 251.

(*c*) *Wilkes* v. *Saunion* (1877), 7 Ch. D. 188.

(*d*) *The Ruby* (1900), 9 Asp. M. L. C. 146. As to what constitutes an act of bankruptcy, see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 13 *et seq.*

(*e*) M. S. Act, 1894, s. 36. The statute only applies to registered mort-

SECT. 3. Transfer and Transmission of Property in Ships.

Priorities.

32. The rights of unregistered mortgagees are postponed to those of registered mortgagees, even though the date of the unregistered mortgage be antecedent to that of the registered mortgage (*f*), and although the existence of the unregistered mortgage was known to the registered mortgagee when he took his mortgage (*g*). The rights of the unregistered mortgagee are also postponed to those of a *bonâ fide* purchaser for value without notice from the legal owner (*h*), and to those of all persons with prior equities (*i*). The unregistered mortgagee cannot arrest the ship (*k*).

Registered mortgagees rank, notwithstanding any express, or implied, or constructive notice, according to their date of registration (*l*). A second or subsequent mortgagee cannot sell the ship without the consent of the court or of every prior mortgagee (*m*).

A mortgagee of a ship or shares (*n*) has priority over the judgment creditors of the mortgagor (*o*), even though such creditors

gages, but it is submitted that all mortgages are covered by the principle see *The Ruby* (1900), 9 Asp. M. L. C. 146.

(*f*) M. S. Act, 1894, s. 35. The unregistered mortgagee is only beneficial owner of the ship; as to his rights and liabilities as such, see p. 23, *ante*.

(*g*) *Black* v. *Williams*, [1895] 1 Ch. 408. Where a registered mortgagee has taken possession of ship and freight, he will be entitled to reimburse himself not only for his advances on ship, but also for any advances he may have made on freight without notice of other equitable charges (*Liverpool Marine Credit Co.* v. *Wilson* (1872), 7 Ch. App. 507; see title EQUITY, Vol. XIII., p. 86, note (*f*)).

(*h*) M. S. Act, 1894, ss. 35, 56, and see *Barclay & Co., Ltd.* v. *Poole*, [1907] 2 Ch. 284. It seems that it is immaterial that the purchaser had notice of the charge (*M'Calmont* v. *Rankin* (1850), 8 Hare, 1). A mortgagee who has agreed with his mortgagor to conceal the mortgage in order to facilitate the sale may find himself in like case (*Hooper* v. *Gumm* (1862), 2 John. & H. 602). Registered mortgages may be enforced even after the ships have passed into the possession of foreign owners (M. S. Act, 1906, s. 52).

(*i*) *Ward* v. *Royal Exchange Shipping Co.*; *Ex parte Harrison* (1887), 6 Asp. M. L. C. 239.

(*k*) Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 11.

(*l*) M. S. Act, 1894, s. 33. In certain circumstances the priorities as between registered mortgages may be deemed not to depend on the dates, and in such cases the statute does not apply. Thus, a first mortgagee, whose mortgage is taken to cover future advances, cannot claim over a second mortgagee the benefit of advances made after he has notice of the second mortgage (*The Benwell Tower* (1895), 8 Asp. M. L. C. 13). This rule does not apply where the agreement as to future advances is contained in a separate unregistered document (*Parr* v. *Applebee* (1855), 24 L. J. (CH.) 767, C. A.). Where a second mortgagee unreasonably disputes the claim of the first mortgagee, he will have to pay the costs of the dispute (*The Western Ocean* (1870), L. R. 3 A. & E. 38; but see *The Volant* (1864), Brown. & Lush. 321).

(*m*) M. S. Act, 1894, s. 35. The Act only refers to registered mortgagees, but presumably unregistered mortgagees are within the principle. When a first mortgagee takes possession of the ship and freight he may satisfy his own debt, and will then hold the balance for the benefit of subsequent mortgagees (*The Benwell Tower, supra*; *Tanner* v. *Heard* (1857), 23 Beav. 555), but there is not such an express trust in favour of the second mortgagee as will prevent the operation of the Statute of Limitations (*Banner* v. *Berridge* (1881), 18 Ch. D. 254; see title LIMITATION OF ACTIONS, Vol. XIX., p. 165).

(*n*) *The Harriet* (1868), 18 L. T. 804.

(*o*) *Dickinson* v. *Kitchen* (1858), 8 E. & B. 789. The rule applies even where garnishee orders have been obtained (*Japp* v. *Campbell* (1887), 57 L. J. (Q. B.) 79; see also *De Wolf* v. *Pitcairn* (1868), 17 W. R. 914 (creditor

have a right *in rem* (*p*). He is entitled to the possession of the ship in priority to a subsequent purchaser without notice (*q*) and to a previous purchaser who has failed to register his title (*r*).

The rights of mortgagees are deferred to those of persons having either possessory (*s*) or maritime (*t*) liens.

Assignee of freight.

33. An assignee of freight has no rights as against a first mortgagee who has taken possession of freight in virtue of his mortgage (*a*), unless the assigned freight became due and payable before possession was taken (*b*), but the assignee of freight has priority over a second mortgagee, even though he has taken the assignment with notice of the second mortgage (*c*). Assignees of freight are entitled to the whole freight mentioned in the bill of lading, without deduction of amounts due from the assignor to the consignees (*d*).

obtains debtor's rights subject to those of mortgagee)). The creditors may arrest the ship in countries where the rights of mortgagees, even though registered, are disregarded (*Liverpool Marine Credit Co.* v. *Hunter* (1868), 3 Ch. App. 479).

(*p*) As in the case of "necessaries men" (*The Two Ellens* (1871), L. R. 3 A. & E. 345 ; see also *Simpson* v. *Fogo* (1860), 1 John. & H. 18 ; *Castrique* v. *Behrens* (1863), 3 E. & E. 709), or in the case of "material men" (*The Pacific* (1864), Brown. & Lush. 243 ; *The Scio* (1867), L. R. 1 A. & E. 353) ; *aliter*, where the "material man" has a possessory lien (*Williams* v. *Allsup* (1861), 10 C. B. (N. S.) 417 ; *The Scio*, *supra*), and see title ADMIRALTY, Vol. I., pp. 67, 68.

(*q*) *Cato* v. *Irving* (1852), 5 De G. & Sm. 210.

(*r*) *The Eastern Belle* (1875), 3 Asp. M. L. C. 19. Registered purchasers of shares are entitled, where they have contracted to do so, to apply the purchase-money to paying off the ship's debts in priority to paying off the mortgage debt (*Barclay & Co., Ltd.* v. *Poole*, [1907] 2 Ch. 284).

(*s*) *Williams* v. *Allsup*, *supra* ; *The Scio*, *supra*. Mortgagees, however, get their costs in priority to "material men" (*The Sherbro* (1883), 5 Asp. M. L. C. 88). As to possessory lien, see p. 621, *post*.

(*t*) As in the case of bottomry bond holders (*The Dowthorpe* (1843), 2 Wm. Rob. 73 ; see also *Percy* (1837), 3 Hag. Adm. 402 ; *The Royal Arch* (1857), Sw. 269). The principle applies even though the bond has been incurred in the course of a voyage taken in fraudulent breach of a contract existing between a mortgagor and mortgagee (*The Mary Ann* (1865), L. R. 1 A. & E. 13), or in the case of a master suing for wages or disbursements even when appointed by the mortgagor (*The Mary Ann*, *supra* ; *The Feronia* (1868), L. R. 2 A. & E. 65 ; *The Ripon City*, [1897] P. 226). The priority does not extend to any part of the mortgage debt personally guaranteed by the master (*The Bangor Castle* (1896), 8 Asp. M. L. C. 156). The master's right of priority does not extend to the recovery of the amount of a bond which he has been forced to enter into by reason of his own negligent navigation (*The Limerick* (1876), 1 P. D. 411, C. A.). As to bottomry bonds, see pp. 70 *et seq.*, *post*. As to crew's wages, see *Prince George* (1837), 3 Hag. Adm. 376 ; pp. 46 *et seq.*, *post*. As to maritime lien, see pp. 617 *et seq.*, *post*.

(*a*) Assignments of freight have not been the subject of statutory enactment ; see *Liverpool Marine Credit Co.* v. *Wilson* (1872), 7 Ch. App. 507 ; *Wilson* v. *Wilson* (1872), L. R. 14 Eq. 32 ; *The Benwell Tower* (1895), 8 Asp. M. L. C. 13 ; *Black* v. *Williams*, [1895] 1 Ch. 408.

(*b*) *Shillito* v. *Biggart*, [1903] 1 K. B. 683 ; see also *Re Pride of Wales and Annie Lisle* (*Mortgagees*) (1867), 15 L. T. 606 (priority of trustee in bankruptcy) ; *Ward* v. *Royal Exchange Shipping Co., Ex parte Harrison* (1887), 6 Asp. M. L. C. 239 (priority of debenture-holders) ; *The Benwell Tower*, *supra* (priority of second mortgagees). The usual rule as among persons with equitable charges is *qui prior est tempore potior est jure* ; see title EQUITY, Vol. XIII., p. 79.

(*c*) *Liverpool Marine Credit Co.* v. *Wilson*, *supra*.

(*d*) *Weguelin* v. *Cellier* (1873), L. R. 6 H. L. 286. As to mortgage of freight, see title MORTGAGE, Vol. XXI., p. 134.

SECT. 3.
Transfer and Transmission of Property in Ships.

(iii.) *Discharge of Mortgage.*

Discharge of mortgage.

34. Where a registered mortgage is discharged the registrar must, on the production of the mortgage deed with a receipt for the mortgage money duly indorsed thereon, make an entry in the register book to the effect that the mortgage has been discharged (*e*). The property in the vessel will then revest in the mortgagor, or other person who has become entitled thereto, regard being had to any circumstances which may disentitle the mortgagor to the property (*f*).

(iv.) *Dealings with Mortgagee's Interest.*

Transfer of mortgages.

35. A registered mortgage may be transferred to any person (*g*). The instrument effecting the transfer must be in the prescribed form, or as near thereto as circumstances permit (*h*), and the transfer will, on production, be entered in the register book by the registrar.

Where the interest of a mortgagee is transmitted on marriage, death, or bankruptcy, or similar occasion (*i*), the registrar will, on production of proper evidence, enter the transaction in the register book (*k*).

SUB-SECT. 5.—*Certificates of Mortgage and Sale.*

Transactions abroad.

36. Where a registered owner is desirous of disposing of a ship or share by way of mortgage or sale at a place out of the country in which the port of registry of the ship is situate, he does so by means of a certificate of mortgage or sale, which authorises some named person to create a charge or to make a sale in accordance with particulars of the intended transaction which are entered in the register book and also upon the certificate (*l*). Subject to various statutory rules, the certificate may then be used for the desired purpose, in conformity with the directions contained therein (*m*).

SUB-SECT. 6.—*Equitable Interests.*

Trusts and equitable rights.

37. Equitable interests in ships or shares of ships are recognised by modern English law (*n*). No notice of any trust may be entered in the register book (*o*), nor can the existence of a trust or

(*e*) M. S. Act, 1894, s. 32. For form of memorandum of discharge of mortgage, see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 57, 58.

(*f*) M. S. Act, 1894, s. 32. The registrar cannot erase entries of mortgages on their discharge (*Chasteauneuf* v. *Capeyron* (1882), 7 App. Cas. 127, 135, P. C.); but the court may in certain circumstances order the entry to be expunged (*Brond* v. *Broomhall*, [1906] 1 K. B. 571 (mortgage registered by a person fraudulently representing himself to be a mortgagee); *Burgis* v. *Constantine*, [1908] 2 K. B. 484, C. A. (mortgage never executed by the mortgagee)). Where a receipt has been indorsed by mistake the court will set aside the indorsement (*The Rose* (1873), L. R. 4 A. & E. 6), unless the priorities of other mortgagees are affected (*Bell* v. *Blyth* (1868), 4 Ch. App. 136).

(*g*) M. S. Act, 1894, s. 37.

(*h*) For form, see *ibid.*, Sched. I., Part I., Form C; Encyclopædia of Forms and Precedents, Vol. XIV., p. 57.

(*i*) M. S. Act, 1894, s. 38. The words are, "by any lawful means other than a transfer under this Act." As to the meaning of these words, see *Chasteauneuf* v. *Capeyron, supra.*

(*k*) M. S. Act, 1894, s. 38.

(*l*) *Ibid.*, ss. 39—46.

(*m*) *Ibid.*, s. 44 (2). If used not in conformity with the directions the transaction is *ultra vires* and void (*Orr* v. *Dickinson* (1859), John. 1).

(*n*) M. S. Act, 1894, s. 57. Beneficial interests have been recognised since the M. S. Amendment Act, 1862; see *Liverpool Borough Bank* v. *Turner* (1860), 1 John. & H. 159.

(*o*) M. S. Act, 1894, s. 56; and see p. 17, *ante.*

beneficial interest interfere (*p*) with the statutory provisions of the Merchant Shipping Acts (*q*), which confer upon registered owners and mortgagees the powers of disposition and of giving receipts (*r*), or which relate to the exclusion of unqualified persons from the ownership of British ships (*s*).

SECT. 4.—*Registration of Alterations and Renewal of Registration.*

Alterations requiring to be registered.

38. All alterations must be registered which so affect the ship that she ceases to correspond with the particulars relating to her tonnage or description contained in the register book (*a*).

When registration may be renewed.

39. Registration may be renewed either when the renewal is ordered by the registrar on account of alterations (*b*), or, if application be made to the registrar, when there is a change of ownership (*c*), or when the ship has, since her original registration, ceased to be registered owing to having for some reason ceased to be a British ship (*d*). The registrar of the ship's port of registry may in any circumstances, with the permission of the Commissioners of Customs and Excise (*e*), grant a new certificate on the delivery up to him of the old one (*f*).

SECT. 5.—*Returns by Registrars.*

Returns.

40. Monthly returns must be made by every registrar to the Registrar-General of Shipping of all registries, transfers, transmissions, mortgages and other dealings with ships, of which he has official cognisance, and of any other particulars required by the Registrar-General. Semi-annual returns must be made by and to the same officials of all ships registered at the port at which the returning registrar officiates, and of all ships of which the registers have been transferred or cancelled at that port since the last preceding return (*g*).

SECT. 6.—*Admissibility of Documents as Evidence.*

Register etc. as evidence.

41. A register book, a transcript of the register of British ships kept by the Registrar-General, a certificate of registry or an

(*p*) M. S. Act, 1894, s. 57.
(*q*) See note (*a*), p. 10, *ante*.
(*r*) M. S. Act, 1894, ss. 35, 56; and see p. 27, *ante*.
(*s*) M. S. Act, 1894, s. 1; and see p. 16, *ante*.
(*a*) M. S. Act, 1894, s. 48. The alteration must be effected by the registrar at the port where the alteration is made, or at the first port having a registrar at which the ship arrives after the alteration, who will either cause the ship to be registered anew or the alteration to be registered (*ibid.*), and either a new certificate will be issued or the alteration indorsed on the old one (*ibid.*, s. 49), a new certificate, if issued by a registrar other than the registrar of the ship's port of registry, being only provisional (*ibid.*, s. 50). On failure to register anew or to register the alteration the owner is liable to a fine of £100 and a penalty of £5 per day after conviction (M. S. Act, 1906, s. 53). As to the register book, see p. 18, *ante*.
(*b*) M. S. Act, 1894, s. 48.
(*c*) *Ibid.*, s. 51. As to ownership, see pp. 15, 16, *ante*.
(*d*) M. S. Act, 1894, s. 54. But where the ship has so ceased by reason of wreck or abandonment, or any reason other than capture by an enemy or transfer to an unqualified person, the ship must first be surveyed and certified to be seaworthy (*ibid.*).
(*e*) As to the Commissioners of Customs and Excise, see title REVENUE, Vol. XXIV., pp. 544 *et seq.*
(*f*) M. S. Act, 1894, s. 17.
(*g*) *Ibid.*, s. 63. As to returns respecting seamen, see pp. 63, 64, *post*.

SECT 6. Admissibility of Documents as Evidence.

indorsement on a certificate of registry purporting to be signed by the registrar or other proper officer, and certain declarations made in respect of a British ship (*h*) are, on production from the proper custody, admissible in evidence before any court, or before any persons having by law or consent of the parties authority to receive evidence, and, subject to all just exceptions, are evidence of the matters stated therein in compliance with the Merchant Shipping Act, 1894, or by any officer in pursuance of his duties as such officer (*i*).

SECT. 7.—*Offences and Penalties.*

Penalties.

42. Penalties attach to offences in respect of the marking of the vessel (*k*), to false statements contained in builders' certificates (*l*), to refusal to deliver up certificates of registry (*m*), to the use or attempted use for the navigation of the ship of a certificate not legally granted (*n*), to offences connected with the naming of the ship (*o*), to failure to register the name of the managing owner at the custom-house (*p*), to failure to register a ship anew on alterations being made in her construction or to register the alterations (*q*), to the forgery or alteration of documents in connexion with the registration of the ship (*r*), to the making of false declarations in regard to title or ownership of or interest in a ship (*s*), to the concealment of British character by a master (*t*), to the hoisting of unauthorised national colours (*a*), and to the failure to hoist national colours in proper circumstances (*b*). A British ship which is not recognised as a British ship, either because she is owned by unqualified persons, or is not registered when she ought to be, is not entitled to any of

(*h*) M. S. Act, 1894, s. 64. As to the register book and certificate of registry, see pp. 18, 20, 21, *ante*.

(*i*) M. S. Act, 1894, s. 695. As to the admissibility of examined copies, see *ibid.*; as to how far the register may be evidence of ownership, see p. 17, *ante*. As to the admissibility of official documents generally, see title EVIDENCE, Vol. XIII., pp. 474, 476 *et seq.*

(*k*) M. S. Act, 1894, s. 7. Penalty, not exceeding £100 and detention of the ship (*ibid.*).

(*l*) *Ibid.*, s. 10 (3). Penalty not exceeding £100 (*ibid.*).

(*m*) For failure of any person to deliver for purposes of navigation, penalty not exceeding £100 (*ibid.*, s. 15 (2)); failure of master to deliver provisional certificate, penalty not exceeding £50 (*ibid.*, s. 18 (3)); failure of master to deliver on change of ownership, penalty not exceeding £100 (*ibid.*, s. 20 (4)); failure of master or owner to deliver up on closure of registry, penalty not exceeding £100 (*ibid.*, s. 21 (3)).

(*n*) *Ibid.*, s. 16. Penalty, conviction for misdemeanour (*ibid.*); see title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 557.

(*o*) M. S. Act, 1894, s. 47 (8).

(*p*) *Ibid.*, s. 59 (3). Penalty, not exceeding £100 each time the ship leaves any port in the United Kingdom (*ibid.*).

(*q*) M. S. Act, 1906, s. 53 (2). Penalty, not exceeding £100 and £5 a day (*ibid.*).

(*r*) M. S. Act, 1894, s. 66. Penalty, conviction for felony (*ibid.*). As to the forgery of documents under M. S. Act, 1894, generally, see title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 752 *et seq.*; Forgery Act, 1913 (3 & 4 Geo. 5, c. 27).

(*s*) M. S. Act, 1894. Penalty, conviction for misdemeanour (*ibid.*); for the punishment, see *ibid.*, s. 680.

(*t*) *Ibid.*, s. 70. Penalty, conviction for misdemeanour (*ibid.*).

(*a*) *Ibid.*, s. 73 (2), (5). Penalty on master or owner, if on board, not exceeding £500 (*ibid.*).

(*b*) *Ibid.*, s. 74 (2). Penalty on master, not exceeding £100 (*ibid.*). This does not apply to fishing boats (*ibid.*, s. 74 (3)).

the benefits, privileges, advantages, or protection usually enjoyed by British ships, nor to use the British flag or assume the British national character, but is liable to all fines and penalties applicable to British ships (*c*).

Forfeiture.

43. A ship, or share in a ship, is subject to forfeiture (*d*) where the master uses or attempts to use a certificate not legally granted (*e*), where no application is made for the sale of a ship which has been transmitted to a foreigner (*f*), where a false declaration of qualification has been made (*g*), where the British national character has been assumed or concealed (*h*), where an unqualified person has illegally acquired some interest in a ship (*i*), and where a ship has been engaged in piracy (*k*) or in an illegal form of trade (*l*).

Procedure on forfeiture.

Where a ship or share has become subject to forfeiture in respect of any of the above-mentioned offences, any commissioned officer on full pay in the army or navy, or a customs officer, or British consular officer, may seize and detain the ship, and bring her for adjudication before the High Court in England or Ireland, the Court of Session in Scotland, any Court of Admiralty or Vice-Admiralty in the British dominions, or any British court in a foreign country having admiralty jurisdiction (*m*), and the court will make such order as may seem just. The officer may be awarded a part of the proceeds of the ship, and will not be held liable either civilly or criminally in respect of the detention, but if the seizure was unreasonable the aggrieved party may be awarded costs (*n*).

(*c*) M. S. Act, 1894, s. 72; see also, as to national character, p. 11, *ante*; and, generally, title CONFLICT OF LAWS, Vol. VI., pp. 177 *et seq.*

(*d*) As to meaning of words "subject to forfeiture," see note (*h*), *infra.*

(*e*) M. S. Act, 1894, s. 16; see p. 32, *ante.*

(*f*) *Ibid.*, s. 28 (4); see *The Millicent*, [1891] W. N. 162.

(*g*) M. S. Act, 1894, s. 67 (2); see p. 32, *ante.*

(*h*) *Ibid.*, ss. 69, 70; see p. 32, *ante.* The M. S. Act, 1854 (17 & 18 Vict. c. 104), s. 103 (2), provides that a ship in respect of which this offence is committed "shall be forfeited." Under these words it was held that the court had no option but to order forfeiture, even when the ship had passed into the hands of a *bonâ fide* purchaser for value without notice (*The Annandale* (1877), 2 P. D. 218, C. A.). The question as to whether the substitution of the words "subject to forfeiture" in the M. S. Act, 1894, conferred any option on the court was considered in *The S.S. Maori King*, [1909] A. C. 562, P. C., where it was held that in the Shanghai court no option was conferred; see also *R.* v. *McCleverty*, *The Telegrafo or Restauracion* (1871), L. R. 3 P. C. 673.

(*i*) M. S. Act, 1894, s. 71.

(*k*) *R.* v. *McCleverty*, *The Telegrafo or Restauracion*, *supra.* As to piracy, see title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 523 *et seq.*

(*l*) Pacific Islanders Protection Act, 1872 (35 & 36 Vict. c. 19); *Burns* v. *Nowell* (1880), 5 Q. B. D. 444, C. A.; *Wilson* v. *R.* (1866), L. R. 1 P. C. 405. As to this offence, see title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 527, 528. See, further, *ibid.*, pp. 522 (smuggling), 526, 527 (slave trade; title TRADE AND TRADE UNIONS, Vol. XXVII., pp. 533 *et seq.*

(*m*) M. S. Act, 1911, s. 1. As to Colonial Courts of Admiralty, see title ADMIRALTY, Vol. I., pp. 140 *et seq.*

(*n*) M. S. Act, 1894, s. 76. Penalties attach to resistance to seizure and detention (*ibid.*, s. 692). A seizure will not as a rule be deemed unreasonable if made *bonâ fide*; see *The Evangelismos* (1858), Sw. 378, P. C.; *Wilson* v. *R.*, *supra*; *Burns* v. *Nowell*, *supra.*

SECT. 8. **Liability of Owners of Ships as Such.**

SECT. 8.—*Liability of Owners of Ships as Such.*

SUB-SECT. 1.—*Who are Liable as Owners* (*o*).

Liability of owner.

44. Persons beneficially interested, otherwise than by way of mortgage, in a ship or share registered in the name of some other person as owner, are liable to all pecuniary penalties imposed by statute on the owners of ships, and proceedings may be taken separately against the registered or beneficial owner (*p*).

The register as evidence.

The register of a ship is, subject to all just exceptions, *primâ facie* evidence of ownership (*q*), and is also *primâ facie* evidence that a person registered as owner is the master of a person employed on the ship (*r*).

Liability for wages.

The owner of a ship is liable for seamen's wages, even though the seamen have in fact been engaged by a master, who is the charterer's servant (*s*). But where a ship is chartered by demise the owner is not liable in respect of an allotment note drawn by the master upon the charterer (*t*).

SUB-SECT. 2.—*Liability while the Ship is Chartered.*

Chartered ships.

45. The owner of a ship is not liable on bills of lading signed by a master who is not his servant, and who has no authority to pledge his credit, even though the shipper has no notice of the charter (*a*); but the owner is liable on bills of lading signed by a master who is in fact his servant, even though by the terms of the charter the master is to sign only as the charterer's servant. A mere reference to the charterparty in the bills of lading does not amount to notice that the master is not the owner's servant (*b*).

SUB-SECT. 3.—*Liability as between Part Owners.*

Part owners.

46. Persons owning shares in a ship are tenants in common (*c*). They may or may not be also partners (*d*), and whether they are or

(*o*) As to liability on contracts on behalf of the ship, see pp. 64, 65, *post*; as to liability in tort, see pp. 618, 619, *post*.

(*p*) M. S. Act, 1894, s. 58. Proceedings may be taken against either the registered owner, or the beneficial owner, or both (*ibid.*). As to the liability of mortgagees, see pp. 24, 25, *ante*. As to ownership generally, see pp. 15, 16, *ante*.

(*q*) M. S. Act, 1894, s. 695; and as to the liability of charterers, see pp. 84 *et seq.*, *post*. As to registration, see pp. 16 *et seq.*, *ante*.

(*r*) *Hibbs* v. *Ross* (1866), L. R. 1 Q. B. 534.

(*s*) See *Re Great Eastern Steamship Co., Williams' Claim* (1885), 5 Asp. M. L. C. 511. The decision in this case only refers to the case of seamen discharged before the ship sailed, there having been no written agreement, but it is submitted that the principle may be applied in other circumstances.

(*t*) *Meiklereid* v. *West* (1876), 1 Q. B. D. 428.

(*a*) *Baumwoll Manufactur von Carl Scheibler* v. *Furness*, [1893] A. C. 8; see also pp. 64, 65, *post*.

(*b*) *Manchester Trust* v. *Furness*, [1895] 2 Q. B. 539; see also *Steel* v. *Lester* (1877), 3 C. P. D. 121. As to charterparties and bills of lading generally, see pp. 84 *et seq.*, *post*.

(*c*) *Ex parte Young* (1813), 2 Rose, 78, n.; *R.* v. *Collector of Customs, Liverpool*, (1813), 2 M. & S. 223; *Re Nicholson, Ex parte Harrison* (1814), 2 Rose, 76; *Helme* v. *Smith* (1831), 7 Bing. 709; *Re Drury and Hudson, Ex parte Leslie* (1833), 3 L. J. (BCY.) 4; *Green* v. *Briggs* (1848), 6 Hare, 395; *Frazer* v. *Cuthbertson* (1880), 6 Q. B. D. 93.

(*d*) *Helme* v. *Smith, supra*; *Brodie* v. *Howard* (1855), 17 C. B. 109. Persons may also be joint owners of a share; see M. S. Act, 1894, s. 5; title PARTNERSHIP, Vol. XXII., pp. 7, 8; *Ex parte Jones* (1816), 4 M. & S. 450.

SECT. 8. Liability of Owners of Ships as Such.

are not in fact partners, they may for certain purposes be treated as such (*e*). An agreement between part owners relating to the employment of the ship, as opposed to her ownership, renders them partners in all matters relating to the employment so agreed upon (*f*).

A part owner is not bound in respect of liabilities incurred by another part owner in regard to the ship, unless he has in fact (*g*) given authority to such other to contract liabilities on his behalf, or has held out such other as having such authority (*h*), or has ratified the specific acts of such other (*i*) which have given rise to liability (*k*).

Managing owner.

47. Part owners frequently delegate authority in respect of the managing of the ship to one of their number, who is known as the managing owner (*l*). The managing owner is agent for all the other owners (*m*), with power to do what is necessary to enable the ship to prosecute her voyages and to earn freight (*n*).

(*e*) *E.g.*, in regard to Statutes of Limitations, such statutes do not run between co-owners while the co-ownership exists, the existence of co-ownership being in each case a question of fact (*The Pongola* (1895), 8 Asp. M. L. C. 89); see title LIMITATION OF ACTIONS, Vol. XIX., p. 171.

(*f*) *Holderness* v. *Shackels* (1828), 8 B. & C. 612; *Helme* v. *Smith* (1831), 7 Bing. 709; *Green* v. *Briggs* (1848), 6 Hare, 395 For forms of agreements between part owners for the management of ships, see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 72, 75; and for form of agreement to purchase ship, see *ibid.*, p. 47.

(*g*) Agency is a question of fact (*Chappell* v. *Bray* (1860), 6 H. & N. 145).

(*h*) *Frazer* v. *Cuthbertson* (1880), 6 Q. B. D. 93. A registered owner will not be bound by the acts of a part owner merely because the latter appears on the register as a managing owner (*ibid.*). Where a part owner has once constituted another his agent for the management of the ship, he must, if he desires to withdraw such authority, do so in some effectual manner (*The Vindobala* (1889), 14 P. D. 50, C. A.; *Von Freeden* v. *Hull, Blyth & Co.* (1906), 10 Asp. M. L. C. 247, 394). As to the power of one part owner to recover expenses of insurance from another, see *Ogle* v. *Wrangham* (1790), cited in Abbott on Shipping, 5th ed., p. 76; 14th ed., p. 130; *Hooper* v. *Lusby* (1814), 4 Camp. 66; see also *Ocean Iron Steamship Insurance Association* v. *Leslie* (1887), 6 Asp. M. L. C. 226).

(*i*) *Keay* v. *Fenwick* (1876), 1 C. P. D. 745, C. A.

(*k*) *Brodie* v. *Howard* (1855), 17 C. B. 109 (repairs).

(*l*) A person who is not a part owner may exercise the functions of a managing owner, in which case he is known as a ship's husband. For form of agreement between co-owners of a ship as to its management, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 72.

(*m*) *The Ida* (1886), 6 Asp. M. L. C. 21 (managing owner receives contributions from one part owner as agent for all the rest).

(*n*) As to the general powers of a managing owner in regard to the working of the ship and the ordering of the necessary supplies and repairs, see *Card* v. *Hope* (1824), 2 B. & C. 661; *Thompson* v. *Finden* (1829), 4 C. & P. 158; *Green* v. *Briggs, supra*; *Darby* v. *Barnes* (1851), 9 Hare, 369; *Whitwell* v. *Perrin* (1858), 4 C. B. (N. S.) 412; *Ritchie* v. *Couper* (1860), 28 Beav. 344; *Barker* v. *Highley* (1863), 15 C. B. (N. S.) 27; *Vanner* v. *Frost* (1870), 39 L. J. (CH.) 626; *The Huntsman*, [1894] P. 214; and see *The Charles Jackson* (1885), 5 Asp. M. L. C. 399 (power of managing owner to recover sums he has not paid); *The Bellcairn* (1886), 54 L. T. 544 (authority to take legal proceedings); *The Meredith* (1885), 10 P. D. 69 (right to reasonable remuneration); *Ocean Iron Steamship Insurance Association* v. *Leslie, supra* (authority to make co-owners liable for calls in a mutual insurance association); *Williamson* v. *Hine Brothers* (1890), 6 Asp. M. L. C. 559 (managing owner cannot receive profit as well as remuneration); *Nicol* v. *Hennessy* (1896), 1 Com. Cas. 410 (managing owner selling shares in a ship which do not belong to him impliedly covenants to pay actual value of shares to the true

SECT. 8.
Liability of Owners of Ships as Such.

Distribution of profits.

48. Profits are distributed in accordance with any agreement between part owners, or in accordance with the interest of each partner in the ship (*o*). Before profits are distributed the sum earned by the ship must be applied to meet expenses (*p*), and no partner is entitled to a share of the profits unless he has contributed his proper share of the capital (*q*). A purchaser of a share in a ship which is at the time of the purchase engaged on a voyage, is entitled to a share of the freight earned on that voyage, but is liable for a share of the expenses of earning it (*r*).

Control of ship.

49. The right to the possession and control of the ship lies with the majority of the owners, or, as they are usually called, the majority owners. Where the majority owners desire to send the ship on a particular voyage, but she is in the possession of a dissenting minority, the majority owners can arrest the ship, and obtain from the court (*s*) a decree of possession, so that they may be enabled to employ the ship as they wish (*t*).

Similarly, the minority owners may, where they object to the voyage on which it is proposed the ship shall be sent, arrest her and sue for an order that she shall be restrained from pursuing such voyage (*a*).

owner); *Swanston* v. *Lishman* (1881), 4 Asp. M. L. C. 450, C. A. (practice as to discovery where managing owner is a member of a firm); *Steele & Co.* v. *Dixon* (1876), 3 R. (Ct. of Sess.) 1003 (no authority to order structural alterations); *The Mount Vernon* (1891), 7 Asp. M. L. C. 32 (managing owner must account within reasonable time); *Sims* v. *Brittain* (1832), 4 B. & Ad. 375 (rights of part owners against agent appointed by managing owner); *Doeg* v. *Trist* (1897), 2 Com. Cas. 153 (ship's husband cannot delegate his authority without sanction of owners, or pledge their credit unnecessarily). Both a managing owner and any other person acting as ship's husband must be registered as such (M. S. Act, 1894, s. 59). For form of power of attorney given to manager of ship, see Encyclopædia of Forms and Precedents, Vol. I., p. 343.

(*o*) See various cases cited in note (*n*), p. 35, *ante*. A part owner may be entitled to sue for his share of profits, even though they accrue from an illegal voyage (*Sharp* v. *Taylor* (1849), 2 Ph. 801).

(*p*) *Green* v. *Briggs* (1848), 6 Hare, 395. These include wages (*Lindsay* v. *Gibbs* (1859), 3 De G. & J. 690, C. A.), also in some cases insurance (*Ogle* v. *Wrangham* (1790), cited in Abbott on Shipping, 5th ed., p. 76; 14th ed., p. 130; *Hooper* v. *Lusby* (1814), 4 Camp. 66).

(*q*) *Green* v. *Briggs*, *supra*. Money spent on repairs by one partner is to be treated as capital (*ibid.*).

(*r*) *The Vindobala* (1889), 14 P. D. 50, C. A. A purchaser is not liable where the seller is not in a position to complete the transfer of the ship (*The Bonnie Kate* (1887), 6 Asp. M. L. C. 149).

(*s*) As to powers of the court in its dealings with ownership of vessels, see title ADMIRALTY, Vol. I., p. 64, and note (*a*), *infra*, note (*b*), p. 37, *post*. The court will require persons seeking to dispossess others to prove their title to a majority of shares (*The Victoria* (1859), Sw. 408; *The Valiant* (1839), 1 Wm. Rob. 64).

(*t*) *The New Draper* (1802), 4 Ch. Rob. 287; *The Kent* (1862), Lush. 495.

(*a*) *The Talca* (1880), 5 P. D. 169; *The England* (1886), 12 P. D. 32. The court does not interfere to alter the possession of the ship unless such an alteration is sought by the majority of the owners (*The Egyptienne* (1825), 1 Hag. Adm. 346, n.; *The Elizabeth and Jane* (1841), 1 Wm. Rob. 278). The right to arrest is not affected by the fact that the charterparty under

In either of these cases, before the majority owners are permitted to send the ship on the desired voyage they will be compelled to give security for the safe return of the vessel (*b*).

Where the minority owners object to the prosecution of a particular voyage, they are not obliged to contribute to the expenses of the voyage, but will not, on the other hand, be entitled to any of the profits (*c*).

Sale of ship.

50. In certain cases the court will order the sale of the ship, but a strong case must be made out even by majority owners, while the court will be extremely reluctant to make such an order at the instance of minority owners (*d*). In a proper case, however, the court will order a sale at the instance of minority owners (*e*).

In proper cases the court may order an account to be taken between co-owners (*f*).

which the ship is about to sail was negotiated by the whole of the owners (*The Talca* (1880), 5 P. D. 169; *The England* (1886), 12 P. D. 32). But the authority to charter the ship must have been withdrawn from the managing owner before the charterparty was entered into (*The Vindobala* (1889), 14 P. D. 50, C. A.). A foreign vessel may not be arrested at the suit of an English part owner, except possibly where the law of the foreign country is the same as that of England (*The Keroula* (1886), 11 P. D. 92). The court does not enter upon questions of ownership of a foreign ship where foreigners are alone concerned, unless by consent of the parties or upon the intervention of the representative of a foreign State (*The Johan and Siegmund* (1810), Edw. 242; *The See Reuter* (1811), 1 Dods. 22; *The Evangelistria* (1876), 2 P. D. 241; *The Agincourt* (1877), 2 P. D. 239). A mortgagee of a ship or share cannot as such bring a restraint action (*The Innisfallen* (1866), L. R. 1 A. & E. 72). Probably an equitable owner can do so (*Von Freeden* v. *Hull, Blyth & Co.* (1906), 10 Asp. M. L. C. 247). See *The Horlock* (1877), 2 P. D. 243. As to who is to be deemed owner, see pp. 15, 16, *ante;* as to the position of mortgagees of shares, see pp. 25, 28, 29, *ante.*

(*b*) *The Apollo* (1824), 1 Hag. Adm. 306. The giving of a bail bond does not prevent the majority owners from subsequently disputing the right of the minority owners to have arrested the vessel (*The Keroula, supra*). The amount of the security given must bear the same relation to the value of the vessel as does the number of shares held by the minority owners to the whole number of shares in the ship (*The Cawdor* (1898), 8 Asp. M. L. C. 475; see also *The Robert Dickinson* (1884), 10 P. D. 15). The minority owners may not re-arrest until the ship has returned to the port to which her safe return is pledged (*The Regalia* (1884), 5 Asp. M. L. C. 338). The sureties will be released after a reasonable time (*The Vivienne* (1887), 12 P. D. 185).

(*c*) *The Cawdor, supra.*

(*d*) *The Nelly Schneider* (1878), 3 P. D. 152; *The Marion* (1884), 10 P. D. 4.

(*e*) *The Hereward*, [1895] P. 284 (where the majority owners had changed the character of the ownership by transferring the shares to a limited company). The *dictum* of BRUCE, J., in this case that the majority had no right thus to change the character of the ownership was criticised by GORELL BARNES, J. (*The Loughborough* (1904), *Shipping Gazette*, 20th December).

(*f*) See title ADMIRALTY, Vol. I., p. 64. The court has ordered accounts to be taken of transactions taking place before the Admiralty Court Act, 1861 (24 & 25 Vict. c. 10) (*The Idas* (1863), Brown. & Lush. 65); also between a part owner and one who had ceased to be a part owner by selling his share (*The Lady of the Lake* (1870), L. R. 3 A. & E. 29). The court has also ordered the earnings of the ship in the hands of third parties to be brought into court pending the settlement of a dispute (*The Meggie* (1866), L. R. 1 A. & E. 77).

Part III.—Master and Crew.

SECT. 1. **Qualifications of Officers and Men.**

SECT. 1.—*Qualifications of Officers and Men.*

SUB-SECT. 1.—*Officers.*

Certificates of competency.

51. Every foreign-going British ship, and every British home-trade passenger ship (*g*), when going to sea from any place in the United Kingdom, every foreign steamship carrying passengers between places in the United Kingdom (*h*), and every trawler of twenty-five tons tonnage and upwards (*i*), must, under penalty (*k*), carry such certificated officers as are required by statute (*l*).

Granting of certificates.

52. Certificates of competency are granted to officers and engineers by the Board of Trade, providing they have passed an examination before examiners appointed by the Local Marine Board, and have given satisfactory evidence of their sobriety, experience, ability, and general good conduct on board ship (*m*). Officers who have served in the navy may obtain certificates of service without examination (*n*).

Where the legislature of any British possession provides for the examination of and granting of certificates of competency to officers and engineers, the Crown may, by Order in Council, recognise the validity of such certificates, and apply to them all or any of the provisions of the Merchant Shipping Acts (*o*), or any other conditions or regulations (*p*).

(*g*) For definitions of "foreign-going ship" and "home-trade passenger ship," see M. S. Act, 1894, ss. 742, 744; for definition of "ship," see p. 14, *ante*.

(*h*) M. S. Act, 1894, s. 92 (1).

(*i*) *Ibid.*, s. 413; M. S. Act, 1906, s. 81. Other fishing boats are not required to carry certificated officers (M. S. Act, 1894, ss. 260, 263). See, generally, title FISHERIES, Vol. XIV., pp. 628 *et seq.*

(*k*) Penalty, in the case of vessels other than trawlers, not exceeding £50, and the liability may fall either upon the employer or the employed (M. S. Act, 1894, s. 92 (2)); penalty, in the case of trawlers, not exceeding £20 (*ibid.*, s. 413 (3)).

(*l*) The statutory provisions apply to all sea-going ships registered in the United Kingdom (*ibid.*, s. 260), to all unregistered British ships which should have been registered (*ibid.*, s. 266), and to all sea-going British ships registered out of the United Kingdom employed in trading or going between a port in the United Kindgom and a port not situated in the country in which the ship is registered (*ibid.*, s. 261 (c)); but not to the ships of lighthouse authorities (*ibid.*, ss. 260, 262), nor to fishing boats other than trawlers above a certain tonnage (see notes (*i*), (*k*), *supra*). A ship navigating merely in tidal waters is not a sea-going ship (*Salt Union* v. *Wood*, [1893] 1 Q. B. 370).

(*m*) M. S. Act, 1894, ss. 93—98. Certain fees are payable to the Exchequer in respect of these examinations (*ibid.*, s. 97; M. S. Act, 1898, s. 1). As to the constitution and powers of the Local Marine Board, see M. S. Act, 1894, ss. 242—245; M. S. Act, 1906, s. 74; and p. 652, *post*. As to the granting of certificates to the skippers and second hands of trawlers, see M. S. Act, 1894, s. 414; and see title FISHERIES, Vol. XIV., p. 629.

(*n*) M. S. Act, 1894, s. 99. So far as they are applicable the provisions of the M. S. Act, 1894, which relate to certificates of competency relate also to certificates of service. For the offence of forging or fraudulently altering a certificate, see title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 752 *et seq.*

(*o*) See note (*a*), p. 10, *ante*.

(*p*) M. S. Act, 1894, s. 102. Orders have been made in respect of the

53. A duplicate of every certificate of competency granted, and a register of every such certificate issued, suspended, altered, or cancelled, is kept by the Board of Trade (*q*). Where a master, mate, or engineer, without fault on his part, has lost or has been deprived of a certificate, the Board of Trade will, on proper proof of the loss or deprivation, supply a new copy of the certificate (*r*). Preservation of certificates.

54. The master of every foreign-going ship, and of every home-trade passenger ship of more than eighty tons burden, must on certain specified occasions (*s*) produce to a superintendent the certificate of competency of himself, his mates, and his engineers. On such production a certificate is granted, which must be produced to the chief officer of customs before the ship is allowed to go to sea (*s*). Production of certificates.

SUB-SECT. 2.—*Seamen.*

55. No superintendent, before whom a seaman (*t*) is engaged to be entered on board a British ship at any port in the British Isles, or on the continent of Europe between the river Elbe and Brest inclusive, may permit him to sign an agreement if in his opinion he does not possess a sufficient knowledge of the English language to understand the necessary orders that may be given to him in the course of the performance of his duties. But this provision does not apply to British subjects, or to inhabitants of a British protectorate, or to lascars (*a*). Qualifications.

56. Two kinds of rating are contemplated by the law—the rating which the seaman obtains in accordance with statutory provisions by virtue of length of sea service, and the rating which he obtains, or, in other words, the capacity in which he serves, on a particular ship. Rating of seamen.

The rating which the seaman obtains by sea service, by virtue of statute, is that of able seaman. He is not entitled to this rating until he has served three years before the mast, service in decked fishing boats only counting up to a period of two years. Service must be proved by the production to the superintendent, or other officer before whom the seaman is engaged, of certificates of discharge (*b*), by a certificate of service from the Registrar-General of Shipping and Seamen, or by other satisfactory proof (*c*).

following places:—Canada, Malta, Victoria, New Zealand, New South Wales, South Australia, Tasmania, Bengal, Newfoundland (masters and mates), Bombay, Queensland, Hong Kong, Straits Settlements, Mauritius (masters and mates) (9th May, 1891). A further order has been made relating to Victoria (23rd November, 1893). An order has also been made relating to the whole of these places, amending the above-mentioned orders, dated the 22nd October, 1906.

(*q*) M. S. Act, 1894, s. 100.

(*r*) *Ibid.*, s. 101.

(*s*) *Ibid.*, s. 103. The occasions are, in the case of a foreign-going ship, (1) on the signing of an agreement with the crew before a superintendent; (2) in the case of a running agreement, before the second and every subsequent voyage. In the case of a home-trade ship, within twenty-one days after the 30th June and 31st December in every year (*ibid.*).

(*t*) For definition of "seaman," see p. 14, *ante*.

(*a*) M. S. Act, 1906, s. 12. As to agreements with seamen generally, see pp. 41 *et seq.*, *post*.

(*b*) See p. 55, *post*.

(*c*) M. S. Act, 1894, s. 126; M. S. Act, 1906, s. 58 (1). Any false statement

SECT. 1. Qualifications of Officers and Men.

The rating which a seaman holds on a particular vessel depends upon agreement at the commencement of the voyage, and such rating may be forfeited by reason of misconduct in the course of the voyage (*d*).

SECT. 2.—*Contracts of Service by Master and Crew.*

SUB-SECT. 1.—*Engagement of Master.*

Contract of service.

57. In every contract of service between an owner and master there is implied, notwithstanding any agreement to the contrary, an obligation on the owner and his agents to use all reasonable means to ensure the seaworthiness of the ship, both at the commencement of and during the voyage (*e*). Apart from this provision the master's contract of service is a matter of agreement (*f*).

Appointment.

58. In the ordinary course the master is appointed or removed by the owners of the ship, or by other persons having control over her, but in certain circumstances the master may be appointed or removed by the court (*g*), or by a naval court (*h*), or by other persons, who in cases of emergency are in a position to exercise authority (*i*). Where the master dies at sea his natural successor is the chief officer (*k*).

or representation made for the purpose of obtaining this rating is punishable on summary conviction by fine not exceeding £5 (M. S. Act, 1906, s. 58 (2)).

(*d*) M. S. Act, 1906, s. 59, which provides that a statement of any disrating shall be entered in the log, and a copy of the entry furnished to the seaman, clearly contemplates this form of rating and the deprivation thereof at the discretion of the master ; see also *The Highland Chief*, [1892] P. 76. As to offences against discipline and the punishments therefor generally, see pp. 60 *et seq.*, *post.*

(*e*) M. S. Act, 1894, s. 458 (1). This provision does not apply where, owing to special circumstances, it cannot be complied with, or to ships trading from place to place in any river or inland water of which the whole or part is within British dominions (*ibid.*, s. 458 (2)). As to seaworthiness, see pp. 77, 81, *post.*

(*f*) Reasonable notice must be given of discharge having regard to the terms of the contract (*Creen* v. *Wright* (1876), 1 C. P. D. 591). The law will presume that terms agreed upon with regard to a first voyage apply, in default of further stipulation, to a second voyage during which the services of the master are retained (*The Gananoque* (1862), Lush. 448). If wrongfully discharged a master is entitled to damages equal to his wages up to the end of the voyage, or until he obtains other employment (*The Camilla* (1858), Sw. 312 ; see *The Royalist* (1863), Brown. & Lush. 46). An action *in rem* for wrongful dismissal may be brought in either the High Court or the county court (*The Great Eastern* (1867), L. R. 1 A. & E. 384 ; *The Blessing* (1878), 3 P. D. 35)). For form of agreement to employ master, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 75.

(*g*) M. S. Act, 1894, s. 472.

(*h*) *Ibid.*, s. 483. As to naval courts, see title COURTS, Vol. IX., pp. 108 *et seq.*

(*i*) *The Alexander* (1812), 1 Dods. 278 (consignees) ; *Tartar* (1822), 1 Hag. Adm. 1 (bottomry bondholder) ; *Zodiac* (1825), 1 Hag. Adm. 320 (consul) ; *Bowen* v. *Fox* (1829), 10 B. & C. 41 (previous master) ; *Kennersley Castle* (1833), 3 Hag. Adm. 1 (underwriters) ; *The Cynthia* (1852), 16 Jur. 748 (consul) ; "*Segredo*," *otherwise* "*Eliza Cornish*" (1853), 1 Ecc. & Ad. 36 (naval officer).

(*k*) See *The Favourite* (1799), 2 Ch. Rob. 232 ; *Providence* (1825), 1 Hag. Adm. 391.

SUB-SECT. 2.—*Apprenticeship to Sea Service.*

SECT. 2. Contracts of Service by Master and Crew.

Apprentices.

59. Apprentices may be bound to service either by private persons, to whom superintendents are bound to give facilities for the purpose (*l*), or by boards of guardians (*m*). Before proceeding to sea, the master must, under penalty, present the apprentice and his indenture to a superintendent, and particulars of the name of the apprentice, with the date of the indenture and of any assignment thereof, and the name of the port where such assignment has been registered, must be entered in the agreement with the crew (*n*). Every indenture must be executed in duplicate, and records must be kept of the execution, assignment or cancellation of the indenture, and of the death or desertion of the apprentice (*o*). Apprenticeship on fishing boats is the subject of special enactment (*p*). The court has power to rescind any contract of apprenticeship (*q*).

SUB-SECT. 3.—*Engagement of Seamen.*

Agreement for engagement of seamen.

60. The agreement with the crew, which must, under penalty, be entered into by the master of every ship, except a coaster of less than eighty tons registered tonnage, with every seaman whom he carries to sea from any port in the United Kingdom, must be in a form approved by the Board of Trade (*r*). The agreement must

(*l*) M. S. Act, 1894, s. 105. Forms of indenture, both for ordinary apprentices and for apprentices on fishing vessels, have been issued by the Board of Trade. Apprentices are not included in the expression "seaman," so far as the provisions of the M. S. Act, 1894, are concerned, but are so included in the provisions of the M. S. Act, 1906; see *ibid.*, s. 49. An apprentice may sue for wages due, but not for the penalty under his indenture (*Albert Crosby* (1860), Lush. 44).

(*m*) Special provisions relating to the apprenticeship of pauper boys by boards of guardians are contained in the M. S. Act, 1894, ss. 106, 107. In order to come within the provisions the boy or his parent must be receiving relief in the union (*ibid.*, s. 106). Every indenture made under these provisions must be executed by the boy and the person to whom he is to be bound, in the presence of and attested by two justices of the peace, who must ascertain that the boy has attained the age of twelve years, is of sufficient health and strength, and consents to be bound, and that the person to whom the boy is to be bound is a proper person for the purpose (*ibid.*, s. 107). As to boards of guardians generally, see title POOR LAW, Vol. XXII., pp. 530 *et seq.*

(*n*) M. S. Act, 1894, s. 109. Penalty, not exceeding £5 (*ibid.*).

(*o*) *Ibid.*, s. 108. The indenture is exempt from stamp duty. Any person failing to comply with these provisions is subject to a penalty not exceeding £10 (*ibid.*). For form of articles of apprenticeship to sea service, see Encyclopædia of Forms and Precedents, Vol. II., p. 49; and for official form, see *ibid.*, p. 51.

(*p*) M. S. Act, 1894, ss. 392, 398; see title FISHERIES, Vol. XIV., p. 630. For articles of apprenticeship to sea-fishing service, see Encyclopædia of Forms and Precedents, Vol. II., p. 53; and for form of certificate under M. S. Acts, see *ibid.*, p. 59.

(*q*) M. S. Act, 1894, s. 168.

(*r*) *Ibid.*, s. 113 (1). Penalty, not exceeding £5 (*ibid.*, s. 113 (2)), and attaches to carrying seamen to sea without an agreement in writing; an enforceable agreement may exist in the case of a ship which does not ultimately proceed to sea, although such agreement is verbal (*Re Great Eastern Steamship Co., Williams' Claim* (1885), 5 Asp. M. L. C. 511). As to proof of the contents of such agreement, see title EVIDENCE, Vol. XIII., p. 522. The same rules, with certain modifications, apply to the engagement of seamen at colonial and foreign ports (M. S. Act, 1894, s. 124). For form of agreement, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 77. As to the engagement of the crew of a sea-fishing boat, see title FISHERIES, Vol. XIV., pp. 630 *et seq.*

SECT. 2. **Contracts of Service by Master and Crew.**

contain particulars of the nature and duration of the voyage (*s*), of the number and description of the crew, of the time at which each seaman is to be on board or to begin work, of the amount of wages each seaman is to receive (*t*), of the scale of provisions to be provided (*a*), and of any regulations as to conduct, fines, short allowance, or other lawful punishment approved by the Board of Trade and agreed upon by the parties (*b*). The agreement may also contain stipulations as to the advance and allotment of wages (*c*). Apart from special provisions, the stipulations contained in the agreement may be as determined upon by the master and crew in each case, provided such stipulations are not contrary to law (*d*).

Signature.

61. The agreement must be dated at the time of the first signature thereof, and must be signed by the master before it is signed by the seaman (*e*). In the case of a foreign-going vessel (*f*) the seaman may only sign in the presence of a superintendent, who must have caused the agreement to be read over and explained to the crew. In the case of both foreign-going and home-trade ships a copy of the agreement must be posted up in some part of the ship which is accessible to the crew (*g*). Penalties attach to the fraudulent alteration of the agreement (*h*).

(*s*) The principle contained in this provision has been recognised from early times; see *Minerva* (1825), 1 Hag. Adm. 347; *Eliza* (1823), 1 Hag. Adm. 182; *Countess of Harcourt* (1824), 1 Hag. Adm. 248; *George Home* (1825), 1 Hag. Adm. 370; *The Westmorland* (1841), 1 Wm. Rob. 216. As to what is comprised in the term "voyage," see note (*d*), p. 60, *post*. In every contract there is an implied term that the ship is seaworthy; see pp. 61, 62, *post*.

(*t*) Where no rate of wages has been specified a seaman may recover on a *quantum meruit* (*Porcupine* (1825), 1 Hag. Adm. 378; *Prince George* (1837), 3 Hag. Adm. 376 (purser)), but where the wages are specified he cannot recover extras (*Thompson* v. *Nelson* (*H. & W.*), *Ltd.*, [1913] 2 K. B. 523).

(*a*) Provisions according to a statutory scale must now be provided for seamen who do not furnish their own provisions (M. S. Act, 1906, s. 25); see p. 44, *post*.

(*b*) M. S. Act, 1894, s. 114 (2). For cases relating to the interpretation of contracts of service, see p. 60, *post*.

(*c*) M. S. Act, 1894, s. 140. The agreement can only extend to one month's wages (*ibid.*); but as to advance and allotment of wages, see pp. 51, 52, *post*.

(*d*) M. S. Act, 1894, s. 114 (3). Stipulations providing for deductions to be made from seamen's wages for absence without leave which are different in amount and enforceable in a different way from the deductions allowed in respect of the offence by *ibid.*, s. 221, have been held "contrary to law" (*Mercantile Steamship Co.* v. *Hall*, [1909] 2 K. B. 423).

(*e*) M. S. Act, 1894, s. 114 (1).

(*f*) These and other provisions relating to the engagement of substitutes and running agreements in regard to foreign-going ships may be found in *ibid.*, s. 115. Agreements with seamen for service on home-trade ships may be made in respect of two or more ships belonging to the same owner, and the presence of the superintendent is not compulsory (*ibid.*, s. 116). "Home-trade ship" includes every ship employed in trading or going within the following limits, that is to say the United Kingdom, the Channel Islands, and Isle of Man, and the continent of Europe between the river Elbe and Brest inclusive; "foreign-going ship" includes every ship employed in trading or going between some place or places in the United Kingdom and some place or places situate beyond the following limits, that is to say, the coasts of the United Kingdom, the Channel Islands, and Isle of Man, and the continent of Europe between the river Elbe and Brest inclusive (*ibid.*, s. 742).

(*g*) *Ibid.*, s. 120. A penalty not exceeding £5 attaches to failure to comply with this provision (*ibid.*).

(*h*) *Ibid.*, ss. 121, 122. Fraudulent alteration of an agreement is a

Certificates and delivery.

62. Where agreements with the crew have been formally entered into, certificates are granted by the superintendent, and these must be produced before the ship is permitted to leave port. In the case of a foreign-going ship, the agreement must, under penalty, be delivered to a superintendent within forty-eight hours of her arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever happens first, and the superintendent will, on such delivery, give a certificate of delivery, which must be produced before the ship is allowed to clear inwards. In the case of a home-trade ship of more than eighty tons burden, the agreement must be produced and a certificate obtained every half-year (*i*).

Lascars.

63. The master or owner of any ship, or his agent, may enter into an agreement with a lascar, or any native of India, binding him to proceed as seaman or passenger to any port in the United Kingdom, and there to enter into a further agreement to serve in any ship bound to any port in British India, or to proceed to the Australian colonies, and there to enter into a further agreement to serve in any ship bound to the United Kingdom or any other British dominion (*k*). The ship in which it is proposed that the lascar shall return to India must be approved as suitable. A list and description of all lascars on board a ship must under penalty be shown to the officer of customs on the arrival of the ship at a port in the United Kingdom (*l*).

Rescission of contracts.

64. Where a proceeding is instituted in or before any court relating to a dispute between owner or master and seaman or apprentice, the court may, at its discretion, rescind any contract between owner or master and seaman or apprentice, or any contract of apprenticeship, upon such terms as seem just. This power is in addition to any other jurisdiction which the court has power to exercise (*m*).

Licences to engage or supply seamen.

65. Licences to engage or supply seamen are granted by the Board of Trade to suitable persons, and no person can engage in these occupations with regard to any ship, either British or foreign (*n*), unless a licence-holder, or a superintendent, or the owner (*o*), master, or mate, or servant in the constant employment

misdemeanour (M. S. Act, 1894, s. 121), and an agreement, unless made as required by statute (see *ibid.*, s. 122), is wholly inoperative (*ibid.*). See title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 753.

(*i*) M. S. Act, 1894, ss. 118, 119. Failure to comply with these provisions is punishable by a penalty not exceeding £5 (*ibid.*). In the case of an outward-bound foreign-going ship the master must, before sailing, notify the superintendent of any change in the crew made after the agreement has been made, or he will become liable to a penalty not exceeding £5 (*ibid.*, s. 117). For definitions of "home-trade ship" and "foreign-going ship," see note (*f*), p. 42, *ante*.

(*k*) M. S. Act, 1894, s. 125. The form and conditions of the agreement are subject to the control of the Indian authorities, the Governor-General of India in Council, or the Governor in Council of any Indian Presidency in which the agreement is made. These provisions do not affect those contained in the Lascars Act, 1823 (4 Geo. 4, c. 80).

(*l*) The master and owner are jointly and severally liable to a penalty not exceeding £10 (M. S. Act, 1894, s. 125 (4)).

(*m*) *Ibid.*, s. 168.

(*n*) *R.* v. *Stewart*, [1899] 1 Q. B. 964.

(*o*) A person may be owner for the purposes of this provision, although not the registered owner, if in fact he has control over the manning of the ship (*Hughes* v. *Sutherland* (1881), 7 Q. B. D. 160). As to ownership generally, see pp. 15, 16, *ante*.

SECT. 2. Contracts of Service by Master and Crew.

of the ship; nor may a person employ for the purpose of supplying or engaging seamen anyone other than one of the persons above enumerated, nor receive on board any seaman or apprentice supplied by any person not entitled to supply seamen (*p*). A further offence is committed by any person receiving any remuneration, direct or indirect, other than the authorised fees for finding a seaman or apprentice for a ship (*q*).

SECT. 3.—*Care of Seamen during Currency of Agreement.*

Statutory scale of provisions.

66. The master of every ship for which an agreement with the crew is required must furnish provisions in accordance with a statutory scale, and is liable to a fine if he fails to do so (*a*). Where proper provisions are not provided in accordance with the statute, the seaman is entitled to monetary compensation on a fixed scale (*b*). The provisions and water of any ship going from a port in the United Kingdom are liable to inspection, and penalties may be exacted in the event of such inspection proving unsatisfactory (*c*). Certain of the stores carried by vessels going or trading from any port in the United Kingdom through the Suez Canal or round the Cape of Good Hope or Cape Horn must be inspected (*d*).

A certificated cook, who is able to prove one month's service at sea in some capacity, must under penalty be carried by every ship of 1,000 tons and upwards gross tonnage going to sea from the British Isles, or from the continent of Europe between the river Elbe and Brest inclusive (*e*).

(*p*) M. S. Act, 1894, ss. 110, 111. Penalty, not exceeding £20 for each offence and, if a licensed person, forfeiture of the licence (*ibid.*, s. 111). Where proceedings are taken in respect of wrongfully supplying seamen, the burden of proving that he is a licence-holder is upon the defendant (*R.* v. *Johnston* (1886), 6 Asp. M. L. C. 14). For an instance of a conviction, see *Nelson* v. *Richardson* (1884), 48 J. P. 457, a case decided on the now repealed M. S. Act, 1854 (17 & 18 Vict. c. 104), s. 147, re-enacted by the M. S. Act, 1894, s. 111.

(*q*) Penalty, not exceeding £5 (M. S. Act, 1894, s. 112).

(*a*) M. S. Act, 1906, s. 25. The scale is contained in *ibid.*, Sched. I. The Schedule may be varied or added to by Order in Council (M. S. Act, 1906, s. 25 (4)). These provisions do not apply to lascars or others not accustomed to European dietary (*ibid.*, s. 25 (5)).

(*b*) M. S. Act, 1894, s. 199. The seaman is entitled to compensation even though the shortage is caused by the prolongation of the voyage beyond its natural limits by reason of the severity of the weather (*The Josephine* (1856), Sw. 152). In addition to paying compensation, the master, if the court considers that the failure to furnish provisions was due to his fault, is liable on summary conviction to a penalty not exceeding £100 (M. S. Act, 1906, s. 25 (3)). Proper weights and measures must be kept on the ship under a penalty not exceeding £10 (M. S. Act, 1894, s. 201).

(*c*) M. S. Act, 1906, s. 26. The master is liable on summary conviction to a penalty not exceeding £100, or if the fault is that of persons other than the master, then such other persons are liable instead (*ibid.*, s. 26 (2)). The master is also liable on summary conviction to a penalty not exceeding £10 if he does not offer reasonable facilities for inspection (*ibid.*, s. 26 (3)).

(*d*) The stores to be inspected are the beef and pork, preserved meat and vegetables, flour or biscuits, and water (M. S. Act, 1894, s. 206).

(*e*) M. S. Act, 1906, s. 27 (1). The certificate is issued by the Board of Trade (*ibid.*, s. 27 (2)). The cook must be rated on the ship's articles (*ibid.*, s. 27 (3)), and must be in addition to any cook required by the provisions relating to emigrant ships (*ibid.*, s. 27 (4)). The penalty, which

SECT. 3. Care of Seamen during Currency of Agreement.

Doctors, medicines, anti-scorbutics.

67. Every ship navigating between the United Kingdom and other places is compelled, with certain exceptions, to carry stores of medicine in accordance with official scales, and also books of instruction, and foreign-going vessels having a hundred persons or upwards on board must carry a doctor. Vessels going to warm climates must carry anti-scorbutics, which must be served out to the crew, and the name of any member of the crew refusing to take them must be entered in the official log-book. A penalty attaches to failure to comply with these provisions (*f*). A medical inspector, appointed either by the Board of Trade or a local marine board, must inspect all medical stores and anti-scorbutics at least three days before the ship sails, and if these are deficient the ship must under penalty obtain a certificate that the default has been remedied before proceeding to sea. The inspector must also, at the request of the owner or master, examine any seaman to see if he is fit for duty (*g*).

Injury to or illness of seaman.

68. The master of, or a seaman belonging to, a ship who receives any hurt or injury in the service of the ship, or suffers from any illness, not being venereal or due to his own wilful act, default, or misbehaviour, is entitled to medicine, medical advice, and maintenance until he is cured, dies, or is returned to a proper return port at the expense of the owners; and in the event also of his death the owners must defray the expense of his funeral. No deduction may be made from the seaman's wages in regard to any of these expenses (*h*).

may be exacted either from master or owner, is a fine not exceeding £25, recoverable on summary conviction (M. S. Act, 1906, s. 27 (5)). As to summary procedure, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.*

(*f*) M. S. Act, 1894, ss. 200, 209. The exceptions referred to in the text are—(a) ships bound to Europe or to the Mediterranean Sea; (b) ships bound to the east coast of America north of latitude 35 degs., and to any islands or places in the Atlantic north of that limit exempted by the Board of Trade (*ibid.*, s. 200). The penalties are—for failure to carry proper medicines, a fine not exceeding £20; for failure to serve out anti-scorbutics, a fine not exceeding £5; for selling or keeping bad medical stores, a fine not exceeding £20 (*ibid.*). If the offender is someone other than the master or owner the penalty is in each case a fine not exceeding £20 (*ibid.*). The penalty for failure to carry a doctor is a fine not exceeding £100 (*ibid.*, s. 209; *David* v. *Britannic Merthyr Coal Co.*, [1909] 2 K. B. 146). As to the right of a seaman to recover damages for injuries sustained by reason of failure to carry out these statutory duties notwithstanding the penalties, see *Atkinson* v. *Newcastle Waterworks Co.* (1877), 2 Ex. D. 441, C. A.; and compare *Gibraltar Sanitary Commissioners* v. *Orfila* (1890), 15 App. Cas. 400, P. C.; *Butler* (*or Black*) v. *Fife Coal Co.*, [1912] A. C. 149; *Watkins* v. *Naval Colliery Co.* (1897), *Ltd.*, [1912] A. C. 693; and see title TORT, Vol. XXVII., p. 483.

(*g*) M. S. Act, 1894, ss. 202, 203. Penalty for proceeding to sea without a certificate not exceeding £20 (*ibid.*, s. 202 (4)). As to who may appoint the medical inspectors, see *ibid.*, ss. 204, 205.

(*h*) M. S. Act, 1906, s. 34; see also title BURIAL AND CREMATION, Vol. III., p. 407. The phrase "hurt or injury" includes illness contracted as a result of bad food on the voyage (*Board of Trade* (*Secretary*) v. *Sundholm* (1879), 4 Asp. M. L. C. 196). Under the M. S. Act, 1894, s. 207, it was held that the owner is not liable for medical expenses after the seaman has been brought back to a home port (*Anderson* v. *Rayner*, [1903] 1 K. B. 589, C. A.). In spite of this provision, where a seaman is discharged abroad with a venereal disease, the owners are responsible for his board and lodging and conveyance home, but not for his medical attendance (*Board of Trade* v. *Anglo-American Oil Co., Ltd.*, [1911] 2 K. B. 225). For compensation for injury, see Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 7, and title MASTER AND SERVANT, Vol. XX.,

SECT. 3. **Care of Seamen during Currency of Agreement.**

Where any expenses incurred in respect of the illness, hurt, or injury of a seaman have been paid by any authority on behalf of the Crown, and such expenses are by the Merchant Shipping Acts (*i*) to be paid by the master or owner, they may be recovered from the master or owner of the ship for the time being, and are a charge on the ship. The certificate of the authority is sufficient and, in the absence of evidence to the contrary (*j*), conclusive proof that the amounts have been paid (*k*).

Accommodation for seamen.

69. In every British ship of more than 300 tons burden, other than a fishing boat or a ship registered before the 1st January, 1907, an allowance of 170 cubic feet and 15 superficial feet must be allowed for each seaman (*l*) and apprentice in places, including mess-rooms, washing places, and sleeping places, occupied by them and appropriated to their use; 72 cubic feet and 12 superficial feet being allowed in the sleeping places. These places must be kept clear of all stores and goods not being the personal property of the crew in use during the voyage (*m*).

Complaints.

70. If a seaman or apprentice whilst on board ship states to the master that he wishes to make a complaint to a justice of the peace, consular officer, or officer commanding one of His Majesty's ships, the master must allow him to do so as soon as the service of the ship permits, if the ship be at a place where the complaint can be made, or if not, after the ship first arrives at such a place (*n*).

SECT. 4.—*Wages.*

SUB-SECT. 1.—*When Whole Wages Payable.*

Whole wages payable.

71. In the ordinary course a seaman is entitled to his whole wages from the time at which he commences work, or at the time specified in the agreement for the commencement of work or presence on board, whichever happens first (*o*), until the termination of the seaman's service, whether by the completion of the adventure or of the period of engagement, or by reason of the wreck (*p*) or loss of the ship, or of the seaman's unfitness to proceed on the voyage (*q*). The right to whole wages does not depend on the earning of freight (*r*).

pp. 157 *et seq.*, where the various exceptions are considered. As to the insurance of seamen, see title WORK AND LABOUR.

(*i*) See note (*a*), p. 10, *ante*.

(*j*) *Board of Trade* v. *Sailing Ship Glenpark*, [1904] 1 K. B. 682.

(*k*) M. S. Act, 1906, s. 35. Such vouchers, if any, as the case requires must be produced (*ibid.*).

(*l*) Lascars are included under the M. S. Act, 1894 (see *Peninsular and Oriental Steam Navigation Co.* v. *R.*, [1901] 2 K. B. 686), but not under the M. S. Act, 1906 (*ibid.*, s. 64).

(*m*) M. S. Acts, 1894, s. 210; 1906, s. 64.

(*n*) M. S. Act, 1894, s. 211. The complainant may be required to give security (*ibid.*, s. 461). As to the inclusion of lascars, see *Peninsular and Oriental Steam Navigation Co.* v. *R.*, *supra*.

(*o*) M. S. Act, 1894, s. 155. "Wages," so far as the provisions of the M. S. Acts are concerned, include emoluments (*ibid.*, s. 742).

(*p*) For the meaning of "wreck," see *The Olympic*, [1913] P. 92, C. A.

(*q*) M. S. Act, 1894, s. 158. The "loss" may be caused by capture (*Sivewright* v. *Allen*, [1906] 2 K. B. 81) or explosion (*Collins* v. *Simpson Steamship Co.* (1907), 24 T. L. R. 178, C. A.); service on board ship is also terminated by a suit against her for wages (*The Carolina* (1875), 34 L. T. 399).

(*r*) M. S. Act, 1894, s. 157. This enactment abolishes the doctrine which

The wages may be paid in foreign money at the rate of exchange current at the place of payment (*s*).

SUB-SECT. 2.—*Time and Mode of Payment.*

Damages for delay in payment of master.

72. In any proceeding by the master for the recovery of wages the court may, if the payment has been delayed by the default of the person liable, order that person to pay an additional sum by way of damages for the delay, without prejudice to any claim by the master on that account (*t*).

Payment of seaman's wages.

73. Every seaman serving in a British foreign-going ship must receive his wages in the presence of a superintendent (*a*). Seamen serving in home-trade ships may be paid in the same way, if the master or owner desire it (*b*).

A full and true account of the seaman's wages, drawn up in an approved form, must be delivered, either to the seaman himself or to the superintendent, twenty-four hours before the discharge or payment off (*c*), together with an account of all deductions (*d*).

Foreign-going ship.

In the case of a foreign-going ship (*e*), except where the seaman receives by agreement a share of the profits, the seaman must be paid £2, or a quarter of his wages, whichever is least, at the end of his engagement (*f*), and the balance within two clear days, unless he has consented to the wages being received by the superintendent on his behalf. Should the wages not be paid in accordance with these provisions, then, unless the delay be due to the act or default of the seaman, or to any reasonable dispute as to liability (*g*),

prevailed before 1854 (not as to the master (*Hawkins* v. *Twizell* (1856), 5 E. & B. 883)) that freight is the "mother" of wages; see *Neptune* (1824), 1 Hag. Adm. 227. As to the rights of the crew of a fishing vessel to wages, see title FISHERIES, Vol. XIV., pp. 631, 632.

(*s*) M. S. Act, 1894, s. 139.

(*t*) M. S. Act, 1906, s. 57.

(*a*) M. S. Act, 1894, ss. 127, 131. This is the case even when the superintendent declines to be present because he objects to a deduction from wages to which the seaman has consented (*Keslake* v. *Board of Trade*, [1903] 2 K. B. 453). If the wages are paid within the United Kingdom in any other manner, the master or owner is liable to a fine not exceeding £10 for each offence (M. S. Act, 1894, s. 131). "Wages" includes "emoluments" (*ibid.*, s. 742). For definition of "foreign-going ship," see note (*f*), p. 42, *ante*; *Thompson* v. *Nelson* (*H. & W.*), *Ltd.*, [1913] 2 K. B. 523.

(*b*) M. S. Act, 1894, s. 131. For definition of "home-trade ship," see note (*f*), p. 42, *ante*.

(*c*) M. S. Act, 1894, s. 132. Breach of this provision renders the master liable to a penalty not exceeding £5 (*ibid.*).

(*d*) *Ibid.*, s. 132. Otherwise the deduction will not be allowed (*ibid.*, s. 133); as to deductions, see p. 50, *post*.

(*e*) For definition of "foreign-going ship," see note (*f*), p. 42, *ante*.

(*f*) The end of his engagement means the time at which the actual service terminates, and includes the natural effluxion of the agreement (*Re Great Eastern Steamship Co., Williams' Claim* (1885), 5 Asp. M. L. C. 511). As to when a voyage ends, see *Haylett* v. *Thompson*, [1911] 1 K. B. 311; *Board of Trade* v. *Baxter*, [1907] A. C. 373; and note (*d*), p. 60, *post*.

(*g*) In the case of seamen who have left the ship abroad in circumstances which justified their so doing, it has usually been held that a "reasonable dispute" existed from the time the seaman landed in England (*Lloyd* v. *Sheen* (1905), 10 Asp. M. L. C. 75; *Austin Friars Steam Shipping Co.* v. *Strack*, *Same* v. *Strack*, [1905] 2 K. B. 315; but see *Palace Shipping Co., Ltd.* v. *Caine*, [1907] A. C. 386). The fact that the owners are counter-

SECT. 4. **Wages.**

or to any other cause not being the wrongful act or default of the owner or master, the seaman's wages continue to run and be payable until the final settlement thereof (*h*).

Home-trade ships.

In the case of a home-trade ship, a seaman must be paid his wages within two days after the termination of the agreement with the crew or the time when the seamen is discharged, whichever happens first. Should the master or owner fail to comply with this provision without reasonable cause (*i*), the seaman is entitled to recover as wages two days' pay for each day during which payment is delayed, to an amount not exceeding ten days' double pay (*k*).

Disputes.

The superintendent may, in the case of a foreign-going ship, on the application of either party, finally adjudicate as to any dispute, where the amount in question does not exceed £5, and with the consent in writing of the parties may adjudicate, whatever the nature of the question and whatever the amount in dispute (*l*).

Release.

When the settlement is completed the seaman gives a release, which is signed by the master or owner and is attested by the superintendent: this henceforward constitutes the sole evidence of the payment (*m*).

Seaman entering Royal Navy.

74. When a seaman leaves a merchant ship for the purpose of entering the Royal Navy the wages he has earned must be paid to the officer authorised to receive him, who will give a receipt. The amount so paid will not pass to the seaman until the time when, but for his enlistment, he would have received it (*n*).

Seaman left behind.

75. When a seaman is left on shore abroad on the ground of unfitness, the master must pay wages due, if in a British possession, to the seaman himself, and if elsewhere to a British consular officer. In the latter case the amount will be subject to deductions (*o*).

When a seaman is left behind for reasons other than his unfitness out of the British islands, a statement of his effects and the wages due to him must be entered in the log-book, and the master must on his arrival at the end of the voyage furnish an account to the Board

claiming for negligence does not constitute a "reasonable dispute" as to liability (*Delaroque* v. *S.S. Oxenholme Co., Ltd.* (1883), Cab. & El. 122; see also *Re Great Eastern Steamship Co., Williams' Claim* (1885), 5 Asp. M. L. C. 511; *The Rainbow* (1885), 5 Asp. M. L. C. 479).

(*h*) M. S. Act, 1894, s. 134. The "final settlement" may not be reached until judgment is pronounced (*Palace Shipping Co., Ltd.* v. *Caine*, [1907] A. C. 386; and see *Sibery* v. *Connelly* (1907), 96 L. T. 140, C. A.).

(*i*) See *The Turgot* (1886), 11 P. D. 21; *The Princess Helena* (1861), Lush. 190. This provision does not apply to masters (*The Arina* (1887), 12 P. D. 118). For definition of "home-trade ship," see note (*f*), p. 42, *ante*.

(*k*) M. S. Act, 1894, s. 135.

(*l*) *Ibid.*, s. 137. The superintendent may refuse to decide the question if he is of opinion that it is one which ought to be decided by a court of law (*ibid.*). For definition of "foreign-going ship," see note (*f*), p. 42, *ante*.

(*m*) M. S. Act, 1894, s. 136. The seaman may except from the release any claim against the master or owner (M. S. Act, 1906, s. 60), and even if he does not do so the release will not necessarily be a bar to a claim for compensation arising out of an accident on the voyage (*Buls* v. *Ship Teutonic* (*Owners*) (1913), *Times*, 12th July).

(*n*) M. S. Act, 1894, ss. 196, 197.

(*o*) M. S. Act, 1906, ss. 37—39. These provisions do not curtail any rights which the seaman might otherwise have (*The Rajah of Cochin* (1859), Sw. 473).

of Trade of wages due, and of expenses caused to the master or owner by the absence of the seaman in cases where the absence is due to desertion, neglect to join the ship, or absence without leave. The master is entitled to be reimbursed out of the seaman's wages and effects for such expenses (*p*).

SUB-SECT. 3.—*Loss of Right to Wages.*

Loss of right to wages.

76. A seaman may lose his right to wages already earned, either by failing to exert himself to the utmost to save ship, cargo, or stores in a case of wreck or loss of the ship (*q*), or by desertion (*r*). Where his services terminate before the date contemplated in the agreement, by reason of the wreck or loss of the ship, or his being left on shore on account of unfitness or inability, he is by statute entitled to receive wages up to the time of such termination, but not for any longer period (*s*). Apart from statute, the right of the crew to part wages depends on the terms of the contract of service (*t*), the seaman being entitled to wages till the contract in fact comes to an end (*a*) otherwise than in breach of such terms (*b*).

(*p*) M. S. Act, 1906, s. 28. Where a Chinaman deserted from a British ship at an Australian port and the master of the ship was fined £100 under the Immigration Restriction Acts, 1901—1905, of Australia, it was held that the fine could not be deducted from the seaman's wages and effects (*Halliday* v. *Taffs*, [1911] 1 K. B. 594). As to expenses due to desertion, see *Deacon* v. *Quayle*, *Neate* v. *Wilson*, [1912] 1 K. B. 445.

(*q*) M. S. Act, 1894, s. 157. See note (*s*), *infra*.

(*r*) M. S. Act, 1894, s. 221. As to desertion, see pp. 61, 62, *post*.

(*s*) M. S. Act, 1894, s. 158. A ship is a wreck if she is so seriously damaged that she ceases to be a navigable ship (*The Olympic*, [1913] P. 92, C. A., *per* BARGRAVE DEANE, J., at p. 101). A ship therefore which collided with another on her first day out, and was so injured that she was unable to continue her voyage, but was able to regain her port of departure under her own steam, was held to be a "wreck" within this provision (*The Olympic*, *supra*). A ship is not necessarily deemed a "wreck" because underwriters have abandoned her (*Lloyd* v. *Sheen* (1905), 10 Asp. M. L. C. 75 (discovery that cargo contraband)); and in any case abandonment must be clearly proved (*The Warrior* (1862), Lush. 476). Destruction of a neutral ship, not shown to have been carrying contraband of war, by a belligerent State constitutes "loss" (*Sievwright* v. *Allen*, [1906] 2 K. B. 81), but where, unknown to the crew, the vessel is carrying contraband of war, the right of the crew to wages does not cease with the capture of the ship (*Austin Friars Steam Shipping Co.* v. *Strack*, *Same* v. *Strack*, [1905] 2 K. B. 315). The scuttling of a ship in port to put out a fire has been held to constitute "wreck or loss" (*The Woodhorn* (1891), 92 L. T. Jo. 113). A seaman incapacitated by accident in the course of duty was formerly by maritime custom entitled to his wages for the whole voyage (*Chandler* v. *Grieves* (1792), 2 Hy. Bl. 606, n.).

(*t*) Thus, where a mate was engaged for a monthly salary and was, by reason of misconduct, left at a foreign port, he was held to be entitled to his wages up to the end of the last completed month (*Button* v. *Thompson* (1869), L. R. 4 C. P. 330). As to contracts of service, see pp. 40 *et seq.*, *ante*.

(*a*) The contract was held to have come to an end so as not to entitle the seaman to further award in the cases of *The Friends* (1801), 4 Ch. Rob. 143 (capture); *Beale* v. *Thompson* (1803), 3 Bos. & P. 405 (detention); *Melville* v. *De Wolf* (1855), 4 E. & B. 844 (seaman sent home as witness).

(*b*) As in the case of desertion, for which the seaman is liable to forfeit all his wages and effects (M. S. Act, 1894, s. 221; see p. 61, *post*; and see *Deacon* v. *Quayle*, *Neate* v. *Wilson*, *supra*). Desertion may be proved by the production of the official log (M. S. Act, 1894, s. 231), as to which see pp. 82, 83, *post*. Where effects are forfeited for desertion they may be converted into money, and the balance of wages and the proceeds of the

SECT. 4. Wages.

Fines.

77. Any regulations as to fines which it is proposed to impose during a voyage must be stated in the agreement with the crew, after having been approved by the Board of Trade (*c*). Every fine imposed on a seaman for any act of misconduct is deducted from his wages upon the offence being satisfactorily proved (*d*). The amount of the fines must be paid over by the master or the owner to a superintendent or to the proper authority, and if he fails to do so without reasonable cause he is liable to a penalty (*e*).

Deductions.

78. A seaman or apprentice is not entitled to wages for any time during which he unlawfully refuses or neglects to work, when required, whether before or after the time fixed by the agreement for commencing work, nor, unless the court hearing the case otherwise directs, while lawfully imprisoned, nor while incapacitated by illness caused by his own wilful act or default (*f*). Deductions may be made in respect of the cost of procuring punishment in respect of an offence committed by a seaman in the course of the voyage (*g*), and of amounts properly paid under advance notes (*h*), or of expenses incurred by the owner in respect of the illnesses or burial of a seaman which he is not by statute bound to bear (*i*). The master must keep a record of the matters in respect of which deductions are made in a book to be kept for the purpose, and no deduction is allowed which is not included in the account of wages delivered at the end of the voyage, except in respect of a matter happening after the delivery (*j*).

SUB-SECT. 4.—*Agreement for Extra Remuneration.*

Extra wages.

79. As a general rule, seamen are not entitled to claim any additional wages in respect of services rendered in the course of the period of engagement, even though the master has agreed to pay

effects after all proper deductions have been made goes to the Exchequer (M. S. Act, 1894, s. 232; and see *The Parkdale*, [1897] P. 53). Any question concerning the forfeiture of or deductions from the wages of a seaman or apprentice may be determined in a civil action, although it has not, even where it might have, been made the subject of criminal proceedings (M. S. Act, 1894, s. 233). As to forfeitures where the payment is by the voyage, or by the run, or by the share, see *ibid.*, s. 234.

(*c*) M. S. Act, 1894, s. 114 (1). The stipulations must not be "contrary to law" (*ibid.*, s. 114 (2); see *Mercantile Steamship Co.* v. *Hall*, [1909] 2 K. B. 423).

(*d*) M. S. Act, 1906, s. 44. As to deductions in the case of desertion, see M. S. Acts, 1894, ss. 221, 231—234; 1906, s. 28; *Halliday* v. *Taffs*, [1911] 1 K. B. 594 (fine paid in respect of desertion of Chinaman at Australian port cannot be deducted); *Deacon* v. *Quayle*, *Neate* v. *Wilson*, [1912] 1 K. B. 445.

(*e*) M. S. Act, 1906, s. 44. The penalty is a fine, on summary conviction, not exceeding six times the amount of the fine not so paid (*ibid.*). As to summary procedure, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.* The proper authorities are, in the British dominions, the superintendent or chief officer of customs, and elsewhere the British consular officer or British merchant or merchants (*ibid.*, s. 49 (1)).

(*f*) M. S. Act, 1894, ss. 159, 160. All deductions from wages must be stated in the account delivered on the payment off of the seaman (*ibid.*, ss. 132, 133).

(*g*) M. S. Act, 1894, s. 161.

(*h*) *Rowlands* v. *Miller*, [1899] 1 Q. B. 735.

(*i*) M. S. Act, 1906, s. 34 (3), (4). As to insurance under the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), see title WORK AND LABOUR.

(*j*) M. S. Act, 1894, s. 133. A reduction of wages consequent upon disrating is not a deduction within this provision (*The Highland Chief*, [1892] P. 76).

them, the contract being considered void for absence of consideration as well as from public policy (*k*). The fact, however, that a vessel is about to sail short-handed is a fact that will justify an agreement to pay additional remuneration (*l*), and a seaman who is promoted during a voyage is entitled to be paid at an enhanced rate of payment (*m*), even though no alteration as to rate of pay is made in the ship's articles (*n*).

SUB-SECT. 5.—*Payment in Case of Seaman's Death.*

Payment on death.

80. When a seaman or apprentice dies on a British ship, either homeward (*o*) or outward (*p*) bound, the master must enter in the official log-book a statement of the amount of wages due and of any deductions (*q*). The balance of wages so ascertained is treated as part of the property of the seaman or apprentice (*r*).

SUB-SECT. 6.—*Advance and Allotment of Wages.*

Advance notes.

81. Whenever a formal agreement with the crew is required (*s*), the agreement may contain a stipulation for payment in advance to the seaman or his order of a sum not exceeding one month's wages (*t*).

Allotment notes.

A seaman may agree with the master at the beginning of a voyage for the payment of any part of his wages by means of an allotment note, either to a near relative or to a savings bank, and may insist that a stipulation shall be inserted in the agreement that any part of his wages up to one-half shall be so paid (*a*). The person in whose favour the allotment note is made out may recover the

(*k*) *Harris* v. *Watson* (1791), Peake, 102 [72]; *Stilk* v. *Myrick* (1809), 2 Camp. 317; *Harris* v. *Carter* (1854), 3 E. & B. 559; *Frazer* v. *Hutton* (1857), 2 C. B. (N. S.) 512; *Hopkins* v. *M'Bride* (1901), 50 W. R. 255. *Aliter*, where a good consideration can be shown (*Clutterbuck* v. *Coffin* (1842), 3 Man. & G. 842).

(*l*) *Hartley* v. *Ponsonby* (1857), 7 E. & B. 872; *Turner* v. *Owen* (1862), 3 F. & F. 176.

(*m*) *Hanson* v. *Royden* (1867), L. R. 3 C. P. 47.

(*n*) *Providence* (1825), 1 Hag. Adm. 391; *Hicks* v. *Walker* (1856), 4 W. R. 511.

(*o*) M. S. Act, 1894, s. 169; and see *Cutter* v. *Powell* (1795), 6 Term Rep. 320; *Beale* v. *Thompson* (1803), 3 Bos. & P. 405; *Button* v. *Thompson* (1869), L. R. 4 C. P. 330.

(*p*) M. S. Act, 1906, s. 29.

(*q*) As to deductions, see p. 50, *ante*; as to the official log-book, see pp. 82, 83, *post*.

(*r*) M. S. Act, 1894, s. 169. As to the property of seamen dying at sea, see p. 58, *post*.

(*s*) See M. S. Act, 1894, s. 113.

(*t*) *Ibid.*, s. 140. An advance note is not negotiable, and the conditions upon which the note was given must be complied with before the transferee of such a note can recover (*M'Kune* v. *Joynson* (1858), 5 C. B. (N. S.) 218; *Cardiff Boarding Masters' Association* v. *Cory & Sons* (1893), 9 T. L. R. 388; *Bellamy & Co.* v. *Lunn & Co.* (1897), 8 Asp. M. L. C. 348). These statutory provisions do not apply to a seaman engaged at a foreign port (*Ritchie* v. *Larsen*, [1899] 1 Q. B. 727; *Rowlands* v. *Miller*, [1899] 1 Q. B. 735). By the Piracy Act, 1721 (8 Geo. 1, c. 24), s. 7, no master or owner may advance to any seaman engaged in England, when abroad, more than one-half his wages due to him; see *Ritchie* v. *Larsen*, *supra*.

(*a*) M. S. Act, 1894, ss. 141, 142; M. S. Act, 1906, s. 61; M. S. (Seamen's Allotment) Act, 1911, s. 1. "Near relative" means wife, father, mother, grandfather, grandmother, child, grandchild, brother or sister (M. S. Act, 1894, s. 141 (4)). Allotment notes must be in a form approved by the Board of Trade (*ibid.*, s. 141 (3)). As to agreements with seamen, see pp. 41 *et seq.*, *ante*.

SECT. 4. Wages.

amount from any person who is in fact acting as owner (*b*). A wife may by misconduct forfeit her right to her allotment (*c*). The seaman will be presumed to be duly earning his wages unless proof is given to the contrary (*d*). Payment under an allotment note must begin after the expiration of not more than one month from the date of the agreement with the crew (*e*).

SUB-SECT. 7.—*Remittance of Wages.*

Seamen's money orders and savings banks.

82. Facilities are given, and regulations made by the Board of Trade, in respect of the remittance of wages to relatives and others by superintendents, by means of special seamen's money orders, and the establishment of seamen's saving banks (*f*). Where the balance of wages due to a seaman is more than £10, the master must, on the request of the seaman, give all reasonable facilities for remitting such excess to a savings bank or a near relative, in whose favour an allotment note may be made (*g*). The master need not give these facilities if the ship is in port and the money will become payable while the ship is in port, or otherwise than conditionally on the seaman going to sea in the ship (*h*).

SUB-SECT. 8.—*Compensation for Premature Discharge.*

Wrongful discharge.

83. A seaman who is wrongfully (*i*) discharged after signing an agreement (*k*) before the commencement of the voyage, or before one month's wages are earned, is entitled, in addition to any wages he may have earned, to compensation not exceeding one month's wages (*l*). Seamen wrongfully discharged have a right of action for damages (*m*).

SUB-SECT. 9.—*Proceedings to Recover Wages.*

Summary proceedings.

84. A seaman or apprentice, or any person duly authorised on his behalf, may, as soon as any wages due to him, not exceeding £50, become payable, sue for the same before a court of summary jurisdiction in or near the place at which his service has terminated,

(*b*) M. S. Act, 1894, s. 143; see *Meiklereid* v. *West* (1876), 1 Q. B. D. 428.
(*c*) M. S. Act, 1894, s. 143.
(*d*) *Ibid.*
(*e*) M. S. Act, 1906, s. 62; M. S. (Seamen's Allotment) Act, 1911, s. 1.
(*f*) M. S. Act, 1894, ss. 145—154. Any superintendent or officer fraudulently granting or issuing a seaman's money order is guilty of felony, and is liable to penal servitude for a term not exceeding five and not less than three years (*ibid.*, s. 147). Sentences not exceeding five years may be imposed in respect of various crimes in connexion with the issue of seamen's money orders and seamen's savings banks (*ibid.*, s. 154; title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 753).
(*g*) For definition of "near relative," see note (*a*), p. 51, *ante*.
(*h*) M. S. Act, 1906, s. 63. The penalty for failing to afford facilities is a fine not exceeding £5 on summary conviction (*ibid.*). As to summary procedure, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.*
(*i*) See *Tindle* v. *Davison* (1892), 66 L. T. 372, which laid down the principle here enacted.
(*k*) This enactment does not prevent seamen recovering under the M. S. Act, 1894, s. 134 (*Re Great Eastern Steamship Co., Williams' Claim* (1885), 5 Asp. M. L. C. 511).
(*l*) M. S. Act, 1894, s. 162. It seems that general damages may be claimed in addition to the month's wages (*The Justitia* (1887), 12 P. D. 145).
(*m*) See *The Justitia, supra; Austin Friars Steam Shipping Co.* v. *Strack, Same* v. *Strack*, [1905] 2 K. B. 315; see also *Collins* v. *Simpson*

or at which he has been discharged, or at which any person on whom the claim is made is or resides (*n*).

A seaman engaged on a voyage which is to end in the United Kingdom may not sue for wages abroad unless discharged with the sanction required by statute (*o*), and with the written consent of the master, or on account of ill-usage (*p*).

Lien.

A seaman has a lien upon the ship for wages, and cannot by agreement forfeit the lien, nor abandon any other means of recovering his wages (*q*).

Master's rights.

85. A master, so far as the case permits (*r*), has the same rights, liens, and remedies for the recovery of his wages as a seaman, and may recover disbursements properly made by him on account of the ship in the same way as he can recover wages (*s*).

Restrictions on actions.

86. Where the amount due does not exceed £50, the seaman (*t*) or apprentice may not institute proceedings in any superior court of record, nor in any court having admiralty jurisdiction, as an admiralty proceeding, except where the owner is adjudged bankrupt, or the ship is under arrest, or is sold by the authority of the court, or the claim is referred by a court of summary jurisdiction, or neither the master nor owner resides within twenty miles of the place where the seaman or apprentice is discharged, or put ashore (*u*).

Steamship Co. (1907), 24 T. L. R. 178, C. A. (right of seamen to compensation for loss of effects and hardships due to carriage of contraband).

(*n*) M. S. Act, 1894, s. 164. A personal representative would not be entitled to claim under this provision (*Hollingworth* v. *Palmer* (1849), 4 Exch. 267). It is doubtful if this provision applies to foreign ships (*Burns* v. *Chapman* (1858), 5 C. B. (N. S.) 481).

(*o*) M. S. Act, 1906, s. 30; see p. 55, *post*.

(*p*) M. S. Act, 1894, s. 166 (1). If the seaman is prevented from suing by this provision in a case in which, apart from the statutory provision, he would be entitled to sue, he may on his return obtain compensation not exceeding £20 in addition to his wages (*ibid.*, s. 166 (2)).

(*q*) *Ibid.*, s. 156; see title ADMIRALTY, Vol. I., pp. 68 *et seq.*; and p. 620, *post*. As to the rights of the crew of a fishing vessel with regard to wages, see title FISHERIES, Vol. XIV., pp. 631, 632.

(*r*) In view of these words a master's claim for wages has been postponed to that of a bottomry bond holder (*The Jonathan Goodhue* (1859), Sw. 524).

(*s*) M. S. Act, 1894, s. 167; see title ADMIRALTY, Vol. I., pp. 68 *et seq.* "Wages" includes both "emoluments" (*ibid.*, s. 742) and a "bonus" (*The Elmville* (No. 2), [1904] P. 422). The provisions of the M. S. Act, 1894, ss. 134 (c), 135 (2) (see p. 48, *ante*), relating to the additional wages due to seamen where there is an unreasonable delay in paying off do not apply to a master (*The Arina* (1887), 12 P. D. 118). The M. S. Act, 1894, applies to the masters of foreign ships (*The Milford* (1858), Sw. 362; *The Jonathan Goodhue, supra*; *The Tagus*, [1903] P. 44).

(*t*) "Seaman" in this provision may be read as "seaman or seamen," so as to entitle seamen whose claims in the aggregate exceed £50, but do not do so individually, to sue together (*Phillips* v. *Highland Rail. Co.*, *The Ferret*, (1883), 3 App. Cas. 329, P. C. (a case decided on the now repealed M. S. Act, 1854, s. 189, re-enacted by the M. S. Act, 1894, s. 165)).

(*u*) M. S. Act, 1894, s. 165. As to admiralty jurisdiction, see title ADMIRALTY, Vol. I., p. 70. This provision has been applied where more than £50 has been claimed but less awarded, on the ground that the amount claimed but not awarded was claimed in virtue of a kind of contract over which the Court of Admiralty has not jurisdiction (*The Harriet* (1861), Lush. 285).

SECT. 4. Wages.

The Limitation Act, 1623 (*a*), applies to an admiralty action for seamen's wages (*b*).

SECT. 5.—*Protection of Seamen from Imposition.*

SUB-SECT. 1.—*Assignment of Salvage and Wages.*

Assignment of salvage and wages.

87. No assignment or sale of salvage (*c*) or wages (*d*) payable to a seaman or apprentice, made prior to the accruing thereof, binds the person making it; and a power of attorney or authority for the receipt thereof is not irrevocable, nor may a seaman abandon any right he may have or obtain in the nature of salvage (*e*), nor his right to wages in case of the loss of the ship, nor may he agree to be deprived of any remedy for the recovery of his wages which he would otherwise have had (*f*). A debt exceeding in amount 5*s.* incurred by any seaman after he has engaged to serve is not recoverable until the service agreed for is concluded (*g*).

SUB-SECT. 2.—*Lodging-house Keepers.*

Seamen's lodging-houses.

88. Bye-laws may be made either by a local authority or by the Board of Trade relating, *inter alia*, to the licensing, inspection, and sanitary conditions of seamen's lodging-houses (*h*). Fines may be imposed upon lodging-house keepers for charging seamen for a longer period than that for which the seaman has resided in the house, or for detaining money or effects in payment (*i*), or for soliciting a seaman on board the ship to become a lodger within twenty-four hours of the arrival of the ship at a home port (*k*), or for going on board for such purpose without leave when a ship is about to arrive, is arriving, or has arrived, at the end of her voyage (*l*). These provisions may be extended by Order in Council to ships belonging to a foreign country, where similar provisions exist in respect of British ships in such foreign country (*m*).

(*a*) 21 Jac. 1, c. 16.

(*b*) See title LIMITATION OF ACTIONS, Vol. XIX., p. 39.

(*c*) M. S. Act, 1894, s. 212. As to salvage, see pp. 557 *et seq.*, *post*.

(*d*) M. S. Act, 1894, s. 163. This provision does not render illegal advance notes and allotments of wages; see pp. 51, 52, *ante*.

(*e*) M. S. Act, 1894, s. 212. This provision only applies to a sale of salvage made prior to the accruing thereof. Under *ibid.*, s. 156 (1), a sale made after the service has been rendered is void (*The Rosario* (1876), 2 P. D. 41). An agreement to apportion is not void (see *The Afrika* (1880), 5 P. D. 192), but may be set aside if inequitable; see p. 573, *post*. These provisions do not affect vessels which, by the terms of the agreement, are to be employed on salvage service (M. S. Act, 1894, s. 156 (2)).

(*f*) *Ibid.*, s. 156 (1).

(*g*) *Ibid.*, s. 213.

(*h*) *Ibid.*, s. 214; see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., p. 515.

(*i*) M. S. Act, 1894, ss. 215, 216. Penalty, not exceeding £10 (*ibid.*).

(*k*) *Ibid.*, s. 217. Penalty, not exceeding £5 (*ibid.*).

(*l*) *Ibid.*, s. 218. The corresponding provision in the M. S. Act, 1854, only related to the time when a ship was about to arrive at her place of destination, before her actual arrival in dock, or at the place of her discharge; see *Attwood* v. *Case* (1875), 1 Q. B. D. 134. Persons charged with offending against this provision have a right to be tried by a jury (*R.* v. *Goldberg*, [1904] 2 K. B. 866). The provision applies in the case of a foreign ship (*R.* v. *Abrahams*, [1904] 2 K. B. 859).

(*m*) M. S. Act, 1894, s. 219. The M. S. Act, 1894, must be deemed to be

SECT. 6.—*Discharge of Seamen.*

Discharge.

89. A seaman serving in a British foreign-going ship, when discharged at a home port, must be discharged in the presence of a superintendent, and a seamen serving in a home-trade ship may be so discharged, if the master or owner desires it (*n*). The master must under penalty sign and give to the seaman, either on his discharge or on payment of his wages, a certificate of discharge in approved form, specifying the period of service and the time and place of discharge, and must return to officers their certificates of competency (*o*). When a seaman is discharged before a superintendent, the master must make and sign in approved form a report of the conduct, character, and qualifications of the seaman discharged, or may state on the form that he declines to do so (*p*).

Foreign discharge.

90. A master discharging a seaman abroad must give him a certificate of discharge, and must return to a certificated officer whom he discharges abroad his certificate of competency (*q*). He may not, however, under penalty, discharge a seaman at all at any port outside the United Kingdom, except in the country where he was shipped, without the sanction of the proper authorities, and where the seaman is not discharged in the statutory manner, a certificate of the proper authority must be indorsed on the agreement with the crew, stating why the seaman is left behind (*r*).

extended to countries to which the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (43 & 44 Vict. c. 16), formerly was extended by Order in Council (*R.* v. *Abrahams*, [1904] 2 K. B. 859). Orders in Council have been made in respect of the following countries:—Italy (2nd March, 1881); Norway and Sweden (25th October, 1881); Germany (30th November, 1882); United States of America (22nd May, 1883); Austria-Hungary (17th October, 1884); Denmark (15th September, 1887); Belgium (23rd July, 1889).

(*n*) M. S. Act, 1894, s. 127. A penalty of a fine not exceeding £10 attaches to failure to comply with these provisions (*ibid.*).

(*o*) *Ibid.*, s. 128. No action lies in respect of the failure of a master to give a certificate of discharge (see *Vallance* v. *Falle* (1884), 13 Q. B. D. 109), but the court may apply any part of the penalty in compensating the seaman (M. S. Act, 1894, s. 699 (1)). The duty to grant this certificate is on the master alone, and not on the owners (*Downie* v. *Connell Brothers, Ltd.* [1910] S. C. 781). Where the seaman has wilfully or through misconduct failed to join the ship, the Board of Trade may order that his certificate of discharge shall be withheld for a period (M. S. Act, 1906, s. 65 (2)). For a form of certificate of discharge, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 50.

(*p*) M. S. Act, 1894, s. 129. In the absence of malice an action for damages will not lie against a master for declining in accordance with this provision (*Palace Shipping Co., Ltd.* v. *Caine*, [1907] A. C. 386). Penalties attach to the making of a false report of character with knowledge of the falsity, and to the forgery or fraudulent alteration of such reports; see M. S. Act, 1894, s. 130; *R.* v. *Wilson* (*James*) (1858), Dears. & B. 558; and title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 753.

(*q*) M. S. Act, 1906, s. 31. The word "seamen" for this purpose includes "apprentices" (*ibid.*, s. 49 (2)).

(*r*) *Ibid.*, ss. 30, 36. As to the proper authorities, see note (*e*), p. 50, *ante*. A master failing to comply with these provisions is guilty of a misdemeanour, and the burden is on him to prove that sanction was obtained, or could not be obtained, or was unreasonably withheld (M. S. Act, 1906, ss. 30, 36); see title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 556, 557. The certificates are not conclusive evidence of desertion (*Lewis* v. *Jewhurst* (1866), 15 L. T. 275).

SECT. 6. Discharge of Seamen, Sale of ship.

91. When a ship changes hands abroad, the seamen serving on her must be discharged, unless they consent in writing in the presence of the proper authorities to complete the voyage if continued (*s*).

SECT. 7.—*Destitute and Distressed Seamen.*

Foreign seaman in United Kingdom.

92. The master or owner of a ship who brings to the United Kingdom a native of Asia or Africa, or of any island in the South Sea or Pacific Ocean, and leaves him in the United Kingdom, is liable to a fine not exceeding £30, if within six months the person so left becomes chargeable on the poor rate, or commits any act by reason whereof he is liable to be convicted as an idle or disorderly person, or any other act of vagrancy (*a*).

Lascars.

93. It is the duty of the Secretary of State in Council for India to send home lascars or other natives of India found destitute in the United Kingdom, and to reimburse the British poor law authorities for any expenses incurred in connexion with such persons. The amount so paid by the Secretary of State constitutes a debt, for which the master and owner of the ship which brought such persons to the United Kingdom are jointly and severally liable (*b*).

Seamen abroad.

94. Where the service of a seaman serving on a British ship ends at a port out of British dominions, otherwise than by the consent of the seaman to be discharged during the currency of the agreement, the master must make provision for his maintenance and return to a proper return port. If the master fails to do this, the owner will be liable for the expenses incurred either by the seaman himself or by the authority or person which has defrayed the expenses of maintenance and of the return journey (*c*). These provisions apply where the seaman has refused to complete the voyage on the transfer or disposal of the ship abroad (*d*).

Wrecked seamen.

95. Seamen shipwrecked from a British ship, or discharged or left behind from a British ship and found in distress abroad, may

(*s*) M. S. Act, 1906, s. 33; as to the proper authorities, see note (*e*), p. 50, *ante*.

(*a*) M. S. Act, 1894, s. 184. The court inflicting the fine may order a part or the whole of it to be applied towards the relief or sending home of the person left (*ibid.*).

(*b*) *Ibid.*, s. 185.

(*c*) M. S. Act, 1906, s. 32. Except for expenses defrayed by the seaman himself, the owner is not made liable by the statute if the seaman has been guilty of barratry (*ibid.*); as to barratry, see title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 789. A proper return port is either the port where the seaman was shipped, or a port in the country to which he belongs, or some other port agreed to by the seaman, in the case of a discharged seaman, at the time of his discharge, but in the case of a seaman belonging to a British possession, shipped and discharged out of the United Kingdom, a port in the United Kingdom may be treated as a proper return port (M. S. Act, 1906, s. 45). *Ibid.*, ss. 31—33, take the place of the M. S. Act, 1894, s. 186; as to the interpretation of which see *Edwards* v. *Steel, Young & Co.*, [1897] 2 Q. B. 327, C. A.; *Purves* v. *Straits of Dover Steamship Co.*, [1899] 2 Q. B. 217, C. A.; *A.-G.* v. *Fargrove Steam Navigation Co., Ltd.* (1908), 24 T. L. R. 430, C. A. An owner is responsible for the board, lodging, and conveyance home of a seaman discharged abroad, even though he was put ashore with a venereal disease (*Board of Trade* v. *Anglo-American Oil Co., Ltd*, [1911] 2 K. B. 225).

(*d*) M. S. Act, 1906, s. 33.

be sent home by the proper authorities (*e*) at the expense of the owners (*f*).

British subjects engaged to serve on foreign ships and found in distress abroad are entitled to similar relief (*g*).

Sailors' homes.

96. Certain public bodies may, with the consent of the Local Government Board, appropriate any land vested in them, or in trustees for them, as a site for a sailors' home (*h*).

SECT. 8.—*Relief to Families of Seamen.*

Charge for poor law relief.

97. When during the absence of a seaman on a voyage his wife or any of his children or step-children becomes chargeable on any union or parish in the United Kingdom, the union or parish is entitled to be reimbursed out of the wages of the seaman, up to an amount equal to one-half of the wages in the case of one member of the family becoming chargeable, and up to two-thirds in the case of two members. The reimbursement can, however, only extend to the balance of wages after any amounts paid under an allotment note have been deducted (*i*).

Enforcement of charge.

98. For the purpose of obtaining such reimbursements, the board of guardians, or a poor law union, or an inspector of the poor, may give notice to the owner of a ship to retain the required amount from the seaman's wages for a period not exceeding twenty-one days. During that time the money may be paid over on the order of a court of summary jurisdiction having jurisdiction in the union or parish seeking reimbursement, the court having power to reimburse for the whole amount claimed, or for any less sum, as it shall think fit. If no order for reimbursement is obtained within twenty-one days, the wages retained must be paid to the seaman (*k*).

(*e*) For definition of "proper authorities," see note (*e*), p. 50, *ante*. "Seamen" for this purpose includes apprentices (M. S. Act, 1906, s. 49 (2)).

(*f*) *Ibid.*, s. 41. By *ibid.*, s. 40, the Board of Trade has power to make regulations in regard to shipwrecked seamen and seamen in distress, known as the Distressed Seamen Regulations. Such regulations have been issued under Order in Council of the 9th April, 1908. Statutory provisions relating to the methods in which distressed seamen may be sent to a return port are contained in the M. S. Act, 1906, ss. 46—48. As regards the recovery of expenses in connexion with the return of distressed seamen, see *ibid.*, s. 42. Agreements have been come to and published by Order in Council with regard to the treatment of distressed seamen with the following countries:—Austria-Hungary (26th November, 1880); Denmark (25th July, 1883); France (5th November, 1879); Germany (27th May, 1879); Italy (8th June, 1880); Sweden and Norway (12th July, 1881); see also M. S. Act, 1906, s. 41).

(*g*) The question whether a seaman is "in distress" is a question of fact (*Board of Trade* v. *Sailing Ship Glenpark*, [1904] 1 K. B. 682, C. A.). Distressed seamen are not "passengers" so as to make pilotage compulsory upon a ship carrying them (*The Clymene*, [1897] P. 295). A person belonging to a British ship who wrongfully forces a seaman on shore, or causes a seaman to be wrongfully left behind at any place, is guilty of a misdemeanour (M. S. Act, 1906, s. 43); see title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 556, 557.

(*h*) M. S. Act, 1894, s. 259.

(*i*) *Ibid.*, s. 182; see title POOR LAW, Vol. XXII., p. 572. As to allotment notes, see pp. 51, 52, *ante*.

(*k*) M. S. Act, 1894, s. 183. As to courts of summary jurisdiction generally, see title MAGISTRATES, Vol. XIX., pp. 571 *et seq.*

SECT. 9.
Property of Deceased Seamen.

SECT. 9.—*Property of Deceased Seamen.*

Death at sea.

99. When a seaman or apprentice on a British ship dies during a voyage which is to terminate in the United Kingdom, the master must take charge of his money and effects, and may sell the latter by auction. Full particulars must be entered in the official log, and the entry must be attested by the mate or by some member of the crew (*l*). The property must be delivered over to a superintendent on arrival at a home port, or to other officials in the case of foreign ports, and a certificate is granted in exchange, which must be produced before a foreign-going ship is cleared inwards (*m*).

Death abroad.

100. When a seaman dies abroad, not on board ship, his money and effects must be taken charge of by a chief officer of customs in the case of a British possession, or a British consular officer elsewhere, who may sell any part of the property, and must remit the rest, with the proceeds of sale, as the Board of Trade may require (*n*).

Death in United Kingdom.

101. When a seaman dies in the United Kingdom, the master must account for all property to the superintendent or to the Board of Trade (*o*).

Wills of seamen.

102. Where property of a deceased seaman or apprentice has come into the hands of the Board of Trade, the Board may refuse to recognise any will unless, if made on board ship, it is attested by the master, or first or only mate, and signed or acknowledged in the presence of one of them, or unless, if the will is not made on board ship, and the property is left to any person not related to the deceased by blood or marriage, the will is in writing, and is signed or acknowledged by the testator in the presence of, and is attested by two witnesses, one of whom is a superintendent, or minister of religion officiating in the place where the will is made, or where there are no such persons a justice, British consular officer, or an officer of customs (*p*).

Administration of effects.

103. Where property of a deceased seaman comes into the hands of the Board of Trade, the Board will, after deducting expenses, deal with the residue thus :—If the property exceeds £100 in value, it will be paid to the personal representative of the deceased; if it does not exceed £100, it may be paid to any person proved

(*l*) M. S. Act, 1894, s. 169. "Effects" includes clothes and documents (*ibid.*, s. 742); "during the voyage" does not include time after a vessel has been wrecked (*Stephens* v. *Duncan* (1862), 1 Macph. (Ct. of Sess.) 146). As to the official log, see pp. 82, 83, *post*.

(*m*) M. S. Act, 1894, s. 170. The master may be fined an amount not exceeding treble the amount of the property not accounted for, or, if such value is not ascertained, not exceeding £50, for not taking charge of or not delivering over the deceased seaman's property (*ibid.*, s. 171). In the case of a sailor belonging to one of His Majesty's ships being sent home in a merchantman and dying on the way, his property is at the disposal of the Accountant-General of the Navy (*ibid.*, s. 181).

(*n*) Both ships of which the voyages terminate in the United Kingdom and ships of which the voyages terminate abroad are included in this provision (M. S. Acts, 1894, ss. 172, 173; 1906, s. 29).

(*o*) M. S. Acts, 1894, s. 175; 1906, s. 29.

(*p*) M. S. Act, 1894, s. 177 (1). If the will be void under this provision the property is dealt with as though there were no will (*ibid.*, s. 177 (2)); see titles EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 162; WILLS.

SECT. 9. Property of Deceased Seamen.

to be the widow or child of the deceased, or a person entitled under the will, or a person entitled to take out representation. The Board may, at its discretion, require administration to be taken out for this purpose (*q*).

Creditors' claims.

104. Creditors claiming upon the property of a deceased seaman must state the particulars of their claim in proper form, and verify them by statutory declaration. No creditor is entitled to claim any part of the property by virtue of representation obtained as creditor, nor in respect of a debt which has accrued more than three years before the death of the deceased, nor unless a demand is made within two years after the death. A creditor may proceed against a widow, next of kin, or legatee, to whom the Board of Trade has delivered over any property of the deceased, as if she or he had received the property as legal personal representative of the deceased. Payment to the creditor may be delayed for a year, whether he has proved the debt to the satisfaction of the Board of Trade or not (*r*).

Offences and penalties.

105. Any person who for the purpose of obtaining any property of any deceased seaman or apprentice, either for himself or any other person, has any guilty connexion with the forgery or fraudulent alteration of any document, or the giving of false evidence, or the making of false representations, or the procuring of false evidence, is liable to imprisonment (*s*).

SECT. 10.—*Discipline.*

SUB-SECT. 1.—*Authority of Master.*

Master's powers.

106. A master may, apart from the powers conferred upon him by statute, take all reasonable means to preserve discipline in the ship (*t*).

Deserters.

107. At a home port a deserter from a British ship, or an absentee without leave, may be taken on board by force, but if he so requires, he must first be taken before some competent court (*a*). At a foreign port the seaman may be arrested without warrant, so far as the local laws permit, but must also be given the opportunity

(*q*) M. S. Act, 1894, s. 176; see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 190.

(*r*) M. S. Act, 1894, s. 178; see title LIMITATION OF ACTIONS, Vol. XIX., p. 181. Where no claim is received within six years the Board of Trade has power to give the property to a subsequent claimant or pay it to the Treasury (M. S. Act, 1894, s. 179; and see M. S. Act, 1898).

(*s*) M. S. Act, 1894, s. 180. The penalty is penal servitude not exceeding five years, or imprisonment not exceeding two years, with or without hard labour, or, on summary conviction, imprisonment not exceeding six months, with or without hard labour (*ibid.*); see title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 753.

(*t*) *Lima* (1837), 3 Hag. Adm. 346. The master has also the power to alter the rating of a seaman in the course of a voyage (*Hicks* v. *Walker* (1856), 4 W. R. 511; *Hanson* v. *Royden* (1867), L. R. 3 C. P. 47). So far as the provisions of the M. S. Acts are concerned, "master" includes every person, except a pilot, having command or charge of any ship (M. S. Act, 1894, s. 742). The master of a merchant ship is entitled to the assistance of His Majesty's officers in maintaining discipline; see title CONSTITUTIONAL LAW, Vol. VI., p. 436.

(*a*) M. S. Act, 1894, s. 222.

SECT. 10. Discipline.

of appearing before a court (*b*). Similar provisions may be applied by Order in Council to seamen of vessels belonging to foreign countries (*c*).

SUB-SECT. 2.—*General Duties of Seamen.*

Duties of seamen.

108. A seaman is not bound to perform any services other than those stipulated for in his contract of service (*d*). He will, however, be required to perform duties which, although not specifically stipulated for, are reasonably incidental to a seafaring life. Thus, the seaman must navigate the ship in all sorts of weather (*e*), conduct himself in a properly respectful manner towards his superiors (*f*), and assist with the working of the cargo in ports of call (*g*).

SUB-SECT. 3.—*Offences against Discipline.*

Offences against discipline.

109. A seaman lawfully engaged, or an apprentice, if he quits the ship without leave after her arrival at her port of delivery before she is placed in security, is liable to be punished summarily by the forfeiture of a sum not exceeding one month's pay; if he is guilty of wilful disobedience to a lawful command, he is liable to imprisonment for not more than four weeks or to forfeit two days' pay; if he is guilty of continued wilful disobedience to lawful commands (*h*), or continued wilful neglect of duty, he is liable to imprisonment for not more than twelve weeks or to forfeit a sum not exceeding six days' pay in respect of each day's disobedience or neglect of duty, or to the expenses of hiring a substitute; if he assaults the master or a mate or a certificated engineer, he is liable to imprisonment for a term not exceeding twelve weeks;

(*b*) M. S. Act, 1894, s. 223.

(*c*) *Ibid.*, s. 238.

(*d*) Thus, a seaman who has agreed to serve on an ordinary voyage is not bound to continue to serve when the voyage has become extraordinary, as when the risk ceases to be a commercial risk by reason of the carriage of contraband (*Burton* v. *Pinkerton* (1867), L. R. 2 Exch. 340; *O'Neil* v. *Armstrong, Mitchell & Co.*, [1895] 2 Q. B. 418, C. A.; *Lloyd* v. *Sheen* (1905), 10 Asp. M. L. C. 75; *Austin Friars Steam Shipping Co.* v. *Strack, Same* v. *Strack*, [1905] 2 K. B. 315; *Palace Shipping Co., Ltd.* v. *Caine*, [1907] A. C. 386; *Collins* v. *Simpson Steamship Co.* (1907), 24 T. L. R. 178, C. A.), or the voyage is extended beyond the time and scope agreed upon (*Eliza* (1823), 1 Hag. Adm. 182; *Countess of Harcourt* (1824), 1 Hag. Adm. 248; *Minerva* (1825), 1 Hag. Adm. 347; *George Home* (1825), 1 Hag. Adm. 370; *The Westmorland* (1841), 1 Wm. Rob. 216; *Donkin* v. *Hastie* (1897), 61 J. P. 568), or where there is a shortage of provisions (*Castilia* (1822), 1 Hag. Adm. 59). As to when a voyage will be deemed to be terminated, see *Haylett* v. *Thompson*, [1911] 1 K. B. 311. The voyage to be considered is the "voyage of the ship," not the voyage of the cargo (*The Scarsdale*, [1906] P. 103, C. A.). Where the agreement is reasonable, the crew may be bound by an agreement to accept half wages in the event of certain contingencies (*Hoghton* (1833), 3 Hag. Adm. 100). Any contract may be rescinded by the court upon such terms as it thinks just (M. S. Act, 1894, s. 168). For other cases relating to interpretation of seamen's contracts, see *Frazer* v. *Hatton* (1857), 2 C. B. (N. S.) 512.

(*e*) *Neptune* (1824), 1 Hag. Adm. 227.

(*f*) *Lowther Castle* (1825), 1 Hag. Adm. 384.

(*g*) *Cambridge* (1829), 2 Hag. Adm. 243.

(*h*) As to what may constitute this offence, see *Caroe* v. *Bayliss* (1908), 25 T. L. R. 22; as to fishing vessels, see M. S. Act, 1894, s. 376; and *Edgill* v. *Alward* (*J. & G.*), *Ltd.*, [1902] 2 K. B. 239. For riots by seamen etc., see Shipping Offences Act, 1793 (33 Geo. 3, c. 67), ss. 1, 3, 4; and title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 473.

if he combines with any of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or the progress of the voyage, he is liable to imprisonment for not more than twelve weeks; if he wilfully damages the ship, or embezzles or wilfully damages stores or cargo, he is liable to imprisonment for not more than twelve weeks, and also to forfeit a sum equal to the loss sustained; if he is convicted of smuggling, he is liable to make good to the master or owner any loss caused (*i*).

Desertion and absence without leave.

110. A seaman guilty of desertion is liable to imprisonment for a term not exceeding twelve weeks, to forfeit all effects left on board, all wages earned, and all wages he may earn in any other ship until his next return to the United Kingdom, and to satisfy any excess of wages paid for a substitute (*j*).

Persuading to desert and harbouring deserters.

A penalty attaches to persuading or attempting to persuade a seaman or apprentice to desert from his ship (*k*), or otherwise to absent himself from his duty, and also to wilfully harbouring seamen or apprentices who have deserted or absented themselves from duty (*l*).

Absence without leave.

A seaman is guilty of being absent without leave if he neglects or refuses without reasonable cause to join or proceed to sea in his ship, or is absent without leave at any time within twenty-four hours of the ship's sailing from port, or is otherwise absent from duty in circumstances which do not amount to, or are not treated as amounting to, desertion (*m*).

(*i*) M. S. Act, 1894, s. 225. This section contains the offences which are "offences against discipline" under the Act. It only applies to sea-going vessels; see M. S. Act, 1894, s. 260; *Salt Union* v. *Wood*, [1893] 1 Q. B. 370. The offence may be punished summarily (*ibid.*, s. 243). Where a fine has been imposed upon a seaman for an act of misconduct under his agreement, he cannot be otherwise punished under the Merchant Shipping Acts (M. S. Act, 1906, s. 44 (5)). Despite the punishments imposed by statute upon offences against discipline, desertion, or absence without leave, the master may sue for breach of contract in respect of such offences (M. S. Act, 1894, s. 225, overruling *Great Northern Fishing Co.* v. *Edgehill* (1883), 11 Q. B. D. 225). As to smuggling, see title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 522, 523.

(*j*) M. S. Act, 1894, s. 221 (a). The desertion must be from a British ship (*Leary* v. *Lloyd* (1860), 3 E. & E. 178). As to what constitutes desertion, see *Sigard* v. *Roberts* (1799), 3 Esp. 71; *Limland* v. *Stephens* (1801), 3 Esp. 269; *Neave* v. *Pratt* (1807), 2 Bos. & P. (N. R.) 408; *Castilia* (1822), 1 Hag. Adm. 59; *Bulmer* (1823), 1 Hag. Adm. 163; *The Two Sisters* (1843), 2 Wm. Rob. 125; *Edward* v. *Trevellick* (1854), 4 E. & B. 59; *Cross* v. *Hyne* (1868), 3 Mar. L. C. 80; *Button* v. *Thompson* (1869), L. R. 4 C. P. 330; *The Roebuck* (1874), 2 Asp. M. L. C. 387; *Seward* v. *Ratter* (1884), 12 R. (Ct. of Sess.) 222. Expenses caused by desertion may be deducted from wages, see p. 49, *ante*.

(*k*) The ship may be "his ship" before the seaman has signed articles if he has contracted to serve on her (*Vickerson* v. *Crow* (1913), 30 T. L. R. 111).

(*l*) M. S. Act, 1894, s. 236. The penalty for enticing to desert is a fine not exceeding £10, and for harbouring deserters not exceeding £20 (*ibid.*). It is immaterial whether all the statutory formalities have been observed in the engagement of the seamen (*Austin* v. *Olsen* (1868), L. R. 3 Q. B. 208; see also *Thomson* v. *Hart* (1890), 28 Sc. L. R. 28). Persons other than seamen may also be proceeded against for this offence under the Conspiracy, and Protection of Property Act, 1875 (38 & 39 Vict. c. 86); see *Kennedy* v. *Cowie*, [1891] 1 Q. B. 771; *R.* v. *Lynch*, [1898] 1 Q. B. 61, C. C. R.; *Farmer* v. *Wilson* (1900), 69 L. J. (Q. B.) 496. M. S. Act, 1894, s. 236, does not apply to foreign vessels (*Poll* v. *Dambe*, [1901] 2 K. B. 579).

(*m*) M. S. Act, 1894, s. 221 (b). This offence renders the seaman liable to imprisonment for not more than ten weeks, to forfeiture of a sum not

SECT. 10. Discipline.

Foreign ships.

Where it appears that facilities are given by a foreign country in respect of the recovery and apprehension of deserters from British merchant ships, the same powers may be conferred upon courts, justices, or officers in regard to the apprehension of seamen deserting from ships belonging to that country as they possess in regard to the apprehension of British seamen (*a*).

SUB-SECT. 4.—*Other Offences.*

False statements.

111. A seaman may be fined for wilfully and fraudulently making a false statement of the name of his last ship, or of his own name, on or before being engaged (*b*).

Stowaways.

Stowaways may be taken before a court without warrant and sentenced to fine or imprisonment. While on board a ship they are for the purposes of discipline treated as members of the crew (*c*).

Barratry.

A master or a member of a crew who wilfully commits a wrongful act to the prejudice of the owner or charterer is guilty of barratry (*d*).

Piracy.

Piracy, which is an offence in the nature of barratry, has been the subject of special legislative enactment (*e*).

Wilfully endangering ship.

112. A master, seaman, or apprentice belonging to a British ship who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of the ship, or tending immediately to endanger the life or limb of a person belonging to or on board the ship, or refuses or omits to do any lawful act proper and requisite to the

exceeding two days' pay, and for every twenty-four hours' absence either to a sum not exceeding six days' pay or any expenses incurred in hiring a substitute (M. S. Act, 1894, s. 221 (b)). The unseaworthiness of the vessel is an answer to a charge of desertion or of absence without leave (*ibid.*, s. 463). No stipulations which are at variance with the provisions of the Merchant Shipping Acts may be inserted in the agreement with the crew in respect of this offence (*Mercantile Steamship Co.* v. *Hall*, [1909] 2 K. B. 423). For offences on fishing boats etc., see M. S. Act, 1894, ss. 376—384; title FISHERIES, Vol. XIV., pp. 632, 633.

(*a*) M. S. Act, 1894, s. 238. Orders have been made in respect of the following countries:—Austria-Hungary (16th October, 1852); Belgium (8th February, 1855); Brazil (17th November, 1888); Columbia (28th December, 1866); Congo Free State (10th August, 1888); Denmark (15th July, 1881); Ecuador (24th September, 1886); France (3rd July, 1854); Germany (18th March, 1880); Greece (12th July, 1887); Honduras (26th September, 1901); Italy (11th June, 1863); Japan (9th October, 1903); Mexico (28th May, 1889); Morocco and Fez (6th May, 1857); (Netherlands (9th March, 1854); Nicaragua (1st March, 1907); Paraguay (29th December, 1887); Peru (18th August, 1852); Roumania (29th February, 1908); Russia (27th August, 1860); Salvador (11th June, 1863); Siam (10th November, 1866); Spain (23rd January, 1860); Sweden and Norway (8th August, 1852); Turkey (18th May, 1865); United States of America (18th August, 1892); Uruguay (24th September, 1886); Zanzibar (7th March, 1887).

(*b*) M. S. Act, 1894, s. 227. The penalty is a fine not exceeding £5 (*ibid.*).

(*c*) *Ibid.*, s. 237; M. S. Act, 1906, s. 82 (1).

(*d*) See the definitions contained in the Marine Insurance Act, 1906 (6 Edw. 7, c. 41), Sched. I (1), which sums up the effect of previous decisions; see *Earle* v. *Rowcroft* (1806), 8 East, 126; title INSURANCE, Vol. XVII., pp. 444, 445. Certain forms of barratry have been made punishable by statute; thus, any person who unlawfully and maliciously sets fire, casts away, or in anywise destroys any ship is guilty of felony (Malicious Damage Act, 1861 (24 & 25 Vict. c. 97); see also M. S. Act, 1894, s. 220; title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 789, 790.

(*e*) See title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 523 *et seq.*

preservation of the ship or the safety of those on board her, is guilty of a misdemeanour (*f*).

SUB-SECT. 5.—*Entry of Offences.*

Logging.

113. Every statutory offence must be entered in the official log, and signed by the master and mate or one of the crew, and the entry must be read over to the offender if still in the ship, or a copy of the entry furnished to him. A statement of his reply must also be entered and similarly signed (*g*). Where a seaman deserts in a foreign port, the entry showing desertion must be produced to a person authorised to grant certificates for leaving seamen behind abroad, who will make and certify a copy of the entry, and send it home for registration by the Registrar-General of shipping and seamen (*h*). A list of deserters is kept by superintendents (*i*).

SECT. 11.—*Seamen Volunteering for Royal Navy.*

Seaman joining Royal Navy.

114. A seaman may leave his ship in order to enter the Royal Navy and will not be deemed to have deserted therefrom or be liable to any punishment or forfeiture. Any stipulation in an agreement inconsistent with this provision is void, and the master or owner introducing such a stipulation is liable to a penalty (*k*).

SECT. 12.—*Registration and Returns Respecting Seamen.*

General Register and Record Office.

115. An office is maintained in London under the control of the Board of Trade, known as the General Register and Record Office of Seamen (*l*). It is supervised by the Registrar-General of Shipping and Seamen, who keeps a record of all persons who serve in ships, together with various particulars concerning them (*m*). To enable him to do so lists of the crews serving on home trade ships, and on foreign-going ships whose crews are discharged in the United Kingdom, must be transmitted through superintendents (*n*) after the arrival of the ship at her final home port of destination in the United Kingdom, or upon discharge of the crew, whichever happens first, together with various particulars relating to their services and other matters (*o*).

Lists of seamen must also be returned where a transfer of

(*f*) M. S. Act, 1894, s. 220. This provision does not cover the case of mere negligence in navigation as manifested in a failure to keep a good look-out (*Deacon* v. *Evans*, [1911] 1 K. B. 571). The act need only "tend" to loss or destruction, and may be within this provision although there is no actual damage (*R.* v. *Gardner* (1859), 1 F. & F. 669); see title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 558.

(*g*) M. S. Act, 1894, s. 228. In any subsequent legal proceedings for offences these entries must be produced in evidence, or the court may refuse to receive other evidence (*ibid.*); and see title EVIDENCE, Vol. XIII., p. 542; see also pp. 82, 83, *post*.

(*h*) M. S. Acts, 1894, s. 229; 1906, ss. 36, 49.

(*i*) M. S. Act, 1894, s. 230.

(*k*) *Ibid.*, s. 195. The penalty is a fine not exceeding £20 (*ibid.*). To bring the seaman within this provision it seems he must have left his ship with the *bonâ fide* intention of joining the Royal Navy (*The Amphitrite* (1832), 2 Hag. Adm. 403). As to the Royal Navy generally, see title ROYAL FORCES, Vol. XXV., pp. 3 *et seq.*

(*l*) M. S. Act, 1894, s. 251.

(*m*) *Ibid.*, s. 252.

(*n*) *Ibid.*, s. 256.

(*o*) *Ibid.*, s. 253.

SECT. 12. Registration and Returns Respecting Seamen.

ownership or a change in the employment of the ship takes place, or if the ship be lost or abandoned (*p*). Further returns must be made of all births, marriages, and deaths taking place on a British ship (*q*).

When a cargo boat stops forty-eight hours in a port in a British dominion, the master must deliver to the chief officer of customs or consular officer the agreement with the crew, and all indentures and assignments of apprenticeships, to be kept during the ship's stay in port. The officer receiving the documents must report any irregularity to the Registrar-General (*r*).

Ship's papers.

116. Where a master relinquishes his position during a voyage, he must, under penalty, deliver to his successor the various documents relating to the navigation and crew of the ship, and his successor must, immediately he assumes command of the ship, enter in the official log a list of the documents so delivered to him (*s*).

Part IV.—Authority and Liability of Master as Custodian of Ship and Cargo.

SECT. 1.—*General Authority as to Contracts for Employment of Ship.*

Authority of master.

117. As owners rarely navigate a trading ship by themselves, the management of it is generally entrusted to the master, and he is their confidential servant or agent to perform all things relating to the usual employment of the ship. His authority is very large, and extends to all acts that are usual and necessary for the use and employment of the ship, but it is subject to certain limitations (*a*). Thus the master may make a charter in his own name so as to bind his owners, if this is done at a foreign port and there is a difficulty in communicating with his owners, and it is made in the usual course of the ship's employment, and in circumstances that do not afford evidence of fraud; or if it is made at the ship's home port in circumstances which afford evidence of the assent of the owners (*b*), provided that in making a contract for the hire of the ship he does not substitute it for a contract already made by his owner (*c*).

He has a general implied authority by maritime usage to contract to carry goods on freight, but not freight free, and

(*p*) M. S. Act, 1894, s. 255.

(*q*) *Ibid.*, s. 254; see titles HUSBAND AND WIFE, Vol. XVI., p. 308; REGISTRATION OF BIRTHS, MARRIAGES, AND DEATHS, Vol. XXIV., pp. 455, 457

(*r*) M. S. Act, 1894, s. 257. Failure by the master to carry out these duties is punishable by a fine not exceeding £20 (*ibid.*).

(*s*) *Ibid.*, s. 258. The penalty is a fine not exceeding £100 (*ibid.*). As to the official log, see pp. 82, 83, *post.*

(*a*) *Grant* v. *Norway* (1851), 10 C. B. 665.

(*b*) *Messageries Imperiales Co.* v. *Baines* (1863), 1 Mar. L. C. 285. A master has no authority to write from the neighbourhood of his home to a foreign port to a broker to fix the ship for a home voyage. The fact that he has done so on previous occasions and acted on the charters made does not bind his owners (*The Fanny, The Mathilda* (1883), 5 Asp. M. L. C. 75, C. A.). As to charterparties generally, see pp. 84 *et seq.*, *post.* As to authority of agents generally, see title AGENCY, Vol. I., pp. 160 *et seq.* As to the application of foreign law, see title CONFLICT OF LAWS, Vol. VI. pp. 238 *et seq.*, and the cases there cited.

(*c*) *Burgon* v. *Sharpe* (1810), 2 Camp. 529.

he may sign bills of lading for goods put on board, and acknowledge the weight, value, and condition of such goods, and if a more limited authority is given, a party not informed of the limitation is not affected (*d*).

SECT. 1. General Authority as to Contracts for Employment of Ship.

Contracts and warranties made by the master in the course of the usual employment of the ship are in law deemed to have been made by the owner, but the master is also liable; and the merchant has a remedy against both of them (*e*).

Liability of master.

The master is personally responsible for any injury or loss to the ship or cargo by reason of his negligence or misconduct or his acting without authority (*f*).

He is in the position of a trustee for his owner, and is bound to account for all profits made by the ship while under his command (*g*).

SECT. 2.—*Limitations on General Authority.*

How authority is limited.

118. The master's implied authority to contract for the hire of the ship in a foreign port is limited to cases where neither his owners nor their agents in that respect are present and there is difficulty in communicating with them (*h*).

Authority to alter contract.

When the owners have made a contract for the hire of the ship the master may not annul it and substitute another (*i*), nor accept less than a substantial performance of the contract (*k*). Though in slight matters he may vary it (*l*), he cannot bind his owners to carry freight free (*m*), nor contract with the freighter to carry at a lower freight than that agreed upon with the owner (*n*), nor authorise

(*d*) *Grant* v. *Norway* (1851), 10 C. B. 665. The owner is bound by the representation of the master that goods are shipped in good order and condition (*Compania Naviera Vasconzada* v. *Churchill and Sim, Same* v. *Burton & Co.*, [1906] 1 K. B. 237); but as to quality when distinct from condition, see *ibid.*, at pp. 245, 246, and p. 155, *post*. As to the authority of the master in connexion with bills of lading, see pp. 173 *et seq.*, *post*.

(*e*) *Boson* v. *Sandford* (1689), 3 Lev. 258; *Boucher* v. *Lawson* (1734), Lee *temp.* Hard. 85; *Ellis* v. *Turner* (1800), 8 Term Rep. 531; *Blakie* v. *Stembridge* (1859), 6 C. B. (N. S.) 894; *Priestly* v. *Fernie* (1865), 3 H. & C. 977; *Watson and Parker* v. *Gregory, The "Cairo,"* [1908] W. N. 230; and see, generally, pp. 84 *et seq.*, *post*.

(*f*) *Fletcher* v. *Braddick* (1806), 2 Bos. & P. (N. R.) 182; *Swainston* v. *Garrick* (1833), 2 L. J. (EX.) 255; *The Sir Charles Napier* (1880), 5 P. D. 73, C. A.; *Stumore, Weston & Co.* v. *Breen* (1886), 12 App. Cas. 698. As to the relations between principal and agent generally, see title AGENCY, Vol. I., pp. 181 *et seq.*; and, as to negligence generally, see title NEGLIGENCE, Vol. XXI., pp. 360 *et seq.*

(*g*) *Shallcross* v. *Oldham* (1862), 5 L. T. 824.

(*h*) *The Fanny, The Mathilda* (1883), 5 Asp. M. L. C. 75, C. A.

(*i*) *Burgon* v. *Sharpe* (1810), 2 Camp. 529; *Forman & Co. Proprietary, Ltd.* v. *Ship Liddesdale* (1900), 9 Asp. M. L. C. 45, P. C. When cargo is partly shipped but the charterers fail, the master may contract with the charterers' agents as third parties to ship the rest of the cargo at a less freight, this being the best course for his owners (*Pearson* v. *Göschen* (1864), 17 C. B. (N. S.) 352).

(*k*) *Sickens* v. *Irving* (1859), 7 C. B. (N. S.) 165.

(*l*) *Holman* v. *Peruvian Nitrate Co.* (1878), 5 R. (Ct. of Sess.) 657 (loading at a loading berth different from that named in charter so as to avoid delay).

(*m*) *Dewell* v. *Moxon* (1808), 1 Camp. 391; *Grant* v. *Norway, supra*, at p. 687; *Walshe* v. *Provan* (1853), 8 Exch. 843, 850; *Thomas* v. *Lewis* (1878), 4 Ex. D. 18; *The Sir Henry Webb* (1849), 13 Jur. 639.

(*n*) *Pickernell* v. *Jauberry* (1862), 3 F. & F. 217; *Pearson* v. *Göschen, supra*.

SECT. 2. Limitations on General Authority.

its payment in an unusual manner (*o*); neither may he salve property whilst a ship is under a charter which does not give him leave to do this (*p*).

The master's duty is to obey his owner's instructions, and when these are silent he is to do nothing not consonant to the law of the land, because obedience to the law is implied in his instructions (*q*).

Limitation of authority by owner.

Besides the above limitation imposed on the master's implied authority to bind his owner, the owner may limit or extend it as he pleases (*r*), but when this is done to an unusual extent third persons dealing with the master without notice are not affected thereby, for the owner must give clear notice of his intention to limit the master's authority (*s*). When a person has notice of some limitation of the master's authority, he may still treat him as having all the ordinary authority of a master in all matters not affected by the limitation imposed (*t*).

SECT. 3.—*Authority of Master as to Necessaries.*

SUB-SECT. 1.—*Authority to make Owner Liable.*

Necessaries.

119. The power of the master to subject the owner (*u*) to pay for necessaries for the ship, such as repairs to the hull, the price of stores and provisions supplied for its use, or to repay money advanced for these purposes, is sometimes direct, furnishing an action against the owners personally, sometimes indirect, to be prosecuted by a suit against the ship (*v*). The master is himself personally bound by any contract for necessaries made by him, unless by express terms he confines the credit to his owner only (*a*), but contracts made by the owner himself, or in circumstances which

(*o*) *Walshe* v. *Provan* (1853), 8 Exch. 843 (making freight payable at port of loading instead of port of discharge); *Reynolds* v. *Jex* (1865), 7 B. & S. 86 (making freight payable to ship's agents so that they were able to set it off against a debt due in respect of another vessel of the owner).

(*p*) *The Thetis* (1869), L. R. 2 A. & E. 365; *Scaramanga* v. *Stamp* (1880), 5 C. P. D. 295, C. A. As to the power of a master to make salvage agreements, see p. 570, *post*.

(*q*) *Earle* v. *Rowcroft* (1806), 8 East, 126, *per* Lord ELLENBOROUGH, C.J., at p. 133; *Wilson* v. *Rankin* (1865), 6 B. & S. 208, Ex. Ch. Where the owner decides to send a vessel on a voyage that might be dangerous because of quarrels between foreign countries, the master must not substitute another voyage instead of obeying his orders (*The Roebuck* (1874), 2 Asp. M. L. C. 387).

(*r*) *The Edmond* (1860), Lush. 57 (appointing some person to collect the freight or procure a freight for another voyage); compare *The Fanny*, *The Mathilda* (1883), 5 Asp. M. L. C. 75, 79, C. A. Without authority the master may not insure, as this is not a matter of necessity (*The Serafina* (1864), Brown. & Lush. 277).

(*s*) *Grant* v. *Norway* (1851), 10 C. B. 665; *Manchester Trust, Ltd.* v. *Furness, Withy & Co.* (1895), 8 Asp. M. L. C. 57, C. A. (the insertion of "other conditions as per charterparty" in a bill of lading is not sufficient evidence that the master is signing as agent for charterers and not on the owner's behalf).

(*t*) *Weston* v. *Wright* (1841), 7 M. & W. 396.

(*u*) The term "owner" is here used as meaning the person from whom the master derives his authority and whose agent he is.

(*v*) See Abbott on Shipping, 5th ed., p. 100; 14th ed., p. 167; title ADMIRALTY, Vol. I., pp. 67, 68. As to what are "necessaries," see pp. 68, 69, *post*.

(*a*) *Garnham* v. *Bennett* (1728), 2 Stra. 816; *Rich* v. *Coe* (1777), 2 Cowp. 636; and see *The Elmville*, [1904] P. 319.

show that credit was given to him alone, give no right of action against the master (*b*).

The owner is bound by every contract made by the master for necessaries, if either it is within his actual authority or the owner has held him out as having authority to make such contract, and the owner continues so bound even after he has sold the ship, until the master is apprised of the sale (*c*).

Scope of master's authority.

120. The master's implied authority to order necessaries is limited to ordering such things as are actually necessary, and if a person trusts him for a thing not necessary, he trusts him for that which is not within the scope of his authority to order (*d*). Consequently, in order to raise a presumption of authority (*e*), creditors must prove that the things ordered were necessary, and that it was reasonably necessary that the master should obtain or order them on the owner's credit (*f*).

The master has no authority to bind his owner in any part of the world if the owner or his properly authorised agent can personally do what is required, but if the ship be at a foreign port where the owner has no agent, or at a home port at a distance from the owner's residence, and necessaries are required to be promptly provided, the master may pledge his owner's credit (*g*).

Advance by master.

121. If the master himself advances money of his own for the necessary purposes of the ship's outfit, or if he incurs any expenses in or through the performance of his duties which were not contemplated at the time of his engagement as expenses to be defrayed by him, he can recover them from his owner (*h*).

SUB-SECT. 2.—*Authority to make Ship Liable.*

Liability of ship.

122. In certain cases the ship has been made liable by statute for necessaries (*i*), and the person who supplies necessaries to a foreign ship, whether in the body of the country or on the high seas at the time when the necessaries were furnished, or to any

(*b*) *Farmer* v. *Davies* (1786), 1 Term Rep. 108; *Hoskins* v. *Slayton* (1737), Lee *temp.* Hard. 376. As to agency generally, see title AGENCY, Vol. I., pp. 145 *et seq.*

(*c*) *Mackenzie* v. *Pooley* (1856), 11 Exch. 638; *Trewhella* v. *Rowe* (1809), 11 East, 435.

(*d*) *The Pontida* (1884), 9 P. D. 177, C. A.

(*e*) *Rocher* v. *Busher* (1815), 1 Stark. 27.

(*f*) *Gunn* v. *Roberts* (1874), L. R. 9 C. P. 331. As to what are "necessaries," see pp. 68, 69, *post.*

(*g*) *Arthur* v. *Barton* (1840), 6 M. & W. 138; *Gunn* v. *Roberts*, *supra*; *Edwards* v. *Havill* (1853), 14 C. B. 107 (master authorised to borrow £5 for provisions, vessel being at Newport, the owner at Exeter); *Stonehouse* v. *Gent* (1841), 2 Q. B. 431, n. (no authority when plenty of time to communicate with owner); *Johns* v. *Simons* (1842), 2 Q. B. 425 (no authority when the owner lived close to the port, although he directed the master to raise the money by impracticable means and refused to send any).

(*h*) *Huntley* v. *Sanderson* (1833), 1 Cr. & M. 467; *The James Seddon* (1866), L. R. 1 A. & E. 62 (costs incurred by master in his defence against a charge of murder trumped up by the crew and recognisance forfeited to avoid delay of ship); compare *The Elmville* (No. 2), [1904] P. 422.

(*i*) Admiralty Court Acts, 1840 (3 & 4 Vict. c. 65), s. 6; 1841 (24 & 25 Vict. c. 10), ss. 4, 5. For many years the Admiralty Court maintained that the ship was liable *per se* for necessaries supplied, but this was in 1835 decided by the Privy Council not to be the case (*The Ship Neptune* (1835), 3 Knapp, 94, P. C.); see also *The Pacific* (1864), Brown. & Lush.

SECT. 3. **Authority of Master as to Necessaries.**

ship (*k*) elsewhere (*l*) than in the port to which the ship belongs, can institute an action in the Admiralty Court and arrest the ship to enforce his claim, unless it is shown to the satisfaction of the court that at the time of the institution of the cause any owner or part owner is domiciled (*m*) in England or Wales.

Though it is only in the instances given above that the person supplying necessaries has a direct claim on the ship, yet when he has supplied the necessaries on the order of the master he may succeed in making the ship available for the satisfaction of his debt, by proceeding against the master upon his personal liability for the necessaries ordered (*n*), and so force him to exercise the maritime lien that a master has by statute for his liabilities and disbursements (*o*).

Master's lien.

123. This lien of the master only arises in cases where the disbursements or liabilities are made or incurred by him when acting as master and entitled to pledge his owner's credit (*p*), for he has no authority to fix a liability upon the ship which he had not the owner's authority to incur, or which was not necessary for the protection of his interest (*q*). Even when the owner has given the master power to pledge his credit, no lien is created in his favour unless it was necessary that the necessaries should be supplied and he could not have recourse to his owner before ordering them (*r*).

SUB-SECT. 3.—*What are Necessaries.*

Meaning of "necessaries."

124. The term "necessaries" includes anchors, cables, rigging, and matters of that description (*s*), coals (*t*), provisions and clothing

243. For the history of the contention, see Abbott on Shipping, 14th ed., pp. 177—184. As to what are "necessaries," see the text, *infra*.

(*k*) This includes a foreign as well as a British ship (*The Mecca*, [1895] P. 95, C. A.).

(*l*) Whether on the high seas or not (*The Mecca, supra, per* LINDLEY, L.J., at p. 108).

(*m*) Absence from the country does not affect domicil if there is an intention to return (*The Pacific* (1864), Brown. & Lush. 243). As to domicil generally, see title CONFLICT OF LAWS, Vol. VI., pp. 182 *et seq.* As to the jurisdiction of the Admiralty Division over claims for necessaries, see title ADMIRALTY, Vol. I., pp. 67, 68.

(*n*) *Hussey* v. *Christie* (1808), 9 East, 426. It is useless to proceed against the master when the goods were ordered by the owner or in circumstances that show they were given on the credit of the owner alone (*Hoskins* v. *Slayton* (1737), Lee *temp.* Hard. 376; *Farmer* v. *Davies* (1786), 1 Term Rep. 108), or when the owner has been unsuccessfully sued to judgment (*Priestly* v. *Fernie* (1865), 3 H. & C. 977; *Curtis* v. *Williamson* (1874), L. R. 10 Q. B. 57).

(*o*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 167; see title ADMIRALTY, Vol. I., pp. 68, 69. For the history of the legislation on this subject, see *Hamilton* v. *Baker, The "Sara"* (1889), 14 App. Cas. 209; Abbott on Shipping, 14th ed., pp. 185—187; and, as to maritime lien generally, see pp. 617 *et seq., post.*

(*p*) *The Ripon City*, [1897] P. 226.

(*q*) *Morgan* v. *Castlegate Steamship Co., The "Castlegate,"* [1893] A. C. 38; *The Orienta*, [1895] P. 49, C. A. Thus, when the charterers were bound to provide the coal, no lien for disbursement is created in favour of the master so as to be enforced against the ship if he provides the money or orders the coal, for it was outside his authority to pledge the owner's credit in this respect (*ibid.*; *The Turgot* (1886), 11 P. D. 21).

(*r*) *The Orienta, supra.*

(*s*) *The Alexander* (1842), 1 Wm. Rob. 346.

(*t*) *The West Friesland* (1859), Sw. 454; *The Comtesse de Frègeville* (1861), Lush. 329; *The Mecca, supra.*

for the crew (*a*), copper sheathing (*b*), screw propeller (*c*), money advanced to pay for necessaries (*d*), and to pay off a shipwright's lien (*e*), towage and dock dues (*f*), and insurance on freight (*g*), and such repairs and other things as the owner as a prudent man would have ordered if he had been present at the time (*h*).

Though the supplies come within the category of necessary things for a ship, yet a person who supplies them must show that they were necessary for the ship at the time, and, if it is proved that there were other things of the same description on board, he must prove that they were not sufficient (*i*).

SECT. 4.—*Authority to Hypothecate Ship and Freight.*

Bottomry bonds.

125. The master has authority in the circumstances mentioned hereafter (*k*) to pledge the ship and freight to raise the necessary funds for the voyage (*l*). This is effected by the master contracting with the lender by a contract called "bottomry," the bottom or keel of the ship being figuratively used to express the whole body thereof.

Form.

There is no settled form for the bottomry contract; it generally takes the form of a bond (*m*) whereby the master states the occasion for resorting to bottomry and pledges himself, the ship and freight,

(*a*) *The N. R. Gosfabrick* (1858), Sw. 344; *The William F. Safford* (1860), Lush. 69.

(*b*) *The Perla* (1858), Sw. 353; *The Turliani* (1875), 2 Asp. M. L. C. 603.

(*c*) *The "Flecha"* (1854), 1 Ecc. & Ad. 438, 441.

(*d*) *Arthur* v. *Burton* (1840), 6 M. & W. 138, 144; *The Sophie* (1842), 1 Wm. Rob. 368; *The Albert Crosby* (1870), L. R. 3 A. & E. 37; *The Anna* (1876), 1 P. D. 253, C. A.; *The Onni* (1860), Lush. 154. It is often to the advantage of the owner that the master should have cash to pay for necessaries (*Edwards* v. *Havill* (1853), 14 C. B. 107, *per* MAULE, J., at p. 10; *The Aaltjee Willemina* (1866), L. R. 1 A. & E. 107). The lender can only recover from the shipowner the amount actually necessary for the purpose of the ship (*Cary* v. *White* (1710), 2 Eq. Cas. Abr. 722; *Thacker* v. *Moates* (1831), 1 Mood. & R. 79; *Mackintosh* v. *Mitcheson* (1849), 4 Exch. 175; *The Pontida* (1884), 5 Asp. M. L. C. 330, C. A.

(*e*) *The Albert Crosby, supra.*

(*f*) *The St. Lawrence* (1880), 5 P. D. 250. As to towage, see pp. 357 *et seq., post;* and, as to dock dues, see pp. 634 *et seq., post.*

(*g*) *The Riga* (1872), L. R. 3 A. & E. 516; *Webster* v. *Seekamp* (1821), 4 B. & Ald. 352. As to marine insurance generally, see title INSURANCE, Vol. XVII., pp. 334 *et seq.*

(*h*) *The Riga, supra.*

(*i*) *The Marianne*, [1891] P. 180; *The Alexander* (1842), 1 Wm. Rob. 346.

(*k*) See pp. 70 *et seq., post.*

(*l*) *The Gratitudine* (1801), 3 Ch. Rob. 240; *The Jacob* (1802), 4 Ch. Rob. 245; *Smith* v. *Bank of New South Wales, The Staffordshire* (1872), L. R. 4 P. C. 194. As to mortgage of ship and freight, see title MORTGAGE, Vol. XXI., pp. 133, 134; and, as to pledges generally, see title PAWNS AND PLEDGES, Vol. XXII., pp. 233 *et seq.* As to the master's authority to hypothecate cargo, see pp. 240 *et seq., post.*

(*m*) For a form, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 65; *Menetone* v. *Gibbons* (1789), 3 Term Rep. 267. Sometimes it takes the form of a bill of sale; see *Johnson* v. *Shippen* (1703), 2 Ld. Raym. 982. Bills of exchange drawn by the master on the owner as security for money advanced to the master, though accompanied by a verbal agreement that the ship shall be pledged, are not instruments of bottomry (*Ex parte Halkett* (1814), 3 Ves. & B. 135; *Miller & Co.* v. *Potter, Wilson & Co.* (1875), 3 R. (Ct. of Sess.) 105). Bottomry bonds have been described as of "a high and privileged nature," "favoured instruments" to be liberally protected (*The Alexander* (1812), 1 Dods. 278; *Kennersley Castle* (1833), 3 Hag. Adm. 1, 7;

SECT. 4. **Authority to Hypothecate Ship and Freight.**

and sometimes the cargo (*n*), for the repayment of the principal and interest on the safe arrival of the ship at the end of her voyage on such conditions as to risk as may be agreed upon (*o*).

Essentials of bottomry bonds.

126. Bottomry bonds were invented for the purpose of procuring the necessary supplies for ships which may happen to be in distress in foreign ports where the master and owner are without credit, and where, unless assistance can be secured by means of such an instrument, the ships and their cargoes must perish. Accordingly the master, before he can resort to this expedient for raising money, must be satisfied that the necessity to do so has arisen in the course of the voyage, or when the vessel is in a foreign port (*p*), and that it is necessary to hypothecate the ship itself to obtain the necessary supplies (*q*). The loan to be made must be to provide such supplies as are reasonably necessary for the ship during the particular voyage on which she will be engaged (*r*), and therefore, if an unduly large sum is borrowed, the bond will only be valid for such portion of it as was justified by necessity (*s*).

A bottomry bond is no security for any liability of the owner or master incurred before the bond was given, unless by the law of the port at which the ship is she can be arrested and sold for such liability, and funds may be necessary to enable the ship to continue her voyage (*t*). Neither can it can be made a security for an old debt of the owner in respect of another ship, or the same ship on a previous voyage, at the same or any other place (*a*).

Reliance (1833), 3 Hag. Adm. 66, 74); but see *Vibilia* (1838), 1 Wm. Rob. 1, 5; *The "Mary Ann"* (1846), 4 Notes of Cases, 376. As to the jurisdiction of the Admiralty Division over bottomry actions, see title ADMIRALTY, Vol. I., pp. 65 *et seq.*

(*n*) As to hypothecation of cargo, see pp. 240 *et seq.*, *post.*

(*o*) The bond is not invalid for want of an exact description of the voyage if the voyage is not under the control of the person who grants the bond (*The Jane* (1814), 1 Dods. 461). If the rate of interest is not mentioned the bond is still good, and the court will allow such interest as the risk should command (*The Cecilie* (1879), 4 P. D. 210; *The Change* (1857), Sw. 240; and see title MONEY AND MONEY-LENDING, Vol. XXI., p. 42). The master has no authority to contract that a higher rate of interest shall be paid after the bond is due so as to ensure punctual payment (*The Sophia Cook* (1878), 4 P. D. 30; *The D. H. Bills* (1878), 4 P. D. 32, n.). See title ADMIRALTY, Vol. I., pp. 66, 67.

(*p*) *The Alexander* (1812), 1 Dods. 278; *Nelson* (1823), 1 Hag. Adm. 169; *"Dunvegan Castle"* (2) (1836), 3 Hag. Adm. 331; *Hersey* (1837), 3 Hag. Adm. 404; *Prince of Saxe Cobourg* (1837), 3 Hag. Adm. 387; *The "Mary Ann," supra; The Royal Arch* (1857), Sw. 269; *The Helgoland* (1859), Sw. 491; *The Edmond* (1860), Lush. 57; *Droege* v. *Suart, The "Karnak"* (1869), L. R. 2 P. C. 505. It is doubtful whether a bottomry bond can be validly created over a British ship when in a British port, because the proper procedure would be to raise a mortgage under the M. S. Act, 1894. The Admiralty Court has no jurisdiction over such a bond; see Abbott on Shipping, 14th ed., pp. 201, 203.

(*q*) *Hersey, supra.*

(*r*) *The Osmanli* (1850), 3 Wm. Rob. 198; *Gunn* v. *Roberts* (1874), L. R. 9 C. P. 331, 355.

(*s*) *The Elpis* (1872), 27 L. T. 664; *The Pontida* (1884), 9 P. D. 102; *Gunn* v. *Roberts, supra.*

(*t*) *Gore* v. *Gardiner, The Hersey* (1837), 3 Moo. P. C. C. 79 (arrest of master for his owner's liability); *Smith* v. *Gould, The Prince George* (1842), 4 Moo. P. C. C. 21; *The Edmond, supra* (damage to cargo); *The North Star* (1860), Lush. 45 (general average contribution).

(*a*) *The Osmanli, supra; The Lochiel* (1843), 2 Wm. Rob. 34. Dr.

SECT. 4. Authority to Hypothecate Ship and Freight.

As there is no authority to pledge the ship for old debts she cannot be pledged to pay for supplies or repairs which have already been furnished on the credit of the owner (*b*), or otherwise than on the credit of the ship (*c*), nor at any time while anyone can be found to furnish the supplies on the personal credit of the owner (*d*).

Communication to owner.

Another essential before the master resorts to bottomry is that he must when possible communicate with his owner (*e*), or attempt to do so if in the circumstances it is rational to expect that he may have an answer within a time not inconvenient having regard to the circumstances of the case (*f*). The communication must state the necessity for raising the loan and the necessity for doing so by bottomry, and should be by telegraph if practicable (*g*).

Sea risk.

It is essential also to the validity of the bond that the lender should undertake sea risk (*h*), and that this must be expressed or implied from the instrument (*i*).

LUSHINGTON was of opinion that the master might raise a second bond to pay off a first bond given on the same voyage (*The Toivo* (1853), 1 Ecc. & Ad. 185; see also *The Catherine*, formerly *The Croxdale* (1851), 15 Jur. 231).

(*b*) *The Karnak* (1868), L. R. 2 A. & E. 289.

(*c*) *The Empire of Peace* (1869), 39 L. J. (ADM.) 12 (on credit of owners and freight). A presumption that the advance was on the credit of the ship and not of the owners is raised by the fact that the creditors have a lien on the ship which they can enforce (*Vibilia* (1838), 1 Wm. Rob. 1, 6; *The Laurel* (1863), Brown. & Lush. 191; *The Augusta* (1813), 1 Dods. 283), or that the owners were bankrupt to the knowledge of the creditors at the time of the advance (*The Osmanli* (1850), 3 Wm. Rob. 198), or that they had assigned unearned freight to which in the ordinary course the master could have had recourse (*The Edmond* (1860), Lush. 57).

(*d*) *Soares* v. *Rahn, The Prince of Saxe Cobourg* (1838), 3 Moo. P. C. C. 1; *The Faithful* (1862), 31 L. J. (P. M. & A.) 81. A bond given after the lender knew the owner had an agent at the port is void (*Lyall* v. *Hicks* (1859), 27 Beav. 616).

(*e*) The notice must be given even though the owner is insolvent, and, if a bankrupt, the notice should be given to his trustee (*Wallace* v. *Fielden, The "Oriental"* (1851), 7 Moo. P. C. C. 398; *Barron* v. *Stewart, The "Panama"* (1870), L. R. 3 P. C. 199); but there is no obligation to communicate with mortgagees (*The Helgoland* (1859), Sw. 491).

(*f*) *La Ysabel* (1812), 1 Dods. 273; *Wallace* v. *Fielden, The "Oriental," supra; The Hamburg* (1864), Brown. & Lush. 253, 273, P. C.

(*g*) *Wallace* v. *Fielden, The "Oriental," supra; The Olivier* (1862), Lush. 484; *The Karnak, supra.*

(*h*) By "sea risk" is meant that the lender shall have no claim if the vessel is lost on the voyage. If the loan bears interest at current rate for a land risk, it is some evidence that the lender did not intend to undertake sea risk (*The Haabet*, [1899] P. 295); but when maritime risk is involved the absence of maritime interest, the presence of collateral stipulations as to repayment, and the insurance of the loan does not make the instrument a void bond (*The Dora Forster*, [1900] P. 241); see title ADMIRALTY, Vol. I., pp. 66, 67.

(*i*) *The Emancipation* (1840), 1 Wm. Rob. 124; *The Indomitable* (1859), Sw. 446; *Stainbank* v. *Shepard* (1853), 17 Jur. 1032, Ex. Ch.; *The Cecile* (1879), 4 Asp. M. L. C. 78; *Aldrich* v. *Cooper* (1803), 8 Ves. 382. The reason for sea risk being essential was because otherwise the laws against usury would be infringed. Though these are now repealed it is still essential, because the law is against liens being created on a ship which do not appear on the ship's papers (*The Royal Arch* (1857), Sw. 269); so if the bond is to cover insurance it is disallowed to that extent, on the ground that it would relieve the lender of the risk he had undertaken (*Boddingtons* (1832), 2 Hag. Adm. 422), and if the effect of such a stipulation is to negative sea risk on the part of the lender the bond is void (*The Indomitable, supra*).

SECT. 4. **Authority to Hypothecate Ship and Freight.**

Who may advance money.

127. Any person may advance money on bottomry provided he is not a debtor to the ship, but even in that case he may do so to the extent of any excess over his indebtedness (*k*). Thus the consignee of the cargo (*l*) and the agent of the shipowner may lend, but if the latter lends he is bound to superintend the expenditure of the loan to protect the owner from error or malfeasance of the master and to see that the money is applied to necessary expenses (*a*).

Pledging the freight.

128. The master can pledge the freight whenever he can pledge the ship (*b*), and when no freight is due from the charterers but they are entitled to sub-freight from cargo owners, this may be hypothecated (*c*). Freight to be earned on cargo which will not be shipped until after the bond becomes due cannot be pledged, because the lender does not incur sea risk in respect of it (*d*). As to what freight may be pledged, it has been held that when the bottomry bond is given in the course of a voyage, only freight at risk can be pledged, and the charterer is entitled to deduct any advances properly made and the premiums for insuring such advances although made before the necessity for bottomry arises (*e*).

The charterer is not bound to pay freight on goods sold during the voyage (*f*), but he cannot deduct the price of goods sold on the voyage after the bond was given (*g*).

When bond payable.

129. As a general rule a bottomry bond does not become payable until the voyage for which it is given is completed (*h*), but if, after setting forth, the completion of the voyage is prevented by the act of the master, or by some impossibility which the bondholder cannot control (*i*), or if the voyage is abandoned or cannot be performed, the bond becomes due (*j*). If the vessel is totally lost, the bond is void by its terms, but if any part is saved the bond can be

(*k*) *The Hebe* (1846), 2 Wm. Rob. 412; *The Ocean* (1846), 2 Wm. Rob. 429.

(*l*) *The Alexander* (1812), 1 Dods. 278; *Rubicon* (1833), 3 Hag. Adm. 9.

(*a*) *The Hero* (1817), 2 Dods. 139; *The "Royal Stuart"* (1855), 2 Ecc. & Ad. 258; *Smith* v. *Bank of New South Wales, The "Staffordshire"* (1872), L. R. 4 P. C. 194, 203. Such transactions are keenly scrutinised by the court, because, when the agent lends, the owner is deprived of the protection expected from a paid agent. As to the duties of a lender to inquire as to the application of the loan, see *Soares* v. *Rahn, The Prince of Saxe Coburg* (1838), 3 Moo. P. C. C. 1; *The Pontida* (1884), 9 P. D. 177, C. A.

(*b*) Abbott on Shipping, 5th ed., p. 131; 14th ed., p. 198. As to mortgage of ship and freight, see title MORTGAGE, Vol. XXI., pp. 133, 134.

(*c*) *Eliza* (1833), 3 Hag. Adm. 87; *The Andalina* (1886), 12 P. D. 1.

(*d*) *Smith* v. *Bank of New South Wales, The "Staffordshire,"* *supra*, at p. 209.

(*e*) *Droege* v. *Suart, The "Karnak"* (1869), L. R. 2 P. C. 505, 514; *The Catherine* (1857), Sw. 263; *The Salacia* (1862), Lush. 578 (in which case Dr. LUSHINGTON, at p. 582, refused to allow advances for extraordinary disbursements to be deducted, holding that they were a loan and not an advance of freight; but see *Droege* v. *Suart, The "Karnak,"* *supra*, to the contrary).

(*f*) *The Salacia, supra; Hopper* v. *Burness* (1876), 1 C. P. D. 137. The fact that the cargo sold for more than it would have fetched if carried to its destination makes no difference.

(*g*) *The Salacia, supra.*

(*h*) *The Armadillo* (1841), 1 Wm. Rob. 251.

(*i*) *The Dante* (1846), 2 Wm. Rob. 427; *The Elephanta* (1851), 15 Jur. 1185 (becoming unseaworthy on the voyage).

(*j*) *The Armadillo, supra; The Helgoland* (1859), Sw. 491; *Broomfield* v. *Southern Insurance Co.* (1870), L. R. 5 Exch. 192; *London and Midland*

SECT. 4. Authority to Hypothecate Ship and Freight.

enforced against it (*k*). If the ship is lost by the wrongful act of another ship, the bondholder may recover against that ship, and, if she limits her liability, can share in the fund with the other claimants (*l*).

How enforced.

130. As soon as it becomes due the bond should be enforced (*m*), and this can be done by arrest of the ship by the Admiralty Court, and, if necessary, by a sale of the ship by the court (*n*). If not enforced within a reasonable time, the bondholder risks losing his priority (*o*), and the bond cannot be renewed for a new voyage (*p*).

Before declaring for the validity of a bond the Admiralty Court will inquire into the reasonableness of the charge for payment of which the bond was given (*q*), and in extreme cases will reduce the amount of interest undertaken to be paid (*r*). From the time a bond becomes due until paid the court allows interest at the current rate, if there has been anybody in this country capable of giving the ship a good discharge (*s*).

Negotiability.

131. Bottomry bonds are negotiable instruments, and the assignee is in the same position as the original holder (*a*). These bonds are sometimes given as collateral security to bills of exchange (*b*). If the bills are accepted by the owner of the ship, the bond is discharged, and he escapes paying maritime interest (*c*). The lender

Bank v. *Neilsen* (1895), 1 Com. Cas. 18. The doctrine of constructive total loss has no application to contracts of bottomry.

(*k*) *Thomson* v. *Royal Exchange Assurance Co.* (1813), 1 M. & S. 30; *The Catherine*, formerly *The Croxdale* (1851), 15 Jur. 231; *Stephens* v. *Broomfield, The Great Pacific* (1869), L. R. 2 P. C. 516.

(*l*) *The Empusa* (1879), 5 P. D. 6.

(*m*) *The Rebecca* (1804), 5 Ch. Rob. 102; *The Eudora* (1879), 4 P. D. 208. It cannot be enforced before (*ibid.*). A bond is not discharged by a settlement of accounts between the shipowner and the charterer, whereby the latter is to pay the bond, to which settlement the bondholder's agent who has not received the money was privy as a partner (*The Huntcliff* (1829), 2 Hag. Adm. 281). A bond payable "eight days after my arrival" is good, as it means not the arrival of the master, but his arrival with the ship (*Simonds* v. *Hodgson* (1832), 3 B. & Ad. 50). As to the rights of the lender to proceed against the master, see *The Jonathan Goodhue* (1859), Sw. 524; *The Salacia* (1862), Lush. 578: *The Bark Irma* (1873), 2 Asp. M. L. C. 155.

(*n*) In such action the original bond must be produced (*The Rowena* (1877), 3 Asp. M. L. C. 506). As to proceedings to arrest a ship and the sale of a ship under arrest by the court, see title ADMIRALTY, Vol. I., pp. 80 *et seq.*, 123, 124.

(*o*) *The Royal Arch* (1857), Sw. 269, 285.

(*p*) *Ibid.*

(*q*) *Cognac* (1832), 2 Hag. Adm. 377; *The Heart of Oak* (1841), 1 Wm. Rob. 204; *The Ocean* (1846), 2 Wm. Rob. 429; *The Huntley* (1860), Lush. 24; *The Glenmanna* (1860), Lush. 115; *The Laurel* (1863), Brown. & Lush. 191; *The Pontida* (1884), 9 P. D. 177, C. A. Where the charges for commissions were so excessive that, without them, a bottomry bond would not have been necessary, the court pronounced against the bond (*The Roderick Dhu* (1856), Sw. 177).

(*r*) *Cognac, supra; The Pontida, supra.*

(*s*) *The Sophia Cook* (1878), 4 P. D. 30; *The Cecilie* (1879), 4 P. D. 210; *New Brunswick* (1839), 1 Wm. Rob. 28.

(*a*) *The Catherine* (1847), 3 Wm. Rob. 1.

(*b*) As to bills of exchange and negotiable instruments generally, see title BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., pp. 457 *et seq.*

(*c*) *Stainbank* v. *Shepard* (1853), 17 Jur. 1032, Ex. Ch.; *Smith* v. *Bank of New South Wales, The "Staffordshire"* (1872), L. R. 4 P. C. 194.

SECT. 4. **Authority to Hypothecate Ship and Freight.**

has a double security, for in the event of dishonour of the bills he could enforce the bonds with maritime interest. The fact that the bills of exchange were for the same debt does not invalidate the bond, as the shipowner was not liable until he accepted the bills, though in certain cases this might be evidence that the bond was not given on the security of the ship (*d*).

SECT. 5.—*Authority to Tranship.*

Transhipment.

132. It is the duty of the master to convey the cargo to the place of destination by every reasonable and practical method. When the ship in the course of the voyage has suffered damage, and she cannot be repaired at all, or not without very great loss of time or expense, the master is at liberty to tranship the cargo to another vessel to be forwarded to its original destination (*e*). He, as agent for the shipowner, is not bound to do this; neither is he under an absolute obligation to the cargo owner to forward the cargo in the original vessel, although, of course, in his capacity of agent to the shipowner, it is his duty to do so if he can (*f*).

SECT. 6.—*Authority to Jettison.*

Dangerous goods.

133. Without subjecting himself or the owner of the vessel to any liability, the master may jettison any dangerous goods, or any goods which in his judgment or that of the shipowner are dangerous goods: provided they have been put on board the vessel without their nature being distinctly marked on the outside of the package containing them, and without the master or shipowner having been given a written notice of their nature and of the name and address of the sender or carrier thereof (*g*).

Jettison to remove danger.

134. In case of imminent danger to the ship or the lives on board of her, the master may jettison such amount of cargo as will be necessary to remove the danger. In extreme cases he may jettison the whole of the cargo. When doing this he may select what articles he pleases, and may determine what quantity (*h*).

If the master jettisons more cargo than is necessary to remedy the danger to the ship, the shipowner is liable to make good the full value to the cargo owner, and the shipowner is similarly liable when cargo has been rightly jettisoned in case of necessity, but at a time when there has been a deviation from the stipulated voyage (*i*).

(*d*) *Cochrane* v. *Gilkison* (1854), 16 Dunl. (Ct. of Sess.) 548; *The North Star* (1860), Lush. 45. For the master's authority to hypothecate cargo, see pp. 240 *et seq.*, *post.*

(*e*) Abbott on Shipping, 5th ed., p. 240; 14th ed., p. 528; *Shipton* v. *Thornton* (1838), 9 Ad. & El. 314; *Hansen* v. *Dunn* (1906), 11 Com. Cas. 100.

(*f*) *Benson* v. *Chapman* (1849), 2 H. L. Cas. 696; *The Bahia* (1864), Brown. & Lush. 292; *The Hamburg* (1864), Brown. & Lush. 253, P. C. As to transhipment, see also pp. 233 *et seq.*, *post.*

(*g*) M. S. Act, 1894 (57 & 58 Vict. c. 60), ss. 446, 448. For list of "dangerous goods," see note (*d*), p. 79, *post.*

(*h*) *The Gratitudine* (1801), 3 Ch. Rob. 240, 258. Jettison by the master in case of panic does not relieve the shipowner from liability to the cargo owner for the value of his goods (*Notara* v. *Henderson* (1872), L. R. 7 Q. B. 225, 236, Ex. Ch.).

(*i*) *Scaramanga* v. *Stamp* (1880), 5 C. P. D. 295, C. A. (except when deviation was for purpose of saving life); *Leduc* v. *Ward* (1888), 20 Q. B. D. 475, C. A.; *Glynn* v. *Margetson & Co.*, [1893] A. C. 351; *The Dunbeth*, [1897]

Whenever cargo is jettisoned from necessity, the owners thereof are entitled to average contribution, unless the cargo was carried on deck and there is no custom justifying such carriage (*a*).

SECT. 6. **Authority to Jettison.**

Average contribution.

SECT. 7.—*Authority to Sell Ship or Cargo.*

To sell ship.

135. The master has, by virtue of his employment, not merely those powers which are necessary for the navigation of the ship and the conduct of the adventure to a safe termination, but also a power in case of extreme necessity, as when such termination becomes hopeless, and no prospect remains of bringing the vessel home, to do the best for all concerned, and therefore to sell the ship for their benefit (*b*). Before resorting to a sale he is bound, if money is what is required to enable the voyage to be completed, seriously and deliberately to try every other expedient to raise the necessary funds (*c*).

Meaning of "necessity."

136. It is impossible to give an exact and concise definition of what constitutes "necessity." It is not sufficient that the sale was *bonâ fide* and for the benefit of all concerned, or that a prudent owner uninsured would have sold the ship, unless it is also shown that there was urgent necessity for the sale being resorted to (*d*). In combination with other circumstances some of the ingredients of necessity may be want of repairs and the degree of want, the possibility of procuring repairs at the port where the ship lies, the expense of repairs (*e*), the expense of remaining in port, the want of funds or credit (*f*), the impracticability of communicating with the owner, the state and condition of the vessel, and the consequences of not proceeding to sell (*g*). The burden of proof that the sale was

P. 133; *Thorley* (*Joseph*), *Ltd.* v. *Orchis Steamship Co., Ltd.*, [1907] 1 K. B. 660, C. A. As to deviation, see pp. 95 *el seq.*, *post.*

(*a*) *Wright* v. *Marwood* (1881), 7 Q. B. D. 62, C. A.; title INSURANCE, Vol. XVII., p. 449; *Apollinaris Co.* v. *Nord Deutsche Insurance Co.*, [1904] 1 K. B. 252, 259. The fact that deck cargo is carried at merchant's risk does not relieve the shipowner from contributing in general average (*Burton* v. *English* (1883), 12 Q. B. D. 218, C. A.). As to average, see p. 315, *post.*

(*b*) *Robertson* v. *Caruthers* (1819), 2 Stark. 571; *Doyle* v. *Dallas* (1831), 1 Mood. & R. 48; *Hunter* v. *Parker* (1840), 7 M. & W. 322, 342; *Knight* v. *Faith* (1850), 15 Q. B. 649; *Lindsay* v. *Leathley* (1863), 11 L. T. 194; *Cobequid Marine Insurance Co.* v. *Barteaux* (1875), L. R. 6 P. C. 319; *Hall* v. *Jupe* (1880), 43 L. T. 411. For instance, where a sale was held not to be necessary, see *East India Co.* v. *Ekines* (1718), 2 Bro. Parl. Cas. 382; *Maeburn* v. *Leckie* (1822), cited in Abbott on Shipping, 5th ed., p. 7; 14th ed., p. 15.

(*c*) *Underwood* v. *Robertson* (1815), 4 Camp. 138.

(*d*) *Green* v. *Royal Exchange Assurance Co.* (1815), 6 Taunt. 68; *Somes* v. *Sugrue* (1830), 4 C. & P. 276; *Domett* v. *Young* (1842), Car. & M. 465; *The Margaret Mitchell* (1858), Sw. 382, 386; *Cobequid Marine Insurance Co.* v. *Barteaux*, *supra*; *The Uniao Vencedora* (1864), 11 L. T. 351.

(*e*) *The Australia* (1859), Sw. 480, P. C. Necessity exists if the repairs cannot be done except at so great and certain a loss that no prudent man would venture to encounter it (*Somes* v. *Sugrue*, *supra*).

(*f*) "*Segredo*," otherwise "*Eliza Cornish*" (1853), 1 Ecc. & Ad. 36, 48; *The Victor* (1865), 2 Mar. L. C. 261. If sufficient money can be raised by bottomry there is not such a want of funds as to make a sale necessary (*Somes* v. *Sugrue*, *supra*).

(*g*) *Robertson* v. *Clarke* (1824), 1 Bing. 445 (expense of repair far exceeding original value); *Ireland* v. *Thomson* (1847), 4 C. B. 149 (total wreck in a distant country); *The Glasgow*, otherwise *Ya Macraw* (1856), Sw. 145.

SECT. 7. **Authority to Sell Ship or Cargo.**

necessary lies on the person seeking to support the sale, on the purchaser as against the owner (*h*), and on the owner as against the underwriters (*i*).

Foreign judgment.

137. A judgment *in rem* of a foreign court having jurisdiction in the matter ordering the sale of the ship is binding even though all the facts were not before it, provided it was not obtained by fraud (*k*); but if in a foreign country the master, for the purpose of evading the effect of the restrictions on his powers of sale, either fraudulently procures the condemnation and sale of the ship as unfit for sea from some court or judge having jurisdiction in maritime matters, or without fraud procures such condemnation from a court or judge not having jurisdiction, or from an official, or upon the survey and report of surveyors, captains and carpenters, these findings are not binding in the English courts, and the question of the necessity for sale may be inquired into and the sale declared void (*l*).

Disputing the sale.

138. A master who is compelled to sell may receive the proceeds and give a good discharge (*m*). If his owner wishes to impeach the sale he must act promptly (*n*). If he receives the purchase-money knowing the circumstances under which the vessel was sold, and intends to appropriate the money to his own use, he is estopped from disputing the sale (*o*).

Sale of cargo.

139. A sale of cargo by the master is a matter which requires the utmost caution on his part, for the cargo has been entrusted to him for the express purpose of being carried to its destination (*p*). When it becomes necessary to provide funds to enable the ship to reach her destination, and this can only be done by hypothecation of the cargo or a sale of a part thereof, a sale is allowed, but it must be limited to a part of the cargo, for a sale of the whole would defeat the very purpose for which the master has been entrusted with the cargo, and this purpose he is bound to accomplish by every reasonable and practicable method (*q*).

When cargo is improperly sold by the master, the cargo owner may sue the master or shipowner (*r*) or both (*s*), or he may recover

(*h*) *The Glasgow*, otherwise *Ya Macraw* (1856), Sw. 145; *The Margaret Mitchell* (1858), Sw. 382, 386; *The Australia* (1859), Sw. 480, 484, P. C.

(*i*) *Domett* v. *Young* (1842), Car. & M. 465.

(*k*) See title CONFLICT OF LAWS, Vol. VI., p. 297.

(*l*) *Hayman* v. *Molton* (1803), 5 Esp. 65; *Reid* v. *Darby* (1808), 10 East, 143; *Hunter* v. *Prinsep* (1808), 10 East, 378; *The Warrior* (1818), 2 Dods. 288; *Morris* v. *Robinson* (1824), 3 B. & C. 196; "*Segredo*," otherwise "*Eliza Cornish*" (1853), 1 Ecc. & Ad. 36; Abbott on Shipping, 5th ed., p. 8; 14th ed., p. 23; *The Margaret Mitchell, supra; The Australia, supra;* and see title CONFLICT OF LAWS, Vol. VI., p. 297. As to courts of survey and naval courts, see title COURTS, Vol. IX., pp. 107 *et seq.*

(*m*) *Ireland* v. *Thomson* (1847), 4 C. B. 149.

(*n*) *The Australia, supra.*

(*o*) *The Margaret Mitchell, supra; Hunter* v. *Parker* (1840), 7 M. & W. 322, 342; *The Bonita* (1861), Lush. 252.

(*p*) See pp. 224 *et seq.* and p. 247 *et seq., post.*

(*q*) *Van Omeron* v. *Dowick* (1809), 2 Camp. 42; see also pp. 240 *et seq., post.*

(*r*) *Wilson* v. *Dickson* (1818), 2 B. & Ald. 2; *Freeman* v. *East India Co.* (1822), 5 B. & Ald. 617; *Cannan* v. *Meaburn* (1823), 1 Bing. 243; *Morris* v. *Robinson* (1824), 3 B. & C. 196 (purchaser under order made without jurisdiction liable in case of failure to recover from owner).

(*s*) *Tronson* v. *Dent* (1853), 8 Moo. P. C. C. 419; *Australasian Steam*

the cargo from the purchaser, provided the purchaser has not acquired a good title to it by the law of the place where he bought it (*t*), for, though the master's authority to sell is determined by the law of the country to which the vessel belongs (*a*), the purchaser's title is determined by the law of the country in which the sale is effected.

SECT. 7. Authority to Sell Ship or Cargo.

Part V.—General Statutory Provisions for Safety of Ship and Cargo.

SECT. 1.—*Seaworthiness of Ship.*

140. Any person who sends or attempts to send, or the master if he knowingly takes (*b*), a British ship to sea in such an unseaworthy state (*c*) that the life of any person is likely to be thereby endangered is, unless he can justify his action, guilty of a misdemeanour (*d*). The owner's liability for unseaworthiness to a charterer or shipper of goods may sometimes be modified by contract (*e*).

Sending unseaworthy ships to sea.

SECT. 2.—*Equipment.*

141. British sea-going steamships, if employed to carry passengers, must have their compasses properly adjusted to the satisfaction of the shipwright surveyor of the Board of Trade (*f*), and every emigrant ship must be provided with at least three steering compasses and one azimuth compass (*g*).

Compasses.

Navigation Co. v. *Morse* (1872), L. R. 4 P. C. 222; *Hooper* v. *Burness* (1876), 1 C. P. D. 137 (cargo owner is entitled to the full amount received at the sale without deduction of *pro ratâ* freight, even though the goods realised more than if sold at port of destination).

(*t*) *Cammell* v. *Sewell* (1860), 5 H. & N. 728, Ex. Ch.; see title CONFLICT OF LAWS, Vol. VI., pp. 295, 296.

(*a*) *The Gaetano and Maria* (1882), 7 P. D. 137, C. A.; *Droege* v. *Suart, The "Karnak"* (1869), L. R. 2 P. C. 505; *Lloyd* v. *Guibert* (1865), L. R. 1 Q. B. 115, Ex. Ch.; see title CONFLICT OF LAWS, Vol. VI., p. 241.

(*b*) M. S. Act, 1894, s. 457 (1), (2); and see title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 559, 560.

(*c*) Unseaworthiness is a question of fact (*The Schwan*, [1909] A. C. 450 (water entering the hold through a defective sea-cock); *Klein* v. *Lindsay*, [1910] S. C. 231 (material of ventilators); *The Diamond*, [1906] P. 282). A vessel was held to be unseaworthy for the voyage by reason of a list caused through the cargo shifting owing to its being improperly stowed (*Cunningham* v. *Frontier Steam Ship Co.*, [1906] 2 I. R. 12, C. A.). In an unreported case of *Tate* v. *Crosby, Magee & Co.* (1898), tried before Lord RUSSELL OF KILLOWEN, C.J., the defective stowage of a deck cargo of timber was held to render a ship unseaworthy. See also *Thorley (Joseph), Ltd.* v. *Orchis Steamship Co., Ltd.*, [1907] 1 K. B. 660, C. A.; *The Europa*, [1908] P. 84; *Nelson Line (Liverpool), Ltd* v. *Nelson (James) & Sons, Ltd.*, [1908] A. C. 16; *Mendl & Co.* v. *Ropner & Co.*, [1913] 1 K. B. 27. For a statutory definition of seaworthiness, see Marine Insurance Act, 1906 (6 Edw. 7, c. 41), s. 39; and see, generally, pp. 211 *et seq.*, *post*.

(*d*) M. S. Act, 1894, s. 457 (1), (2). The sending may be justified if the person proves that he used all reasonable means to ensure the ship being sent in a seaworthy state, and the sending or taking may be justified by proving that in the circumstances it was reasonable and justifiable (*ibid.*).

(*e*) See pp. 189, 190, *post*.

(*f*) M. S. Act, 1894, ss. 285, 432.

(*g*) *Ibid.*, s. 290 (a). There is no statutory provision requiring

SECT. 2. Equipment.

Fire hose.

142. Every British sea-going steamship not used wholly as a tug must be provided with a sufficient fire hose capable of being connected with the engines of the ship and used in any part of the ship (*h*). Every emigrant ship must have a fire engine in proper working order of such description and power, with such other apparatus, if any, as the emigration officer requires (*i*).

Life-saving appliances.

143. Owners and masters of British ships must see that their ships are provided with proper life-saving appliances in accordance with rules made by the Board of Trade (*k*), and such appliances must, if lost or rendered unfit for service, be replaced or repaired as soon as possible, and must be at all times fit and ready for use (*l*). Ships may be inspected by surveyors for the purpose of seeing that they are properly provided with these appliances (*m*); and masters must keep a record as to boat drill and examination of life-saving appliances (*n*).

Foreign ships.

Foreign ships engaged in the emigrant trade must carry four properly fitted lifebuoys ready for immediate use (*o*), and foreign ships, with certain exceptions, are subject to the same regulations on this point as British ships while they are within any port of the United Kingdom (*p*).

Fishing boats.

Fishing boats do not come within the foregoing provisions, but must be properly provided with boats and lifebuoys (*q*).

SECT. 3.—*Marking of Ships.*

Deck lines.

144. In addition to the mark required on registration (*r*), before a British ship can proceed to sea, the position of each deck which is above water must be permanently marked upon the sides of the ship

vessels, other than sea-going passenger steamers and emigrant ships, to be provided with compasses; but where a question as to seaworthiness arises, any sea-going ship not so provided might be held as a fact to be unseaworthy. As to marking and testing of anchor chain cables, see title TRADE AND TRADE UNIONS, Vol. XXVII., p. 544.

(*h*) M. S. Act, 1894, ss. 285, 432.

(*i*) *Ibid.*, s. 290 (d).

(*k*) *Ibid.*, ss. 427, 428, 430; Rules dated 7th June, 1890; 10th February, 1902; 24th May, 1909; 19th April, 1910, and 17th January, 1913, Stat. R. & O. Rev., Merchant Shipping, Vol. VIII., pp. 201 *et seq.*). In the case of a steamer not certified to carry passengers and employed solely in the coasting trade, it was held that the master ought to have had a lifebelt for each person on board (*Genochio* v. *Steward* (1909), 100 L. T. 525).

(*l*) M. S. Act, 1894, s. 430.

(*m*) *Ibid.*, s. 431.

(*n*) M. S. Act, 1906, s. 9.

(*o*) M. S. Act, 1894, s. 290 (f).

(*p*) M. S. Act, 1906, ss. 4, 6; Order in Council of the 24th October, 1908. The following exemptions by Order in Council have been granted:—Germany, 10th August, 1909 (Stat. R. & O., 1909, p. 581); Norway, 10th August, 1909 (*ibid.*, p. 582); France, 22nd November, 1909 (*ibid.*, p. 580); Sweden, 22nd November, 1909 (*ibid.*, p. 583); Denmark, 22nd April, 1910 (Stat. R. & O., 1910, p. 473); the Netherlands, 11th June, 1910 (*ibid.*, p. 474). On the 20th January, 1914, plenipotentiaries from the British Empire (Australia, Canada and New Zealand being separately represented), Germany, France, the United States, Austria-Hungary, Italy, Spain, Norway, Sweden, Holland, Belgium, and Denmark signed a convention as to the measures to be taken in the interests of the safety of maritime passenger traffic, to which effect is to be given by legislative action by the respective countries.

(*q*) M. S. Act, 1894, s. 375; see title FISHERIES, Vol. XIV., p. 629.

(*r*) See p. 17, *ante*.

with deck lines of not less than twelve inches in length and one inch in breadth (*s*).

Load lines, showing the maximum depth to which the ship may be submerged when loaded with cargo, must also be marked on the sides of all British vessels (*t*), except sailing ships under eighty tons employed solely in the coasting trade (*u*), fishing boats (*a*), and pleasure yachts (*a*), and on certain foreign vessels (*b*), by a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre (*c*). Load lines.

SECT. 4.—*Carriage of Dangerous Goods.*

145. The sending or carriage by any person other than the master or owner, or the attempt to send or carry, dangerous goods in any vessel, British or foreign, without distinctly marking their nature on the outside of the package, is an offence (*d*). Carriage of dangerous goods.

Masters and owners may refuse to ship any packages which they suspect to contain dangerous goods, and if they find such goods on board not marked and declared, may cause them to be thrown overboard (*e*); and a court having Admiralty jurisdiction may declare such goods forfeited (*f*). The carriage of explosives within the meaning of the Explosives Act, 1875 (*g*), or any vitriol or lucifer matches, is forbidden in the case of emigrant ships (*h*).

SECT. 5.—*Deck Cargoes.*

146. The term "deck cargo" means any cargo carried either in any uncovered space upon deck, or in any covered space not included in the cubical contents forming the ship's registered tonnage (*i*). When any such space is occupied by cargo it has to be added to the Deck cargo.

(*s*) M. S. Act, 1894, s. 437. The deck lines must be marked in white or yellow on a dark ground or in black on a light ground (*ibid.*).

(*t*) *Ibid.*, ss. 438—444.

(*u*) *Ibid.*, s. 438; M. S. Act, 1906, s. 7.

(*a*) As to regulations respecting fishing boats, see title FISHERIES, Vol. XIV., pp. 628 *et seq.*; and, as to pleasure yachts, see pp. 659 *et seq.*, *post.*

(*b*) M. S. Acts, 1894, s. 445; 1906, s. 8.

(*c*) M. S. Act, 1894, s. 438. This provision lays down the same regulations as to the colour of load lines as those for the deck lines (see note (*s*), *supra*). Full details as to markings have been laid down by Order in Council of the 12th January, 1899, and the Schedules thereto. See, also, Orders of the Board of Trade of the 24th April, 1907, and the 30th May, 1907 (tugs, salvage-steamers etc. are exempted). For form of application for certificate of approval of load line marks, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 71.

(*d*) M. S. Act, 1894, s. 446. Penalty, not exceeding £100; but, if the person sending is merely an agent for shipment, and had no reason to suspect the dangerous nature of the goods, the penalty is not exceeding £10 (*ibid.*, s. 446 (2)). By dangerous goods are here meant aquafortis, vitriol, naphtha, benzine, gunpowder, lucifer matches, nitro-glycerine, petroleum, any explosives within the meaning of the Explosives Act, 1875 (38 & 39 Vict. c. 17), and any other goods which are of a dangerous nature (M. S. Act, 1894, s. 446 (3)).

(*e*) *Ibid.*, s. 448; see also Explosive Substances Act, 1883 (46 & 47 Vict. c. 3), s. 8; and p. 74, *ante*.

(*f*) M. S. Act, 1894, s. 449 (1).

(*g*) 38 & 39 Vict. c. 17.

(*h*) M. S. Act, 1894, s. 301. See p. 345, *post*; title EXPLOSIVES, Vol. XIV., p. 384.

(*i*) M. S. Act, 1906, s. 10 (5) (c).

SECT. 5. Deck Cargoes.

registered tonnage of the ship for the purpose of ascertaining the tonnage dues payable (*j*). The ordinary regulations with regard to deck cargo do not apply in the case of ships trading exclusively in any river or inland water in a British possession, or engaged in the coasting trade of any British possession (*k*).

In the case of emigrant ships no cargo, luggage, or stores may be carried on the upper deck or passenger decks until the approval of the emigration officer at the port of clearance has been obtained (*l*).

Wood goods.

147. If any ship arrives between the last day of October and the 16th April at any port of the United Kingdom from any port abroad, carrying either heavy or light wood goods as deck cargo, except under conditions allowed by statute, the master of the ship, and the owner, if privy to the offence, are liable to a fine, unless such goods have been placed on deck during the voyage by reason of any damage to the ship, or the vessel sailed on such a date that in the ordinary course of events she would have arrived at her port outside the prohibited period (*m*); but a vessel not bound to a port in the United Kingdom coming into a port of the United Kingdom for any purpose other than delivery of her cargo is not subject to the foregoing provisions (*n*).

SECT. 6.—*Stowage of Grain Cargo.*

Stowage of grain.

148. When a British ship is laden with a grain cargo (*o*), or a foreign ship so laden arrives or loads at a port in the United Kingdom (*p*), all necessary and reasonable precautions against the shifting of the grain must have been taken (*q*).

The master of the ship must deliver to the British consular officer

(*j*) M. S. Act, 1894, s. 85. The word "cargo" is not confined to its ordinary sense. Space on deck occupied by coal for use in ship's boilers fires must be added to ship's registered tonnage for purpose of light dues (*Cairn Line of Steamships, Ltd.* v. *Trinity House Corporation*, [1908] 1 K. B. 528, C. A.; see also *Richmond Hill Steamship Co.* v. *Trinity House Corporation*, [1896] 2 Q. B. 134, C. A. (horses and cattle)).

(*k*) M. S. Act, 1894, s. 85 (4).

(*l*) *Ibid.*, s. 294; see p. 338, *post*. As to further regulations with regard to emigrant ships, see pp. 81, 82, 335 *et seq.*, *post*.

(*m*) M. S. Act, 1906, s. 10. This provision sets out the conditions under which such wood goods may be carried as deck cargo, and Board of Trade Rules (1907, No. 78), of the 7th February, 1907, regulate (1) classes of ships approved for the purpose of carrying heavy wood goods as deck cargo, (2) regulations with respect to the loading of heavy wood goods as deck cargo, and (3) regulations for the protection of seamen from risk arising from the carriage of wood goods as deck cargo in uncovered spaces on board ship. As to loading generally, see pp. 177 *et seq.*, *post*.

(*n*) M. S. Act, 1906, s. (10) (6).

(*o*) For the definition of "grain," see M. S. Act, 1894, s. 456.

(*p*) M. S. Act, 1906, s. 3.

(*q*) If proper precautions have not been taken, the master, and in the case of a British ship the agent of the owner charged with the loading, is liable to a fine not exceeding £300 (M. S. Act, 1894, s. 452, and M. S. Act, 1906, s. 3), or not exceeding £100 if prosecuted summarily under the M. S. Act, 1906, s. 11, unless he proves that he took all reasonable precautions against, and was not privy to the offence. The M. S. Act, 1894, Sched. XVIII., and Regulations of the Board of Trade, which may be obtained from the King's printers, lay down rules on the proper stowage mainly directed against the stowage of such cargo in bulk. As to stowage, see, further, pp. 203 *et seq.*, *post*.

at the port of loading, and to the proper officer of customs in the United Kingdom, a notice stating the ship's draught and clear side, the kind and quantity of the grain, the mode of stowage, and the precautions taken against shifting (*r*).

SECT. 6. **Stowage of Grain Cargo.**

SECT. 7.—*Detention of Unsafe Ships.*

149. The Board of Trade has power to detain in any port in the United Kindom a ship which is unsafe by reason of the defective condition of her hull, equipments or machinery, or by reason of overloading or improper loading (*s*), or by reason of undermanning (*t*). Provision is made for examination by a surveyor and appeal to a court of survey (*u*) for the port or district.

Power to detain unsafe ships.

If the detention of the ship was without reasonable and probable cause, the Board of Trade may be liable to pay costs and compensation (*v*).

Part VI.—Conduct of the Voyage.

SECT. 1.—*Clearances.*

150. A ship cannot lawfully proceed to sea without the necessary clearances, or permission to sail, from the officers of the customs or others appointed for that purpose (*w*).

Clearances.

A clearance may not be granted for any ship until the master has declared the name of the nation to which he claims that she belongs (*x*), and may be refused where, under the Merchant Shipping Acts (*a*), an officer of the customs has power to detain the ship (*b*).

151. No emigrant ship can clear outwards or proceed to sea until the master has obtained from the emigration officer at the port of clearance a certificate for clearance showing that the statutory requirements for such class of ships have been duly complied with, and that the ship, steerage passengers, and crew are in a fit state to proceed (*c*); if she proceeds to sea or

Emigrant ships.

(*r*) M. S. Act, 1894, s. 454. As to consular officers generally, see title CONSTITUTIONAL LAW, Vol. VI., pp. 434 *et seq.*; as to officers of customs, see title REVENUE, Vol. XXIV., pp. 545, 546; as to stowage, see, further, pp. 203 *et seq.*, *post.*

(*s*) M. S. Act, 1894, ss. 459 462; M. S. Act, 1906, s. 2. An inquiry may be ordered as to the condition of anchors and chains (Anchors and Chain Cables Act, 1899 (62 & 63 Vict. c. 23), s. 4); see title TRADE AND TRADE UNIONS, Vol. XXVII., p. 544, note (*c*). As to loading, see pp. 177 *et seq.*, *post.*

(*t*) M. S. Act, 1897 (60 & 61 Vict. c. 59), s. 1.

(*u*) As to courts of survey, see title COURTS, Vol. IX., p. 107; p. 662, *post.*

(*v*) M. S. Act, 1894, s. 460. See also *Thompson* v. *Farrer* (1882), 6 Q. B. D. 372, C. A.; *Lewis* v. *Gray* (1876), 1 C. P. D. 452 (as to facts reported to Board prior to detention); *Dixon* v. *Farrer* (1886), 18 Q. B. D. 43, C. A. (place of trial); *Larsen* v. *Hart* (1900), 37 Sc. L. R. 924 (procedure in case of a foreign ship).

(*w*) As to these officers, see title REVENUE, Vol. XXIV., pp. 545 *et seq.*

(*x*) M. S. Act, 1894, s. 68; *Levy* v. *Costerton* (1816), 4 Camp. 389.

(*a*) See note (*a*), p. 10, *ante.*

(*b*) M. S. Act, 1894, s. 692 (3). This provision applies to detention ordered by a judge under the Shipowners' Negligence (Remedies) Act, 1905 (5 Edw. 7, c. 10), s. 1. As to detention, see the text, *supra.*

(*c*) M. S. Act, 1894, s. 314; see *Steel* v. *Schomberg* (1855), 4 E. & B. 620.

SECT. 1. Clearances.

attempts to do so without having obtained the proper certificates for clearance, she may be seized and forfeited to the Crown (*d*). If the emigration officer refuses to grant such certificate an appeal lies to the Board of Trade. An appeal is also allowed to a court of survey (*e*).

An emigrant ship which, after clearance, puts into or touches at any port in the British Islands, may not proceed to sea again until the master has obtained from the emigration officer a certificate for clearance to the same effect as that given her at her port of departure (*f*).

SECT. 2.—*Official Logs.*

The official log.

152. Every ship, unless employed exclusively in trading between ports on the coasts of Scotland, must carry an official log in the appropriate form for such ship approved by the Board of Trade, containing proper spaces for the entries required by the Merchant Shipping Acts (*g*); the official log may be kept distinct from, or united with, the ordinary ship's log. All entries in the log-book must be made as soon as possible after the occurrences to which they relate, and must be signed by the master, and by the mate or some other member of the crew, and in certain special cases by other specified persons (*h*). Every entry so made is admissible in evidence (*i*).

What must be entered.

153. The master is bound to enter in the official log-book every conviction of a member of his crew by a legal tribunal, and every offence by a member of his crew which it is intended to take steps to punish or for which a punishment is inflicted on board; a statement of the conduct, character, and qualifications of each of his crew, or a statement that he declines to give an opinion of those particulars; every case of illness or injury happening to a member of the crew; every marriage taking place on board; the name of every seaman or apprentice who ceases to be a member of the crew otherwise than by death, with the place, time, manner, and cause thereof; the wages due to any seaman who enters the Royal Navy during the voyage; entries with regard to wages due to any seaman or apprentice who dies during the voyage and the sale of his effects; every collision with any other ship; and any other matter directed by the Merchant Shipping Acts (*g*) to be entered (*k*).

(*d*) M. S. Act, 1894, s. 319; *The Annandale* (1877), 2 P. D. 218, C. A.

(*e*) M. S. Act, 1894, s. 318. As to courts of survey, see title COURTS, Vol. IX., p. 107; p. 662, *post*.

(*f*) M. S. Act, 1894, s. 316.

(*g*) See note (*a*), p. 10, *ante*.

(*h*) M. S. Act, 1894, s. 239. The master is liable to a fine not exceeding £5 for neglect in making the proper entries. Should he or anyone make an entry in the official log-book more than twenty-four hours after the arrival of the ship at her final port of discharge in respect of any occurrence happening previous to the arrival, liability to a fine not exceeding £30 is incurred. Any person wilfully destroying or mutilating or rendering illegible any entry in the official log-book or wilfully making any false entry in or omission from it, is guilty of a misdemeanour (*ibid.*, s. 241).

(*i*) *Ibid.*, s. 239 (6); see title EVIDENCE, Vol. XIII., pp. 462, 541, 542. As to making an entry in the engineer's log evidence against the owner although not entered in the official log, see *The Earl of Dumfries* (1885), 10 P. D. 31.

(*k*) M. S. Act, 1894, s. 240. As to the entry of statutory offences, see p. 63, *ante*.

154. The official log-book must be delivered up to the mercantile marine superintendent, in the case of foreign-going ships within forty-eight hours of arrival at the final port of destination in the United Kingdom or upon the discharge of the crew, whichever first happens, and in the case of home-trade ships twice in every year (*l*). It must be sent to the superintendent at the port to which the ship belonged when it ceases to be required in respect of the ship by reason of transfer of ownership or change of employment, and also, if practicable, when a ship is lost or abandoned (*m*). Delivery of log-book.

SECT. 3.—*Compliance with Warranties.*

155. A passenger has a right of action at common law for unreasonable delay in the time of sailing (*n*). It is understood in all contracts by charterparty that there shall be no such unreasonable delay (*o*); and if in a policy of insurance the ship is warranted to sail before or after a given day, the underwriter is discharged if the warranty is not strictly fulfilled (*p*). Delay.

In all charterparties there is an implied stipulation against deviation (*q*), but stress of weather, occasion for repairs, or other necessity may justify it (*r*). Deviation.

In time of war, if there is an undertaking to sail with convoy, that is to say, under the protection of war vessels expressly appointed for that purpose, the ship must be put under such protection (*s*). Convoy.

(*l*) M. S. Act, 1894, s. 242. As to the meaning of "foreign-going ship" and "home-trade ship," see note (*f*), p. 42, *ante*.

(*m*) M. S. Act, 1894, s. 243. Penalty in case of failure without reasonable cause not exceeding £10 (*ibid.*). As to transfer of ownership, see pp. 21 *et seq.*, *ante*.

(*n*) *Yates* v. *Duff* (1832), 5 C. & P. 369; *Ellis* v. *Thompson* (1838), 3 M. & W. 445, 456; *Cranston* v. *Marshall* (1850), 5 Exch. 395; *Sansom* v. *Rhodes* (1840), 8 Scott, 544; see M. S. Act, 1894, s. 340.

(*o*) *Jackson* v. *Union Marine Insurance Co.* (1874), L. R. 10 C. P. 125, 142, Ex. Ch.; and see pp. 328, 329, *post*.

(*p*) See title INSURANCE, Vol. XVII., p. 419.

(*q*) *Davis* v. *Garrett* (1830), 6 Bing. 716; *Freeman* v. *Taylor* (1831), 8 Bing. 124; *M'Andrew* v. *Adams* (1834), 1 Bing. (N. C.) 29; *Frazu* v. *Astral Shipping Co.* (1904), 9 Com. Cas. 100; see Marine Insurance Act, 1906 (6 Edw. 7, c. 41), ss. 46, 48; and pp. 95, 96, *post*.

(*r*) *The Express* (1872), L. R. 3 A. & E. 597; *The "Teutonia"* (1872), L. R. 4 P. C. 171; *Phelps, James & Co.* v. *Hill*, [1891] 1 Q. B. 605; and see p. 95, *post*; see also *Kish* v. *Taylor*, [1912] A. C. 604; *Internationale Guano en Superphosphaatwerken* v. *Macandrew* (*Robert*) *& Co.*, [1909] 2 K. B. 360.

(*s*) *Philips* v. *Baillie* (1784), 3 Doug. (K. B.) 374; *Runquist* v. *Ditchell* (1799), 3 Esp. 64; *Magalhaens* v. *Busher*, *Sanderson* v. *Busher* (1814), 4 Camp. 54; see also *Hibbert* v. *Pigou* (1783), 2 Park on Marine Insurance, 7th ed., p. 498 (meaning of convoy). See, further, as to extent and condition of sailing with convoy, *Jefferies* v. *Legendra* (1692), Carth. 216; *Lethulier's Case* (1692), 2 Salk. 443; *Gordon* v. *Morley*, *Campbell* v. *Bordieu* (1747), 2 Stra. 1265; *Lilly* v. *Ewer* (1779), 1 Doug. (K. B.) 72; *Smith* v. *Readshaw* (1781), 2 Park on Marine Insurance, 7th ed., p. 510; *Manning* v. *Gist* (1782), Marshall on Marine Insurance, 4th ed., p. 291; *D'Eguino* v. *Bewicke* (1795), 2 Hy. Bl. 551; *De Garay* v. *Clagget* (1795), 2 Hy. Bl. 551, n.; *Webb* v. *Thomson* (1797), 1 Bos. & P. 5; *Audley* v. *Duff* (1800), 2 Bos. & P. 111; *Anderson* v. *Pitcher* (1800), 2 Bos. & P. 164.

SECT. 4. **Protests.**

SECT. 4.—*Protests.*

Protests.

156. A protest is a declaration by the master as to the incidents of the voyage, storms or bad weather or accident, which may have compelled him to put in at some intermediate port. It is made before a notary or British consul, and may be important for the purpose of stating the damage which has taken place, for the sake of supporting a claim against the underwriters, since although the claim would not otherwise be barred, yet unless stated in protest suspicion might arise that the damage did not occur (*t*).

Protests are receivable as evidence in many foreign courts, but not in English courts (*a*).

Part VII.—Carriage of Goods.

SECT. 1.—*Charterparties.*

SUB-SECT. 1.—*General Nature of the Contract.*

Definition.

157. A contract by charterparty (*b*) is a contract by which an entire ship or some principal part thereof is let to a merchant, who is called the charterer, for the conveyance of goods on a determined voyage to one or more places (*c*), or until the expiration of a specified period (*d*). Such a contract may operate as a demise of the ship

(*t*) *The Santa Anna* (1863), 32 L. J. (P. M. & A.) 198; see also title NOTARIES, Vol. XXI., pp. 499, 500.

(*a*) *Appleton* v. *Braybrook* (*Lord*) (1817), 6 M. & S. 34; *Black* v. *Braybrook* (*Lord*) (1817), 6 M. & S. 39; *Brown* v. *Thornton* (1837), 6 Ad. & El. 185; *Senat* v. *Porter* (1797), 7 Term Rep. 158; *R.* v. *Scriveners' Co.* (1830), 10 B. & C. 511; *Betsey Caines* (1826), 2 Hag. Adm. 28; and see title NOTARIES, Vol. XXI., pp. 500, 501.

(*b*) The word is derived from *charta partita* (Abbott on Shipping, 5th ed., p. 163; 14th ed., p. 330). Sometimes a form of contract is used by ship's brokers known as a "berth note," by which the broker notifies the shipowner that his ship has been engaged to carry a specified cargo: such a contract has been held to impose on the broker a personal liability (*Hick* v. *Tweedy & Co.* (1890), 63 L. T. 765; *Steamship Rotherfield Co., Ltd.* v. *Tweedy, Reid & Co.* (1897), 2 Com. Cas. 84; *The Dawlish*, [1910] P. 339; compare *Simpson* v. *Young* (1861), 2 F. & F. 426). As to bills of lading, see pp. 144 *et seq.*, *post*. It is not necessary that a contract for the employment of a ship upon a voyage should be in writing (*Lidgett* v. *Williams* (1845), 4 Hare, 456, 462). As to forwarding agents, see *Sutton & Co.* v. *Ciceri & Co.* (1890), 15 App. Cas. 144; *Heugh* v. *Escombe* (1861), 4 L. T. 517. For forms of charterparties, see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 92 *et seq.*

(*c*) Abbott on Shipping, 5th ed., p. 162; 14th ed., p. 328.

(*d*) Specific performance of a charterparty will not be ordered, but an injunction may be granted to restrain the parties, including a purchaser (*Messageries Imperiales Co.* v. *Baines* (1863), 7 L. T. 763), or mortgagee (*De Mattos* v. *Gibson* (1859), 4 De G. & J. 276, C. A.) of the ship from employing the ship in a manner inconsistent with the charterparty (*Sevin* v. *Deslandes* (1860), 7 Jur. (N. S.) 837; *Kern* v. *Deslandes* (1861), 10 C. B. (N. S.) 205; *Le Blanch* v. *Granger* (1866), 35 Beav. 187; *Heriot* v. *Nicholas* (1864), 12 W. R. 844); see titles INJUNCTION, Vol. XVII., p. 247; SPECIFIC PERFORMANCE, Vol. XXVII., pp. 8, 9. For cases in which an injunction has been refused, see *De Mattos* v. *Gibson*, *supra*, where it was not proved that the mortgagee had interfered; *Adamson* v. *Gill* (1868), 18 L. T. 278, where the cargo was rendered by an excepted peril unfit to be carried. A charterparty which impairs the mortgagee's security is not

itself, to which the services of the master and crew may or may not be superadded, or it may confer on the charterer nothing more than the right to have his goods conveyed by a particular ship, and, as subsidiary thereto, to have the use of the ship and the services of the master and crew (*e*).

Charterparty by demise.

158. A charterparty by way of demise is of two kinds, namely, (1) *locatio navis*, where the hull is the subject-matter of the charterparty (*f*), and (2) *locatio navis et operarum magistri et nauticorum*, under which the ship passes to the charterer in a state fit for the purposes of mercantile adventure (*g*). In both cases the charterer becomes for the time being the owner of the ship (*h*); the master and crew are, or become to all intents and purposes, his servants, and through them the possession of the ship is in him (*i*). The owner, on the other hand, has divested himself of all control either over the ship or over the master and crew (*k*). His sole right is to receive the stipulated hire, and to take back the ship when the charterparty comes to an end (*l*). During the currency of the charterparty, therefore, he is under no liability to third persons whose goods may have been conveyed upon the demised ship (*m*), or who may have done work or supplied stores for the ship (*n*), and

binding upon him after he takes possession (*Law Guarantee and Trust Society* v. *Russian Bank for Foreign Trade*, [1905] 1 K. B. 815, C. A., where the ships had been chartered by the mortgagors to carry contraband of war, and were not insured against war risks, such an insurance being in the circumstances of the case a commercial impossibility).

(*e*) *Sandeman* v. *Scurr* (1866), L. R. 2 Q. B. 86, *per* COCKBURN, C.J., at p. 96; *Baumwoll Manufactur von Carl Scheibler* v. *Furness*, [1893] A. C. 8; *Schuster* v. *McKellar* (1857), 7 E. & B. 704, *per* Lord CAMPBELL, C.J., at pp. 723, 724.

(*f*) *Schuster* v. *McKellar*, *supra*; *Reeve* v. *Davis* (1834), 1 Ad. & El. 312; *Meiklereid* v. *West* (1876), 1 Q. B. D. 428.

(*g*) *Schuster* v. *McKellar*, *supra*; *Trinity House* (*Master, etc.*) v. *Clark* (1815), 4 M. & S. 288; *Colvin* v. *Newberry and Benson* (1832), 1 Cl. & Fin. 283, H. L.; *Sack* v. *Ford* (1862), 13 C. B. (N. S.) 90. Charterparties by way of demise are rare at the present day (*Herne Bay Steam Boat Co.* v. *Hutton*, [1903] 2 K. B. 683, C. A., *per* VAUGHAN WILLIAMS, L.J., at p. 689).

(*h*) *Colvin* v. *Newberry and Benson*, *supra*; compare *Jackson* (*Sir John*), *Ltd.* v. *S.S. Blanche* (*Owners*), [1908] A. C. 126; *Scott* v. *Scott* (1818), 2 Stark. 438.

(*i*) *Belcher* v. *Capper* (1842), 4 Man. & G. 502 (where the charterer appointed the master, being allowed by the shipowners the amount paid to his own master). The fact that the charterer pays the wages of the master and crew is not in itself sufficient (*Fenton* v. *City of Dublin Steam Packet Co.* (1838), 8 Ad. & El. 835).

(*k*) *Meiklereid* v. *West*, *supra*; *Baumwoll Manufactur von Carl Scheibler* v. *Furness*, *supra*. Sometimes the shipowner retains in his hands the appointment and control of his chief engineer; see *Baumwoll Manufactur von Carl Scheibler* v. *Furness*, *supra*.

(*l*) *Meiklereid* v. *West*, *supra*. He has therefore no lien on the cargo for the hire (*Hutton* v. *Bragg* (1816), 7 Taunt. 14; *Belcher* v. *Capper*, *supra*), nor is he liable as owner for light dues (*Trinity House* (*Master, etc.*) v. *Clark*, *supra*).

(*m*) *Baumwoll Manufactur von Carl Scheibler* v. *Furness*, *supra*. But the shipowner may render himself liable by delivering the cargo to the wrong person (*Schuster* v. *McKellar*, *supra*). As to his liability on the bill of lading, see p. 168, *post*.

(*n*) *Frazer* v. *Marsh* (1810), 13 East, 238; *Reeve* v. *Davis*, *supra*.

SECT. 1. Charterparties.

such persons must look only to the charterer who has taken his place (*o*).

Charterparty which is not a demise.

159. A charterparty which does not operate as a demise may be classified as a *locatio operis vehendarum mercium* (*p*). Though it confers on the charterer the temporary right to have his goods loaded and conveyed in the ship, the ownership remains in the original owner, and, through the master and crew, who continue to be his servants, the possession of the ship also (*q*). The existence of the charterparty, therefore, does not necessarily divest the owner of liability to third persons whose goods may have been conveyed on the ship (*r*), nor does it deprive him of his rights as owner (*s*).

Test whether charterparty operates as demise.

160. Whether a charterparty operates as a demise or not is a question of construction, to be determined by reference to the language of the particular charterparty (*t*). The principal test to be applied is whether the master is the servant of the owner or of the charterer (*a*). Even where the charterparty provides for the nomination of the master by the charterer, he must be regarded as the servant of the owner, if the effect of the charterparty is that he is to be paid or dismissed by the owner, and that he is to be subject to the owner's orders as to navigation (*b*). On the other hand, if the charterparty is otherwise to be regarded as a demise, it is immaterial that the owner reserves the right, in certain circumstances, of removing the master and appointing another in his place (*c*), or of appointing the chief engineer (*d*).

Rights of charterers to carry goods of third persons.

161. Under a charterparty by way of demise the charterer may, unless prohibited by its terms, employ the ship in carrying either his own goods or those of others, and he may also sub-charter her (*e*). Where, however, the charterparty does not operate as a demise, the extent of the charterer's right to require the ship to carry goods belonging to third persons depends upon the terms of his contract. The contract of carriage is personal to himself, and

(*o*) Compare *Jackson* (*Sir John*) *Ltd.* v. *S.S. Blanche* (*Owners*), [1908] A. C. 126.

(*p*) *Schuster* v. *McKellar* (1857), 7 E. & B. 704.

(*q*) *Sandeman* v. *Scurr* (1866), L. R. 2 Q. B. 86, *per* COCKBURN, C.J., at p. 96; *Saville* v. *Campion* (1819), 2 B. & Ald. 503; *The Beeswing* (1885), 5 Asp. M. L. C. 484, C. A.; *Omoa Coal and Iron Co.* v. *Huntley* (1877), 2 C. P. D. 464; compare *Thin* v. *Liverpool, Brazil and River Plate Steam Navigation Co.* (1901), 18 T. L. R. 226.

(*r*) It is therefore immaterial that the shipowner is ignorant of the charterparty, if it is in fact covered by the master's authority (*Steel* v. *Lester* (1877), 3 C. P. D. 121).

(*s*) *Lucas* v. *Nockells* (1833), 1 Cl. & Fin. 438, H. L.; *Dean* v. *Hogg* (1834), 10 Bing. 345.

(*t*) *Sandeman* v. *Scurr, supra, per* COCKBURN, C.J., at p. 96. The charterparty may be a demise, though no express words of demise are used (*Colvin* v. *Newberry and Benson* (1832), 1 Cl. & Fin. 283, H. L.); on the other hand, the use of words of demise does not necessarily take the ship out of the shipowner's possession (*Christie* v. *Lewis* (1821), 2 Brod. & Bing. 410).

(*a*) *Baumwoll Manufactur von Carl Scheibler* v. *Furness*, [1893] A. C. 8.

(*b*) *The Beeswing, supra;* compare *Weir* v. *Union Steamship Co.*, [1900] A. C. 525.

(*c*) *Colvin* v. *Newberry and Benson, supra.*

(*d*) *Baumwoll Manufactur von Carl Scheibler* v. *Furness, supra.*

(*e*) Abbott on Shipping, 5th ed., p. 167; 14th ed., p. 340.

he cannot call upon the shipowner to undertake liabilities to third persons or transfer to third persons his own liabilities to the shipowner unless the contract so provides (*f*). In the absence of any such provision, the charterer is not entitled to ship goods other than his own, except upon the terms that the bill of lading is made out to himself (*g*).

It is not unusual, however, when the charterer intends to make his profit by carrying the goods of third persons, for the charterparty to contain a stipulation that the master may be required to sign bills of lading at any rate of freight without prejudice to the charterparty (*h*). Under such a stipulation the charterer is entitled to use the ship as a general ship, and the shipowner may, by reason of the master's signing bills of lading, become liable in certain circumstances to third persons if the goods are lost or damaged (*i*); in this case he is entitled to be indemnified by the charterer, to the extent that his liability is greater than that imposed by the charterparty (*k*).

Stamp duty.

162. A charterparty, which includes any agreement or contract for the charter of any ship or vessel, or any memorandum, letter, or other writing, between the captain, master, or owner of any ship or vessel and any other person, for or relating to the freight or conveyance of any money, goods, or effects on board his ship or vessel (*l*), but not a mere collateral agreement, such as a guarantee that the charterer will fulfil the terms of the charterparty (*m*), must be stamped with a 6*d.* stamp (*n*). The duty may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the charterparty is last executed, or by whose execution it is completed as a binding contract (*o*). If it is first executed out of

(*f*) Compare *Smidt* v. *Tiden* (1874), L. R. 9 Q. B. 446.

(*g*) *Herman* v. *Royal Exchange Shipping Co. and Patton, Junr. & Co.* (1884), Cab. & El. 413; compare *Harrison* v. *Huddersfield Steamship Co.* (1903), 19 T. L. R. 386; *Samuel & Co.* v. *West Hartlepool Steam Navigation Co.* (1906), 11 Com. Cas. 115.

(*h*) *Turner* v. *Hagi Goolam Mahomed Azam*, [1904] A. C. 826, P. C.; *Krüger & Co., Ltd.* v. *Moel Tryvan Ship Co., Ltd.*, [1907] A. C. 272; compare Encyclopædia of Forms and Precedents, Vol. XIV., p. 99.

(*i*) See p. 174, *post.*

(*k*) *Krüger & Co., Ltd.* v. *Moel Tryvan Ship Co., Ltd.*, *supra*; compare *Hansen* v. *Harrold Brothers*, [1894] 1 Q. B. 612, C. A. The charterparty may contain an express indemnity clause (*Milburn & Co.* v. *Jamaica Fruit Importing and Trading Co. of London*, [1900] 2 Q. B. 540, C. A.).

(*l*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 49 (1).

(*m*) *Rein* v. *Lane* (1867), 8 B. & S. 83.

(*n*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., title "Charter Party"; as to stamp duties generally, see title REVENUE, Vol. XXIV., pp. 700 *et seq.* If not duly stamped it cannot be used in evidence (see titles EVIDENCE, Vol. XIII., p. 515; REVENUE, Vol. XXIV., p. 706), if it was executed in any part of the United Kingdom, or if it relates to any property situate, or to any matter or thing done or to be done, in any part of the United Kingdom (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 14). As to what is sufficient evidence of stamping, see *Closmadeuc* v. *Carrel* (1856), 18 C. B. 36; title EVIDENCE, Vol. XIII., p. 516; as to the admissibility of an unstamped copy, see *Smith* v. *Maguire* (1858), 1 F. & F. 199.

(*o*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 49 (2). As to cancellation of adhesive stamps, see *ibid.*, s. 8.

SECT. 1. Charter-parties.

Stamping.

the United Kingdom without being duly stamped, it may be stamped with an adhesive stamp by any party thereto within ten days after it has first been received in the United Kingdom, and before it has been executed by any person in the United Kingdom (*p*). A charterparty may, after execution, be stamped with an impressed stamp on the following terms, namely: (1) within seven days after the first execution thereof, on payment of the duty and a penalty of 4*s*. 6*d*.; (2) after seven days, but within one month after the first execution thereof, on payment of the duty and a penalty of £10. In no other cases may a charterparty be stamped with an impressed stamp (*q*).

SUB-SECT. 2.—*The Parties.*

Contracts by agents.

163. The natural parties to a charterparty are the shipowner and the charterer, and where the charterparty is executed by both no difficulty arises (*a*). In practice, however, the contract is frequently made, on behalf of the owner, by the master (*b*), managing owner, or other agent, and, on behalf of the charterer, by a shipbroker or correspondent (*c*). A question then arises as to the respective rights and liabilities under the contract of the several principals and agents.

Charter-parties under seal.

164. Where the charterparty is under seal, the rules applicable

(*p*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 50. This provision does not apply where the charterparty is wholly executed abroad (*The Belfort* (1884), 9 P. D. 215); see the text, *infra*.

(*q*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 51. In *The Belfort*, *supra*, a charterparty wholly executed abroad, and stamped within two months after it was received in this country, was received in evidence under the now repealed Stamp Act, 1870 (33 & 34 Vict. c. 97), s. 15 (2). In the corresponding provision of the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 15 (3), thirty days is substituted for two months. In both Acts the provision applies to "any unstamped or insufficiently stamped instrument . . . first executed . . . out of the United Kingdom."

(*a*) Where one of two joint contractors is sued upon a charterparty, he cannot claim as of right to have his co-contractor joined as co-defendant, if the latter is resident out of the jurisdiction (*Wilson, Sons & Co.* v. *Killick* (1893), 68 L. T. 312, C. A.). A master who is also a part owner may sue upon a charterparty made between himself and the charterer without joining his co-owners (*Seeger* v. *Duthie* (1860), 8 C. B. (N. S.) 45, 72, Ex. Ch.). If, however, by the charterparty, a specific proportion of the freight is made payable to each co-owner, the contract is a several contract, and cannot be sued on jointly (*Servante* v. *James* (1829), 10 B. & C. 410).

(*b*) The master may have express authority to charter the ship (*Messageries Imperiales Co.* v. *Baines* (1863), 7 L. T. 763); his implied authority arises only when he is in a foreign port and communication with the shipowner is difficult (*The Fanny, The Mathilda* (1883), 48 L. T. 771, C. A.); compare *The Sir Henry Webb* (1849), 13 Jur. 639; and see pp. 64, 65, *ante*.

(*c*) An authority to an agent to procure a charterparty does not necessarily include an authority to cancel it when procured (*Thomas* v. *Lewis* (1878), 4 Ex. D. 18; *Raeburn and Verel* v. *Burness & Sons* (1895), 1 Com. Cas. 22). Nor may an agent, whether of the shipowner (*Burgon* v. *Sharpe* (1810), 2 Camp. 529; *Pearson* v. *Göschen* (1864), 17 C. B. (N. S.) 352 (where the extent of the master's authority was discussed); *Reynolds* v. *Jex* (1865), 7 B. & S. 86; *Capper* v. *Wallace* (1880), 5 Q. B. D. 163; *The Canada* (1897), 13 T. L. R. 238), or of the charterer (*Sickens* v. *Irving* (1859), 7 C. B. (N. S.) 165; *Lindsay & Son* v. *Scholefield* (1897), 24 R. (Ct. of Sess.) 530), vary the terms of the charterparty after completion, unless he

to deeds govern the rights and liabilities of the parties (*d*). An agent, therefore, cannot bind his principal, unless he is empowered to do so by a power of attorney (*e*), and the charterparty must be made and executed in the name of the principal (*f*). If the agent executes the charterparty in his own name he binds himself, but not his principal (*g*), and cannot escape liability by proving that he acted only as agent (*h*). On the other hand, his principal cannot enforce the stipulations of the charterparty (*i*).

Charter-parties not under seal.

165. Where, on the other hand, the charterparty is not under seal, the ordinary rules of agency apply (*k*). The principal may, therefore, be sued upon the contract of his agent, whether he was known at the time when the contract was made or not, or whether it was or was not known that there was a principal at all (*l*). The agent also may be sued if there is a custom making him personally liable on the charterparty (*m*), or if he has chosen to make himself a contracting party (*n*). He may be treated as a contracting

is authorised to do so (*Wiggins* v. *Johnston* (1845), 14 M. & W. 609; compare *Hall* v. *Brown* (1814), 2 Dow, 367, H. L.; see also *Nitrate Producers' Steamship Co.* v. *Wills* (*George*) *& Co.* (1905), 21 T. L. R. 699, H. L.).

(*d*) See titles AGENCY, Vol. I., pp. 154 *et seq.*; DEEDS AND OTHER INSTRUMENTS, Vol. X., pp. 357 *et seq.*, 433 *et seq.*

(*e*) *Horsley* v. *Rush* (1788), cited 7 Term Rep. 209.

(*f*) Where this is the case, the agent cannot himself sue on the charterparty (*Scudamore* v. *Vandenstene* (1687), 2 Co. Inst. 673).

(*g*) Abbott on Shipping, 5th ed., p. 164; 14th ed., p. 333; *Hunter* v. *Prinsep* (1808), 10 East, 378. But the principal may be sued for a breach of an implied obligation not inconsistent with the stipulations of the charterparty (*Leslie* v. *Wilson* (1821), 3 Brod. & Bing. 171).

(*h*) *Humble* v. *Hunter* (1848), 12 Q. B. 310; compare *The Joseph* (1888), 4 T. L. R. 693.

(*i*) *Schack* v. *Anthony* (1813), 1 M. & S. 573. Unless it is in the form of a deed poll, the charterer covenanting to pay a specified sum to the principal (*Cooker* v. *Child* (1673), 2 Lev. 74). See, generally, title AGENCY, Vol. I., pp. 160 *et seq.*, 206 *et seq.*

(*k*) See title AGENCY, Vol. I., pp. 201 *et seq.* Hence the principal may be liable when he has held out the agent as having authority to enter into a charterparty (*Smith* v. *M'Guire* (1858), 3 H. & N. 554; compare *The Fanny*, *The Mathilda* (1883), 48 L. T. 771, C. A., where there was, in the circumstances, no holding out). As to the agent's liability for misrepresentation, see *Salvesen* (*Chr.*) *& Co.* v. *Rederi Aktiebolaget Nordstjernan*, [1905] A. C. 302; title AGENCY, Vol. I., p. 211.

(*l*) *Christoffersen* v. *Hansen* (1872), L. R. 7 Q. B. 509, *per* BLACKBURN, J., at p. 513; *Humble* v. *Hunter*, *supra*, *per* PATTESON, J., at p. 316. The purchaser of the ship is equally bound by an existing charterparty entered into by the master within his authority (*Messageries Imperiales Co.* v. *Baines* (1863), 7 L. T. 763).

(*m*) *Hutchinson* v. *Tatham* (1873), L. R. 8 C. P. 482; *Pike* v. *Ongley* (1887), 18 Q. B. D. 708, C. A.

(*n*) *Christoffersen* v. *Hansen*, *supra*; *Short* v. *Spackman* (1831), 2 B. & Ad. 962; compare *Simpson* v. *Young* (1861), 2 F. & F. 426. An agent contracting on behalf of the Crown is not personally liable, unless the form of the charterparty has that effect (*Cunningham* v. *Collier* (1785), 4 Doug. (K. B.) 233). The liability of the shipowner and his agent is an alternative one, and a judgment against the agent is a bar to proceedings against the principal (*Priestly* v. *Fernie* (1865), 3 H. & C. 977; and compare *Meier & Co.* v. *Küchenmeister* (1881), 8 R. (Ct. of Sess.) 642, where an unsuccessful action against the agent was held not to be a bar). A broker may bind himself to procure a charter so as to render himself

SECT. 1. Charter-parties.

party wherever he has signed the charterparty in his own name (*o*), unless it is clear, either from the terms of the charterparty (*p*) or otherwise (*q*), that his personal liability was intended to be excluded (*r*). When the agent is personally liable on the contract, he is equally entitled to enforce it (*s*).

Principal unnamed or undisclosed.

An agent who enters into a charterparty as agent on behalf of an unnamed principal may declare himself the principal, and may enforce the charterparty on his own behalf (*t*). On the other hand, a principal whose existence is undisclosed cannot intervene and sue upon the charterparty (*a*), if the agent has expressly contracted as a principal, since to allow the principal to do so would be to contradict the language of the charterparty (*b*).

Unauthorised charter-parties.

An agent who contracts as such and has no authority to bind his principal is liable for breach of warranty of authority (*c*), though he cannot, as being an agent, be sued upon the charterparty (*d*). The principal may, however, ratify the charterparty (*e*), provided that the agent purported to make it on his behalf; a person who was not the principal within the contemplation of the agent cannot ratify it (*f*).

liable to his principal for his failure to do so (*Gliddon* v. *Brodersen, Vaughan & Co.* (1883), Cab. & El. 197).

(*o*) *Cooke* v. *Wilson* (1856), 1 C. B. (N. S.) 153. He is liable, even though he appends to his signature the description "agent" (*Lennard* v. *Robinson* (1855), 5 E. & B. 125; compare *Adams* v. *Hall* (1877), 37 L. T. 70), or is so described in the charterparty (*Parker* v. *Winlow* (1857), 7 E. & B. 942; *Hough* v. *Manzanos* (1879), 4 Ex. D. 104, where the charterparty professed to be made by the defendants as agents, and an unqualified signature was held to make them liable).

(*p*) *Deslandes* v. *Gregory* (1860), 2 E. & E. 602, 610, Ex. Ch.; *Gadd* v. *Houghton* (1876), 1 Ex. D. 357, C. A.

(*q*) *Cowie* v. *Witt* (1874), 23 W. R. 76 (where the person who signed the charterparty informed the other contracting party that he did not intend to undertake any personal liability); *Wake* v. *Harrop* (1862), 1 H. & C. 202, Ex. Ch.; *Wagstaff* v. *Anderson* (1880), 5 C. P. D. 171, C. A.; compare *Lilly, Wilson & Co.* v. *Smales, Eeles & Co.*, [1892] 1 Q. B. 456 (telegraphic authority).

(*r*) If he is the real principal, his liability would not be excluded by the terms of the charterparty (*Carr* v. *Jackson* (1852), 7 Exch. 382, *per* PARKE, B., at p. 385 (cesser clause applying to agent)), or by the form of his signature (*Jenkins* v. *Hutchinson* (1849), 13 Q. B. 744; *Adams* v. *Hall*, *supra*).

(*s*) *Cooke* v. *Wilson*, *supra*.

(*t*) *Schmaltz* v. *Avery* (1851), 16 Q. B. 655, distinguishing *Humble* v. *Hunter* (1848), 12 Q. B. 310; *Harper & Co.* v. *Vigers Brothers*, [1909] 2 K. B. 549; *Adams* v. *Hall*, *supra*.

(*a*) Where the wrong name is by mistake left in the charterparty, the real principal may intervene (*Breslauer* v. *Barwick* (1876), 36 L. T. 52).

(*b*) *Humble* v. *Hunter*, *supra*.

(*c*) *Suart* v. *Haigh* (1893), 9 T. L. R. 488, H. L.; *Wagstaff* v. *Anderson*, *supra*, *per* BRAMWELL, L.J., at p. 175. As to the measure of damages, see *Mitchell* v. *Kahl* (1862), 2 F. & F. 709; and compare *Salvesen* (*Chr.*) *& Co.* v. *Rederi Aktiebolaget Nordstjernan*, [1905] A. C. 302.

(*d*) *Jenkins* v. *Hutchinson*, *supra*.

(*e*) *The Fanny, The Mathilda* (1883), 48 L. T. 771, C. A. (where it was held that there was no ratification); see title AGENCY, Vol. I., pp. 173 *et seq.*

(*f*) *Watson* v. *Swann* (1862), 11 C. B. (N. S.) 756; *Keighley, Maxsted & Co.* v. *Durant*, [1901] A. C. 240; and see title AGENCY, Vol. I., pp. 175 *et seq.*

SUB-SECT. 3.—*Usual Stipulations.*

(i.) *As to the Ship.*

Description of ship.

166. In every charterparty the name of the ship which is to be chartered is specified, and her description given in detail (*g*). The description usually includes stipulations as to the nature of the ship, her registered tonnage (*h*), her classification at Lloyd's (*i*), her position at the date of the charterparty, and her fitness for the purposes of the charterer; it may, in addition, specify her carrying capacity and the name of her master (*k*).

How far stipulations are conditions.

Of these stipulations, those relating to the name (*l*) and nature (*m*) of the ship, to her position at the date of the charterparty (*n*), and to her carrying capacity (*o*) are to be regarded as conditions precedent (*p*) on the non-fulfilment of which the charterer may

(*g*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 92, 96, 100, 106, 111.

(*h*) As to the effect of a statement as to tonnage, see p. 92, *post*; as to registered tonnage generally, see p. 19, *ante*.

(*i*) As to the effect of a statement as to class, see the text, *infra*.

(*k*) See p. 92, *post*.

(*l*) The nationality of the ship, if stated in the charterparty, may be a condition precedent in time of war (*Behn* v. *Burness* (1863), 3 B. & S. 751, Ex. Ch., *per* WILLIAMS, J., at p. 757; compare title INSURANCE, Vol. XVII., pp. 362, 418, 420). As to what constitutes a correct description of nationality, see *Reusse* v. *Meyers* (1813), 3 Camp. 475.

(*m*) *Fraser* v. *Telegraph Construction Co.* (1872), L. R. 7 Q. B. 566; *Dimech* v. *Corlett* (1858), 12 Moo. P. C. C. 199 (where it was held that it was unnecessary to decide whether, on the ship being described as "coppered," it was a condition precedent that she should be completely coppered at the date of the charterparty).

(*n*) *Behn* v. *Burness*, *supra*; *Oppenheim* v. *Fraser* (1876), 34 L. T. 524; compare *Ollive* v. *Booker* (1847), 1 Exch. 416, where the ship was described as "now at sea, having sailed three weeks ago," whereas she had only sailed a week previously. Statements as to the date of arrival (*Shubrick* v. *Salmond* (1765), 3 Burr. 1637; *Shadforth* v. *Higgin* (1813), 3 Camp. 385; *Corkling* v. *Massey* (1873), L. R. 8 C. P. 395), or departure (*Glaholm* v. *Hays* (1841), 2 Man. & G. 257; *Van Baggen* v. *Baines* (1854), 9 Exch. 523; *Seeger* v. *Duthie* (1860), 8 C. B. (N. S.) 45, 72, Ex. Ch.; *Bentsen* v. *Taylor, Sons & Co.* (2), [1893] 2 Q. B. 274, C. A.), or as to the date when she will be ready to load (*Deffell* v. *Brocklebank* (1817), 4 Price, 36, Ex. Ch.; *Oliver* v. *Fielden* (1849), 4 Exch. 135), are equally conditions precedent. Where the stipulation is treated as a warranty, the damages may include any additional insurance premiums incurred (*Engman* v. *Palgrave, Brown & Son* (1898), 4 Com. Cas. 75).

(*o*) *Carnegie* v. *Conner* (1889), 24 Q. B. D. 45; *Jardine, Matheson & Co.* v. *Clyde Shipping Co.*, [1910] 1 K. B. 627; compare *Hassan* v. *Runciman & Co.* (1904), 10 Com. Cas. 19; *Societa Anonyma Ungherese* v. *Tyser Line, Ltd.* (1902), 8 Com. Cas. 25, where the shipowner expressly guaranteed the capacity; and p. 103, *post*. This stipulation must be construed with reference to the surrounding circumstances (*The "Norway"* (*Owners*) v. *Ashburner, The "Norway"* (1865), 3 Moo. P. C. C. (N. S.) 245; *Mackill* v. *Wright Brothers & Co.* (1888), 14 App. Cas. 106), and bunker space is not to be included (*The Resolven* (1892), 9 T. L. R. 75). If the ship is loaded and proceeds on her voyage with such cargo as she can carry, the stipulation must be treated as a warranty and not as a condition precedent (*Pust* v. *Dowie* (1864), 5 B. & S. 20).

(*p*) See p. 142, *post*. Where a representation is made which is not embodied in the charterparty, it may nevertheless be treated as a collateral

SECT. 1. Charter-parties.

repudiate the contract. The stipulation as to the classification of the ship amounts to a condition precedent that she is classed as described at the date of the charterparty (*q*). The charterer may, therefore, if the condition is broken, refuse to accept the ship (*r*); if he accepts her, he is nevertheless entitled to recover from the shipowner any damages which he may have sustained by reason of the misdescription, such as, for instance, increased premiums for insurance (*s*). The shipowner does not, however, by such stipulation undertake that his ship is entitled to her class as described (*t*), or that she will continue to retain it (*a*). The stipulation as to fitness must be distinguished from the implied condition that the ship is to be fit at the port of loading to carry the cargo (*b*); it refers only to the date of the charterparty (*c*), and is not to be regarded as a condition precedent (*d*) unless its breach wholly frustrates the object of the voyage (*e*). The stipulation as to the name of the master is not a condition (*f*); nor is that relating to the registered tonnage (*g*), unless the shipowner is guilty of fraud (*h*), or unless the difference amounts to a material misdescription (*i*).

(ii.) *As to the Voyage or Time.*

Voyage charter.

167. A voyage charter must necessarily define the termini of the voyage which the ship is chartered to perform. It must therefore specify the port of loading and the port of discharge (*k*); and in some cases the specification may include the dock or wharf at which the loading or unloading, as the case may be, is to take place (*l*). It is not, however, necessary that such ports should be named; the charterer may be empowered to order the ship to

verbal warranty, and damages may be awarded for its breach (*Hassan* v. *Runciman & Co.* (1904), 10 Com. Cas. 19).

(*q*) *French* v. *Newgass* (1878), 3 C. P. D. 163, C. A.; *Routh* v. *Macmillan* (1863), 2 H. & C. 750.

(*r*) *French* v. *Newgass, supra, per* BRETT, L.J., at p. 166; compare *Ollive* v. *Booker* (1847), 1 Exch. 416, *per* PARKE, B., at p. 423.

(*s*) *Routh* v. *Macmillan, supra.*

(*t*) *French* v. *Newgass, supra.*

(*a*) *Hurst* v. *Usborne* (1856), 18 C. B. 144; approved in *French* v. *Newgass, supra.*

(*b*) See p. 188, *post.* The implied condition is not excluded by reason of the presence in the charterparty of the express condition (*Seville Sulphur and Copper Co.* v. *Colvils, Lowden & Co* (1888), 15 R. (Ct. of Sess.) 616).

(*c*) *Scott* v. *Foley, Aikman & Co.* (1900), 5 Com. Cas. 53.

(*d*) *Tarrabochia* v. *Hickie* (1856), 1 H. & N. 183; *Hudson* v. *Hill* (1874), 43 L. J. (C. P.) 273. But the charterer may be entitled to damages (*Porter* v. *Izat* (1836), 1 M. & W. 381).

(*e*) *Tarrabochia* v. *Hickie, supra;* compare *Freeman* v. *Taylor* (1831), 8 Bing. 124.

(*f*) Compare Arnould, Marine Insurance, s. 174.

(*g*) *Hunter* v. *Fry* (1819), 2 B. & Ald. 421; *Barker* v. *Windle* (1856), 6 E. & B. 675, Ex. Ch.; *Gibbs* v. *Grey, Grey* v. *Gibbs* (1857), 2 H. & N. 22. A statement as to registered tonnage must be distinguished from a statement as to carrying capacity, as to which see p. 91, *ante.*

(*h*) *Hunter* v. *Fry, supra, per* ABBOTT, C.J., at p. 424.

(*i*) *Barker* v. *Windle, supra, per* MARTIN, B., at p. 180.

(*k*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 100, 106, 112.

(*l*) See *ibid.*, p. 100.

proceed to any port within certain limits specified in the charter-party (*m*).

Proceeding to port of loading.

168. It is usually stipulated that the ship shall with all possible despatch (*n*) proceed to the port of loading (*o*). This stipulation is not a condition precedent (*p*); hence, if the ship is unduly delayed on her voyage to the port of loading (*q*), or even if she deviates from the proper course of her voyage on her way to that port (*r*), the charterer is not necessarily discharged from his obligation to provide a cargo, though, in the absence of any exception excusing the delay (*s*) he is entitled to recover damages, inasmuch as there is a breach of contract on the part of the shipowner (*t*). Nevertheless, it is an implied condition of the contract that the ship shall arrive at her port of loading in time for the contemplated voyage (*a*). If, therefore, the effect of the delay (*b*) or deviation (*c*) is, in a commercial sense, to put an end to the commercial speculation entered into by the shipowner and the charterer, the charterer is discharged from his contract, and may, unless the shipowner is excused by the terms of the charterparty (*d*), sue for damages (*e*). Where the

(*m*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 112. As to the charterer's duty to designate the port selected, see pp. 178, 255, *post*.

(*n*) Other phrases are "with all convenient speed," "forthwith," "immediately." Compare *Bornmann* v. *Tooke* (1808), 1 Camp. 377 ("with the first favourable wind"); *The Onrust* (1867), 17 L. T. 415 ("direct").

(*o*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 100, 106, 111.

(*p*) *Bornmann* v. *Tooke, supra; Dimech* v. *Corlett* (1858), 12 Moo. P. C. C. 199; *Hudson* v. *Hill* (1874), 43 L. J. (C. P.) 273; *Potter (John) & Co.* v. *Burrell & Son*, [1897] 1 Q. B. 97, C. A.; compare *Deffell* v. *Brocklebank* (1821), 3 Bli. 561, H. L.

(*q*) *Forest Oak Steam Shipping Co.* v. *Richard* (1899), 5 Com. Cas. 100; *Roberts* v. *Brett* (1865), 11 H. L. Cas. 337.

(*r*) *Clipsham* v. *Vertue* (1843), 5 Q. B. 265; *MacAndrew* v. *Chapple* (1866), L. R. 1 C. P. 643, following *Boone* v. *Eyre* (1777), 1 Hy. Bl. 273, n., *Ritchie* v. *Atkinson* (1808), 10 East, 295, and *Davidson* v. *Gwynne* (1810), 12 East, 381.

(*s*) *Bruce* v. *Nicolopulo* (1855), 11 Exch. 129; *Barker* v. *M'Andrew* (1865), 18 C. B. (N. S.) 759, distinguishing *Crow* v. *Falk* (1846), 8 Q. B. 467, and *Valente* v. *Gibbs* (1859), 6 C. B. (N. S.) 270; *Harrison* v. *Garthorne* (1872), 26 L. T. 508; *Hudson* v. *Hill* (1874), 43 L. J. (C. P.) 273; compare *Donaldson Brothers* v. *Little & Co.* (1882), 10 R. (Ct. of Sess.) 413.

(*t*) *Clipsham* v. *Vertue, supra*; *MacAndrew* v. *Chapple, supra*.

(*a*) *Jackson* v. *Union Marine Insurance Co.* (1874), L. R. 10 C. P. 125, Ex. Ch., *per* BRAMWELL, B., at p. 145; *Clipsham* v. *Vertue, supra*; see p. 178, *post*.

(*b*) *Jackson* v. *Union Marine Insurance Co., supra; Geipel* v. *Smith* (1872), L. R. 7 Q. B. 404; *Hudson* v. *Hill, supra, per* BRETT, J., at p. 279.

(*c*) *Freeman* v. *Taylor* (1831), 8 Bing. 124; *MacAndrew* v. *Chapple, supra, per* WILLES, J., at p. 648.

(*d*) *Jackson* v. *Union Marine Insurance Co., supra; Smith* v. *Dart & Son* (1884), 14 Q. B. D. 105; *Barker* v. *M'Andrew, supra*.

(*e*) *Pope* v. *Bavidge* (1854), 10 Exch. 73 (where the charterparty provided for six successive voyages, within a specified period, and the shipowner was held liable in damages for not making more than three voyages, although his failure to do so was attributable to excepted perils); see also *Dunford & Co., Ltd.* v. *Cia Anonima Maritima Union* (1911), 16 Com. Cas. 181; and p. 178, *post*.

SECT. 1. Charter-parties.

charterparty contains a stipulation that the ship is to sail (*f*) for the port of loading, or to arrive there (*g*) by a named day, such stipulation is to be construed as a condition (*h*), and the shipowner is not excused for non-performance of the condition, even where attributable to an excepted peril (*i*). Moreover, where the stipulation provides that the ship is to arrive at the port of loading by a named day, otherwise the charterer to be discharged from his obligation to load (*k*), the shipowner must nevertheless use all reasonable despatch, and is liable in damages in case of deviation or delay, even though the ship in fact reaches the port of loading before the expiration of the time allowed (*l*).

The voyage.

169. After loading her cargo (*m*) the ship is usually required by an express stipulation to proceed with all possible despatch (*n*) to the port of discharge (*o*). This stipulation is a condition, the breach of which entitles the charterer to treat the charterparty (*p*) as at an end (*q*). The shipowner is no longer protected by any exception contained in the charterparty, but stands in the position of an insurer (*r*). In the event, therefore, of the cargo sustaining any loss or damage after the breach, he must accept all responsibility (*s*),

(*f*) As to the meaning of "sail," see pp. 219, 220, *post*. Sometimes the charterparty may impose a penalty if the ship fails to sail by a given date; see *Sharp* v. *Gibbs* (1857), 1 H. & N. 801; *Sparrow* v. *Paris* (1862), 7 H. & N. 594.

(*g*) As to the meaning of "arrival," see *Whites, etc.* v. *Steamship Winchester Co.* (1886), 13 R. (Ct. of Sess.) 524; and pp. 181 *et seq.*, *post*.

(*h*) *Shadforth* v. *Higgin* (1813), 3 Camp. 385; *Tarrabochia* v. *Hickie* (1856), 1 H. & N. 183; *Dimech* v. *Corlett* (1858), 12 Moo. P. C. C. 199; *Glaholm* v. *Hays* (1841), 2 Man. & G. 257; *Oliver* v. *Fielden* (1849), 4 Exch. 135. The stipulation cannot be construed as a condition if, at the time when the contract is made, both parties are aware that its performance is impossible (*Hall* v. *Cazenove* (1804), 4 East, 477).

(*i*) *Shubrick* v. *Salmond* (1765), 3 Burr. 1637; *Croockewit* v. *Fletcher* (1857), 1 H. & N. 893; compare *Van Baggen* v. *Baines* (1854), 9 Exch. 523. But the exception may be expressly made applicable to such a non-performance (*Granger* v. *Dent* (1829), Mood. & M. 475; *Barker* v. *M'Andrew* (1865), 18 C. B. (N. S.) 759).

(*k*) As to the charterer's option, and the shipowner's duty to proceed, even though he cannot possibly arrive to time, see p. 180, *post*.

(*l*) *M'Andrew* v. *Adams* (1834), 1 Bing. (N. C.) 29; compare *Smith* v. *Dart & Son* (1884), 14 Q. B. D. 105, where there was an option to cancel. The shipowner may, however, be protected by an exception (*Harrison* v. *Garthorne* (1872), 26 L. T. 508; compare *Smith* v. *Dart & Son*, *supra*).

(*m*) See pp. 177 *et seq.*, 218, *post*.

(*n*) See p. 93, *ante*.

(*o*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 100, 106, 112.

(*p*) *Thorley (Joseph), Ltd.* v. *Orchis Steamship Co., Ltd.*, [1907] 1 K. B. 660, C. A., distinguished in *Kish* v. *Taylor*, [1912] A. C. 604; *Balian & Sons* v. *Joly, Victoria & Co.* (1890), 6 T. L. R. 345, C. A. But he is not entitled to treat the contract of carriage as at an end (*Internationale Guano en Superphosphaatwerken* v. *Macandrew (Robert) & Co.*, [1909] 2 K. B. 360).

(*q*) *Leduc* v. *Ward* (1888), 20 Q. B. D. 475, C. A.

(*r*) *Ellis* v. *Turner* (1800), 8 Term Rep. 531 (where a limitation of liability to 10 per cent. of the loss was held to be inapplicable); *Leduc* v. *Ward*, *supra*; *The Dunbeth*, [1897] P. 133; *Thorley (Joseph), Ltd.* v. *Orchis Steamship Co., Ltd.*, *supra*.

(*s*) It has been suggested that his liability in such a case is absolute (*Thorley (Joseph), Ltd.* v. *Orchis Steamship Co., Ltd.*, *supra*, *per* FLETCHER MOULTON, L.J., at p. 669).

and it is immaterial whether the loss or damage is attributable to the breach or not (*t*).

Deviation.

170. In the performance of this condition, apart from any special stipulation in the charterparty, the ship must without unreasonable delay start upon her voyage (*a*), and proceed from the port of loading to the port of discharge by the ordinary sea route between such ports (*b*). Any departure from such route is a deviation which in the absence of some lawful excuse is a breach of the condition (*c*). The ship, therefore, is not at liberty to call at any intermediate ports except where it is customary on the particular voyage to do so (*d*); nor may she turn aside to tow a vessel in distress (*e*), or to salve property which is in danger of being lost by perils of the sea (*f*). Deviation is, however, excused, and no breach of the condition is committed, in the following cases, namely:—

Deviation to save life.

(1) Where it is for the purpose of saving life (*g*). The ship, therefore, may lawfully deviate for the purpose of communicating with a ship in distress, since danger to life may be involved (*h*). If the lives on board the ship in distress can be saved without saving the ship, as by taking them off, any attempt to save the ship will render the deviation a breach of the contract (*i*). If, however, the preservation of life can only be effected through the concurrent saving of property, and the *bonâ fide* purpose of saving life forms part of the motive which leads to the deviation, the privilege will not be lost by reason of the purpose of saving property having formed a second motive for deviating (*k*).

Deviation through stress of weather, or to avoid danger.

(2) Where the ship is driven out of her course by a storm, or where she is attempting to avoid imminent danger (*l*), such as, for instance, capture, whether by the enemies of the country to which the ship belongs (*m*), or by pirates (*n*), or ice (*o*). She may, therefore,

(*t*) *Davis* v. *Garrett* (1830), 6 Bing. 716; *Balian & Sons* v. *Joly, Victoria & Co.* (1890), 6 T. L. R. 345, C. A.; followed in *Thorley (Joseph), Ltd.* v. *Orchis Steamship Co., Ltd.*, [1907] 1 K. B. 660, C. A.

(*a*) *The Wilhelm* (1866), 14 L. T. 636; see, further, pp. 218 *et seq.*, *post.*

(*b*) *Davis* v. *Garrett, supra; Leduc* v. *Ward* (1888), 20 Q. B. D. 475, C. A.; *Evans Sons & Co.* v. *Cunard Steamship Co.* (1902), 18 T. L. R. 374.

(*c*) *Ellis* v. *Turner* (1800), 8 Term Rep. 531 (where the goods were carried past their destination, the master intending to deliver on the return voyage); *The Dunbeth*, [1897] P. 133.

(*d*) Abbott on Shipping, 5th ed., p. 239; 14th ed., p. 522; compare *Cormack* v. *Gladstone* (1809), 11 East, 347.

(*e*) *Scaramanga* v. *Stamp* (1880), 5 C. P. D. 295, C. A.

(*f*) *Ibid.*

(*g*) *Ibid.*, *per* COCKBURN, C.J., at p. 304.

(*h*) *Scaramanga* v. *Stamp, supra.*

(*i*) *Ibid.*

(*k*) *Ibid.*

(*l*) Abbott on Shipping, 5th ed., p. 239; 14th ed., p. 522. It is immaterial that the necessity for the deviation arises from the unseaworthiness of the ship (*Kish* v. *Taylor*, [1912] A. C. 604). As to the duty of the master where the cargo only is "in danger" or "endangered," see note (*s*), p. 227, *post.*

(*m*) *Pole* v. *Cetcovitch* (1860), 9 C. B. (N. S.) 430; *The "Teutonia"* (1872), L. R. 4 P. C. 171; *Anderson* v. *The "San Roman"* (*Owners*), *The "San*

(*n*), (*o*). For notes (*n*), (*o*), see p. 96, *post.*

SECT. 1. Charter-parties.

resort to a port of refuge, either for the purpose of sheltering from the storm or repairing any damage sustained (*p*), or for the purpose of avoiding the danger (*q*), but she must not remain at the port of refuge any longer than necessity requires (*r*).

Express stipulations as to deviation :

171. The stringency of the condition against deviation is usually modified by an express stipulation in the charterparty (*s*). Both delay and deviation are thus expressly permitted in certain specified cases, which are usually the following, namely :—

(1) liberty to call ;

(1) The ship is given liberty to call at any ports in any order (*t*). This stipulation does not confer on the ship liberty to call at any port in the world (*a*) ; it must be given a reasonable interpretation, and is therefore to be construed as referring to ports which are substantially ports which will be passed on the specified voyage, and which would naturally and usually be ports of call (*b*). The exercise of this liberty necessarily involves deviation, and it also involves delay, since the ship is entitled not merely to go into the port, but to remain there for some business purpose, such as, for instance, loading or unloading cargo or receiving orders (*c*).

(2) liberty to tow ;

(2) The ship is given liberty to tow and assist vessels in distress. Under this stipulation the ship may deviate (*d*), and even return on

Roman" (1873), L. R. 5 P. C. 301. An apprehension of capture founded on circumstances calculated to affect the mind of a master of ordinary courage, judgment, and experience, is sufficient (*Anderson* v. *The "San Roman"* (*Owners*), *The "San Roman"* (1873), L. R. 5 P. C. 301, 305 ; *The Wilhelm Schmidt* (1871), 25 L. T. 34). The danger may affect the ship only, not the goods (*The "Teutonia"* (1872), L. R. 4 P. C. 171). The master is not entitled to deviate where the shipowner has foreseen the danger and has given specific instructions to the master as to his course (*The Roebuck* (1874), 31 L. T. 274).

(*n*) *The "Teutonia," supra, per* MELLISH, L.J., at p. 179.

(*o*) *Ibid.*

(*p*) *Phelps, James & Co.* v. *Hill*, [1891] 1 Q. B. 605, C. A.

(*q*) *The Wilhelm Schmidt, supra ; The Express* (1872), L. R. 3 A. & E. 597 ; *The Heinrich* (1871), L. R. 3 A. & E. 424 ; see also *The Europa*, [1908] P. 84 ; *Kish* v. *Taylor*, [1912] A. C. 604.

(*r*) Abbott on Shipping, 5th ed., p. 240 ; 14th ed., p. 523.

(*s*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 102, 108, 114.

(*t*) If the words " in any order " are omitted, the ports must be called at in their geographical order (*Leduc* v. *Ward* (1888), 20 Q. B. D. 475, C. A., *per* Lord ESHER, M.R., at p. 481 ; compare *Gairdner* v. *Senhouse* (1810), 3 Taunt. 16). Calling at any port on the voyage may be prohibited (*Yrazu* v. *Astral Shipping Co.* (1904), 9 Com. Cas. 100, where an exception as to *force majeure* was held to be inapplicable).

(*a*) The clause may be so framed as to permit the shipowner to alter the destination of the ship, and to tranship the goods (*Hadji Ali Akbar & Sons, Ltd.* v. *Anglo-Arabian and Persian Steamship Co., Ltd.* (1906), 11 Com. Cas. 219).

(*b*) *Leduc* v. *Ward, supra, per* Lord ESHER, M.R., at p. 481 ; *Glynn* v. *Margetson & Co.*, [1893] A. C. 351 ; *White* v. *Granada Steamship Co.* (1896), 13 T. L. R. 1, C. A. ; *Evans, Sons & Co.* v. *Cunard Steamship Co.* (1902), 18 T. L. R. 374.

(*c*) *Leduc* v. *Ward, supra ; Caffin* v. *Aldridge*, [1895] 2 Q. B. 648, C. A. Where cargo has been taken on board by the shipowner for his own benefit, he is not at liberty to deviate for the purpose of discharging it (*The Dunbeth*, [1897] P. 133).

(*d*) *Potter* (*John*) *& Co.* v. *Burrell & Son*, [1897] 1 Q. B. 97, C. A.

her course (*e*), subject to certain limitations which have not yet been fully defined (*f*).

(3) The ship is given liberty to deviate for the purpose of saving property as well as life (*g*).

(3) liberty to save property.

172. Though the stipulation as to the ship proceeding to the port of loading is not a condition precedent of the contract, it imposes certain obligations on the shipowner (*h*). If, therefore, after the date of the charterparty (*i*) he sends the ship upon any voyage other than that to the port of loading, he is guilty of a breach of contract which entitles the charterer to recover damages (*j*), and in certain cases to repudiate the contract (*k*). It is not unusual, however, for the charterparty to contain a special stipulation authorising the shipowner to send the ship upon a preliminary voyage (*l*). This preliminary voyage is in effect the voyage to the port of loading, the ship having liberty to deviate for the purpose of calling at certain specified ports on the way either to take in or to discharge cargo for the shipowner's benefit (*m*).

Preliminary voyage.

173. Where the charterparty gives the charterer the option of ordering the ship to various ports of discharge, such ports may not always be situated within the same area. The risks of the voyage and the position of the parties may be materially altered according to the situation of the port to which the ship is actually ordered to proceed. It is, therefore, usual in such a case to specify in the charterparty the conditions under which the option is to be exercised by the charterer (*n*).

Option to name port of discharge.

174. A charterparty frequently contains a cancellation clause under which the charterer is given the option of cancelling the charterparty if the ship is not ready to load by a specified time (*o*).

Cancellation clause.

(*e*) *Stuart* v. *British and African Steam Navigation Co.* (1875), 32 L. T. 257; *Drain* v. *Henderson* (1860), 11 I. C. L. R. 497.

(*f*) *Stuart* v. *British and African Steam Navigation Co., supra.* A deviation which frustrates the object of the adventure is not within the stipulation (*Potter (John) & Co.* v. *Burrell & Son*, [1897] 1 Q. B. 97, C. A.).

(*g*) As in *Kish* v. *Taylor*, [1912] A. C. 604.

(*h*) See p. 93, *ante.*

(*i*) Where at the date of the charterparty the ship is, to the knowledge of the charterer, already engaged for a particular voyage, the charterparty is subject to such voyage (*Corkling* v. *Massey* (1873), L. R. 8 C. P. 395).

(*j*) *Clipsham* v. *Vertue* (1843), 5 Q. B. 265; *MacAndrew* v. *Chapple* (1866), L. R. 1 C. P. 643; *Engman* v. *Palgrave, Broun & Son* (1898), 15 T. L. R. 113; compare *McAndrew* v. *Adams* (1834), 1 Bing. (N. C.) 29.

(*k*) *Freeman* v. *Taylor* (1831), 8 Bing. 124; see pp. 178 *et seq.*, *post.*

(*l*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 106, 111.

(*m*) *Leduc* v. *Ward* (1888), 20 Q. B. D. 475, C. A.; compare *MacAndrew* v. *Chapple, supra*; *Hudson* v. *Hill* (1874), 43 L. J. (C. P.) 273.

(*n*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 112; compare *Sully* v. *Duranty* (1864), 3 H. & C. 270. As to the charterer's duty to name the port, see p. 255, *post.*

(*o*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 104. As to what is meant by readiness to load, see *Groves, Maclean & Co.* v. *Volkart Brothers* (1884), Cab. & El. 309; *Hick* v. *Tweedy & Co.* (1890), 63 L. T. 765; *Smith* v. *Dart & Son* (1884), 14 Q. B. D. 105; and see pp. 184, 185, *post.*

SECT. 1. Charter-parties.

This option is to be exercised when notice is given that the ship is ready to load (*p*). The clause does not, however, operate in derogation of the charterer's general right to repudiate the contract in case a condition is broken (*q*). Thus, where the ship has deviated or delayed on her voyage to the port of loading, and the object of the charterer is thereby wholly frustrated, he is entitled to repudiate the contract, notwithstanding that the ship in fact arrives and is placed at his disposal before the time specified (*r*).

Time charter.

175. A time charter (*s*) necessarily contains stipulations as to the term during which the charterparty is to be in force. These stipulations are usually to the following effect, namely (*t*):—

(1) The term is to run from the day on which the ship is placed at the charterer's disposal at a named port. In this case it is a condition precedent that she shall be placed at his disposal within a reasonable time after the making of the charterparty (*u*).

(2) The term is to run from a specified date. In this case it is a condition precedent that the ship is to be placed at the charterer's disposal on that date (*a*).

(3) The term is to run, alternatively, from a specified date or from so soon thereafter as the ship has been placed at the charterer's disposal at a named port. Where the stipulation is in this form the charterer cannot be compelled to accept the ship at an earlier date (*b*), nor can he repudiate the contract on the ground that she is not placed at his disposal on that date, since the shipowner is allowed a reasonable time thereafter within which to perform his contract (*c*).

Option to continue.

176. The charterer is usually given an option to continue the charterparty for a further term (*d*); and the shipowner is usually

(*p*) As to notice of readiness to load, see p. 186, *post*. The ship is, therefore, bound to proceed to the port of loading, although she cannot arrive in time (*Shubrick* v. *Salmond* (1765), 3 Burr. 1637), and the charterer cannot be required to exercise his option sooner (*Moel Tryvan* (*Owners*) v. *Weir* (1909), 15 Com. Cas. 61). The court will not, however, grant an injunction to restrain the shipowner from proceeding elsewhere (*Bucknall Brothers* v. *Tatem & Co.* (1900), 83 L. T. 121, C. A., distinguishing *De Mattos* v. *Gibson* (1859), 4 De G. & J. 276, C. A., and *Sevin* v. *Deslandes* (1860), 7 Jur. (N. S.) 837).

(*q*) See pp. 142, 143, *post*. It is immaterial that the delay is caused by an excepted peril (*Smith* v. *Dart & Son* (1884), 14 Q. B. D. 105), unless made specially applicable (*Granger* v. *Dent* (1829), Mood. & M. 475). Nor does the exercise of the option preclude the charterer from claiming damages for failure to send the ship (*Nelson* (*Thomas*) *& Sons* v. *Dundee East Coast Shipping Co., Ltd.*, [1907] S. C. 927).

(*r*) Compare *M'Andrew* v. *Adams* (1834), 1 Bing. (N. C.) 29

(*s*) The charterparty may provide for a series of ships at intervals: see *Potter* (*John*) *& Co.* v. *Burrell & Son*, [1897] 1 Q. B. 97, C. A.; *The Melrose Abbey* (1898), 14 T. L. R. 202.

(*t*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 93, 96.

(*u*) *Tully* v. *Howling* (1877), 2 Q. B. D. 182, C. A.

(*a*) *Mackenzie* v. *Liddell* (1883), 10 R. (Ct. of Sess.) 705 (delivery of the ship to the charterer at 2.30 p.m. on the day named held to be too late).

(*b*) Compare *Little* v. *Stevenson & Co.*, [1896] A. C. 108.

(*c*) Compare *Tully* v. *Howling*, *supra*.

(*d*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 95, 98;

given the right of withdrawing the ship from the charterer's service before the expiration of the term if the hire is not duly paid (*e*). Provision is also usually made for the cesser of hire in certain cases (*f*).

(iii.) *As to the Cargo.*

Description of cargo.

177. A charterparty, except where the ship is chartered as a general ship (*g*), usually contains a description of the cargo which is to be shipped (*h*). The description may be framed in general terms, as, for instance, where the cargo is described as "wheat," or it may go into details, and thus limit the application of the general words of description, as, for instance, where the cargo is described as "battens," and it is further stated what the dimensions of the battens are to be (*i*). In either case it is a condition of the contract that the charterer shall ship a cargo in accordance with the description (*k*). If, therefore, the cargo actually provided by the charterer does not, substantially at any rate, correspond with his description, the shipowner may refuse to accept it when tendered, since it is not the cargo which he contracted to carry (*l*). If, however, he accepts it in ignorance of its real character, he must be taken, in the absence of fraud, to have contracted to carry what was delivered to him (*m*), although he is presumably entitled to recover from his charterer any damages which he may have sustained by reason of the

Dunford & Co., Ltd. v. *Cia Anonima Maritima Union* (1911), 16 Com. Cas. 181, not following *Pope* v. *Bavidge* (1854), 10 Exch. 73. A stipulation may be made to extend the time where the ship does not complete her voyage at the end of the period for which she is chartered; in this case the charterer is not precluded from sending the ship upon a voyage which must necessarily extend beyond the period (*Dene Steam Shipping Co., Ltd.* v. *Bucknall Brothers* (1900), 5 Com. Cas. 372; compare *Bucknall Brothers* v. *Murray* (1900), 5 Com. Cas. 312; *Re S.S. Istok (Owners) and Drughorn* (1902), 7 Com. Cas. 190, C. A.), though such a stipulation is not necessary (*Gray & Co.* v. *Christie & Co.* (1889), 5 T. L. R. 577). The charterparty may, however, make the time specified for re-delivery of the essence of the contract (*Watson Steamship Co., Ltd.* v. *Merryweather & Co.* (1913), 108 L. T. 1031). The charterer is not responsible for the loss of the vessel, after the expiration of the charterparty, by the act of God (*Smith* v. *Drummond* (1883), Cab. & El. 160).

(*e*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 93, 98. It is not necessary to demand payment before withdrawing the ship (*Re Tyrer & Co. and Hessler & Co.* (1902), 7 Com. Cas. 166, C. A.). The right to withdraw may be lost by accepting payment after it is due (*S.S. Langford (Owners)* v. *Canadian Forwarding and Export Co.* (1907), 96 L. T. 559, P. C.), or by permitting the charterer to load the ship (*Nova Scotia Steel Co.* v. *Sutherland Steam Shipping Co.* (1899), 5 Com. Cas. 106), but not by the mere giving of time or by any acts of the master done in obedience to the charterer's orders (*Re Tyrer & Co. and Hessler & Co., supra*).

(*f*) See p. 105, *post.*

(*g*) See p. 100, *post.*

(*h*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 100, 106, 112.

(*i*) *Ibid.*, p. 107.

(*k*) *Steamship Isis Co.* v. *Bahr*, [1900] A. C. 340; *Holman & Sons* v. *Dasnières* (1886), 2 T. L. R. 607, C. A. As to the effect of a misdescription, where the bill of lading is qualified, see *Lebeau* v. *General Steam Navigation Co.* (1872), L. R. 8 C. P. 88.

(*l*) *Lebeau* v. *General Steam Navigation Co. supra, per* GROVE, J., at p. 97.

(*m*) *Ibid., per* BRETT, J., at p. 95.

SECT. 1. Charter-parties.

difference, such as, for example, the difference of freight, if any (*n*).

Option to select cargo.

178. The charterparty frequently gives the charterer an option to ship various kinds of cargo, which may be described as, for instance, "wheat and/or (*o*) seed and/or grain" (*p*). In this case the cargo tendered may be wholly composed of one of the specified kinds, or it may be a mixture of as many kinds as the charterer thinks fit, provided that the goods which make up the cargo correspond with the description in the charterparty (*q*). The only limitation upon the exercise of the option is that the cargo, whether all of one kind or not, must not be unreasonable as regards the nature of the goods which the charterer presents (*r*). The shipowner cannot complain of the manner in which the option has been exercised and claim damages on the ground that, if the charterer had exercised the option differently, the freight payable would have been greater (*s*). It is, therefore, not unusual to introduce a stipulation limiting the exercise of the option and specifying, in the case of those goods which are less profitable to the shipowner, the maximum amount which may be shipped (*t*).

General ship.

179. Where the ship is chartered as a general ship, or under a time charter, the charterparty is usually silent as to the kind of cargo which may be shipped, or describes it only as lawful merchandise (*a*). The charterer is in such case entitled to use the ship for the carriage of any goods within that description, provided that they are not forbidden by law to be shipped (*b*).

Dangerous goods.

The shipment of goods of a dangerous nature is not prohibited by law (*c*). If, therefore, the shipowner wishes to preclude the

(*n*) *Capper* v. *Forster* (1837), 3 Bing. (N. C.) 938.

(*o*) As to the effect of "and/or," see *Stanton* v. *Richardson* (1875), 3 Asp. M. L. C. 23, H. L., *per* Lord CAIRNS, L.C., at p. 24; *Cuthbert* v. *Cumming* (1855), 10 Exch. 809, *per* ALDERSON, B., at p. 814; affirmed, 11 Exch. 405, Ex. Ch.

(*p*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 112. Where the list of specified classes of goods concludes with general words of description, the *ejusdem generis* rule applies (*Warren* v. *Peabody* (1849), 8 C. B. 800; *Southampton Steam Colliery Co.* v. *Clarke* (1868), L. R. 4 Exch. 73, *per* KELLY, C.B., at p. 78; affirmed (1870), L. R. 6 Exch. 53, Ex. Ch.).

(*q*) *Moorsom* v. *Page* (1814), 4 Camp. 103; *Southampton Steam Colliery Co.* v. *Clarke, supra*; *Stanton* v. *Richardson, supra*.

(*r*) *Stanton* v. *Richardson, supra, per* Lord CAIRNS, L.C.

(*s*) *Moorsom* v. *Page, supra*; *Irving* v. *Clegg* (1834), 1 Bing. (N. C.) 53; *Southampton Steam Colliery Co.* v. *Clarke* (1870), L. R. 6 Exch. 53, Ex. Ch. As to broken stowage, see p. 103, *post*.

(*t*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 106.

(*a*) *Ibid.*, pp. 94, 98. "Lawful merchandise" means goods ordinarily shipped from the port of loading (*Vanderspar & Co.* v. *Duncan & Co.* (1891), 8 T. L. R. 30, where the term was held not to cover Government stores); compare *Warren* v. *Peabody, supra, per* MAULE, J., at p. 808, where "produce" was defined in similar terms; *Potter & Co.* v. *New Zealand Shipping Co.* (1895), 64 L. J. (Q. B.) 689, where a particular kind of cargo was contemplated, but not specified.

(*b*) Abbott on Shipping, 5th ed., p. 270; 14th ed., p. 643; compare *Cockburn* v. *Alexander* (1848), 6 C. B. 791. The charterer cannot excuse himself for a failure to ship the proper cargo by showing that he has put on board extra passengers (*Lewis* v. *Marshall* (1844), 7 Man. & G. 729).

(*c*) As to the statutory provisions relating to explosives and other goods

charterer from shipping such goods, he must insert a special stipulation in the contract (*d*). Goods, however, which those employed on the shipowner's behalf may not on inspection be reasonably expected to know to be of a dangerous nature (*e*) must not be shipped without notice (*f*); otherwise the charterer is responsible for any damage which may ensue (*g*). Where, on the other hand, the shipowner is acquainted with the nature of the goods, whether by notice from the charterer or otherwise, and consents to carry them, he takes the risk upon himself and cannot hold the charterer responsible (*h*).

Amount of cargo.

180. A charterparty usually contains a stipulation relating to the quantity of cargo which is to be shipped (*i*), since, in the absence of any such stipulation, the charterer cannot be compelled to ship any particular quantity (*k*). The stipulation may specify the weight or measurement of the cargo; in this case the obligation of the charterer to ship the exact quantity specified (*l*) is, in practice, modified by the introduction of qualifying words, such as "say about" or "more or less" (*m*). The effect of these words is to give

of a dangerous nature, see M. S. Act, 1894, ss. 446—449; Explosive Substances Act, 1883 (46 & 47 Vict. c. 3); p. 79, *ante*, p. 345, *post*; title EXPLOSIVES, Vol. XIV., pp. 384, 385.

(*d*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 98.

(*e*) It is immaterial that the charterer is not aware of the dangerous nature of the goods (*Bamfield* v. *Goole and Sheffield Transport Co., Ltd.*, [1910] 2 K. B. 94, C. A., discussing *Brass* v. *Maitland* (1856), 6 E. & B. 470, and *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A.); see, *contra*, *Williams* v. *East India Co.* (1802), 3 East, 192.

(*f*) *Brass* v. *Maitland, supra*; followed in *Farrant* v. *Barnes* (1862), 11 C. B. (N. S.) 553, 563; *Hutchinson* v. *Guion* (1858), 5 C. B. (N. S.) 149; compare *Alston* v. *Herring* (1856), 11 Exch. 822.

(*g*) *Brass* v. *Maitland, supra*; *Ohrloff* v. *Briscall, The "Helene"* (1866), L. R. 1 P. C. 231. A corresponding responsibility is imposed on a shipowner who carries dangerous goods without notice to the owners of the goods (*Dunn* v. *Bucknall Brothers*, *Dunn* v. *Donald Currie & Co.*, [1902] 2 K. B. 614, C. A.).

(*h*) *Acatos* v. *Burns, supra*, as explained in *Bamfield* v. *Goole and Sheffield Transport Co., Ltd., supra*; *Brass* v. *Maitland, supra*. But the shipowner cannot be called upon to adopt an extraordinary and expensive mode of stowage, and is entitled to assume that his shipper has taken every proper precaution to prevent dangerous consequences (*Ohrloff* v. *Briscall, The "Helene," supra*)

(*i*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 100, 106, 112. The charterer is not bound to provide ballast (*Moorsom* v. *Page* (1814), 4 Camp. 103; *Irving* v. *Clegg* (1834), 1 Bing. (N. C.) 53).

(*k*) *Thompson* v. *Small* (1845), 1 C. B. 328, *per* TINDAL, C.J., at p. 353; *James* (*Lady*) v. *East India Co.* (1789), cited in Abbott on Shipping, 5th ed., p. 279; 14th ed., p. 679.

(*l*) Abbott on Shipping, 14th ed., pp. 652 *et seq.*; *Cockburn* v. *Alexander* (1848), 6 C. B. 791; *Caffin* v. *Aldridge*, [1895] 2 Q. B. 648, C. A.

(*m*) See the cases cited *infra*. The contract may impose an outside limit "not exceeding" a specified quantity (*Jardine, Matheson & Co.* v. *Clyde Shipping Co.*, [1910] 1 K. B. 627). For a case in which an option was given to ship a further quantity, see *Shipton, Anderson & Co.* v. *Weil Brothers & Co.*, [1912] 1 K. B. 574 (where the option was to ship a further 8 per cent., and it was held that this was to be calculated upon the amount specified, and not upon that amount plus the margin allowed by the contract). The damages claimed for failure to furnish a full cargo are sometimes termed "dead freight." For the measure of damages see pp. 207 *et seq.*, *post*.

SECT. 1. Charter-parties.

the charterer a reasonable margin (*n*); he does not therefore break his contract by delivering a quantity greater or less than that specified, provided that, in spite of the difference in quantity, he does not exceed or fall short of the margin allowed (*o*). More usually the stipulation provides that the charterer is to ship a full and complete cargo (*p*). In this case, unless the capacity of the ship has been fraudulently misrepresented (*q*) or unless it is the subject of a condition (*r*), the charterer must provide a cargo which will fill the whole of the cargo space in the ship (*s*). He cannot, however, be called upon or claim the right to fill those parts of the ship in which it is not usual to carry cargo (*t*), although it may be possible to do so (*a*). Nor can he be required to ship the cargo packed in any other than the usual packages (*b*), or, where the space occupied in

(*n*) *Alcock* v. *Leeuw & Co.* (1883), Cab. & El. 98 (10 per cent.); *Miller* v. *Borner & Co.*, [1900] 1 Q. B. 691, distinguishing *Morris* v. *Levison* (1876), 1 C. P. D. 155 (3 per cent.); *Société Anonyme L'Industrielle Russo-Belge* v. *Scholefield* (1902), 7 Com. Cas. 114, C. A. (5 per cent.); *Jardine, Matheson & Co.* v. *Clyde Shipping Co.*, [1910] 1 K. B. 627. For a case in which a specific cargo was shipped, its quantity being wrongly described, see *Gibbs* v. *Grey*, *Grey* v. *Gibbs* (1857), 2 H. & N. 22, where it was held that freight was payable only on the quantity shipped.

(*o*) As to the effect of a stipulation to provide a full and complete cargo, specifying the quantity, see *Morris* v. *Levison, supra*; *Carlton Steamship Co.* v. *Castle Mail Packets Co.*, [1897] 2 Q. B. 485, C. A.; and compare *Potter* v. *New Zealand Shipping Co.* (1895), 1 Com. Cas. 114; *Caffin* v. *Aldridge*, [1895] 2 Q. B. 648, C. A., where the words "full and complete" were struck out.

(*p*) *Cuthbert* v. *Cumming* (1856), 11 Exch. 405, Ex. Ch.; *Lawson* v. *Burness* (1862), 1 H. & C. 396; *Furness* v. *Tennant, Sons & Co.* (1892), 8 T. L. R. 336, C. A.; and see the cases cited in the preceding and the following notes. The word "cargo" by itself means an entire loading of the vessel (*Borrowman* v. *Drayton* (1877), 2 Ex. D. 15, C. A.; *Jardine, Matheson & Co.* v. *Clyde Shipping Co., supra*), but is not equivalent to "full and complete" cargo (*Miller* v. *Borner & Co., supra*).

(*q*) *Hunter* v. *Fry* (1819), 2 B. & Ald. 421; *Thomas* v. *Clarke and Todd* (1818), 2 Stark. 450.

(*r*) *Barker* v. *Windle* (1856), 6 E. & B. 675, Ex. Ch.; compare *The "Norway"* (*Owners*) v. *Ashburner, The "Norway"* (1865), 3 Moo. P. C. C. (N. S.) 245.

(*s*) *Hunter* v. *Fry, supra*; *Steamship Heathfield Co.* v. *Rodenacher* (1896), 2 Com. Cas. 55, C. A.; compare *Barker* v. *Windle, supra*; *Thomas* v. *Clarke and Todd, supra*; see, further, pp. 191 *et seq.*, *post*. As to the effect of a fire destroying cargo after shipment, see pp. 201, 202, *post*.

(*t*) *Mitcheson* v. *Nicol* (1852), 7 Exch. 929; *Neill* v. *Ridley* (1854), 9 Exch. 677; *Jardine, Matheson & Co.* v. *Clyde Shipping Co., supra*, as reported (1910), 15 Com. Cas. 193, 200; compare *Gould* v. *Oliver* (1840), 2 Man. & G. 208. Freight is payable to the shipowner, if goods are so carried (*Mitcheson* v. *Nicol, supra*; *The "Ursula Bright" Steamship Co.* v. *Ripley* (1903), 8 Com. Cas. 171), even where the shipper has contracted with the charterers (*Neill* v. *Ridley, supra*), unless the charterer has been compelled by the shipowner to fill such spaces, and has filled them under protest (*Jardine, Matheson & Co.* v. *Clyde Shipping Co., supra*, where the charterer was held entitled to recover the freight back after payment).

(*a*) Thus, he is not entitled to the use of the cabins for passengers (*Shaw, Savill & Co.* v. *Aitken, Lilburn & Co.* (1883), Cab. & El. 195). As to deck cargo, see p. 205, *post*.

(*b*) *Benson* v. *Schneider* (1817), 7 Taunt. 273; *Cuthbert* v. *Cumming* (1856), 11 Exch. 405, Ex. Ch.; compare *Haynes* v. *Holliday* (1831), 7 Bing. 587.

proportion to weight varies according to the condition of the cargo, to tender it in any other than the normal condition of such cargoes at the season when it is shipped (*c*). If the cargo as shipped is a full and complete cargo, it is immaterial that there is a large space left which might have been filled if a different mode of packing had been adopted, or that more cargo could have been carried if the goods tendered had been more compressed (*d*). The stipulation may, however, provide that goods are to be shipped for broken stowage (*e*), in which case the charterer is bound to fill any space which may be left after the specified cargo has been shipped (*f*). On the other hand, if only a portion of the ship's cargo space is chartered, the shipowner is entitled to carry goods for his own profit in the remaining space (*g*). He is also entitled to ship goods in place of ballast, provided that he does not encroach upon the cargo space proper (*h*).

Duties of shipowner.

181. The shipowner in his turn must provide a ship capable of carrying the specified quantity of cargo (*i*). Where, however, the cargo supplied is so bulky that the specified quantity cannot be carried if proper methods of stowage are adopted, he cannot be required to adopt an improper method for the purpose of enabling the whole cargo to be taken on board (*k*).

(iv.) *As to the Freight or Hire.*

Voyage charter.

182. A voyage charter may contain various stipulations as to freight (*l*). The stipulation may provide for the payment of a lump sum as freight (*m*). Such sum is not, strictly speaking, freight at all, but is in the nature of a rent for the use and hire of the ship on the agreed voyage (*n*). It is, therefore, payable irrespective of the quantity of cargo put on board (*o*) or delivered (*p*). Except

(*c*) *Steamship Isis Co.* v. *Bahr*, [1900] A. C. 340 (wet wood pulp frozen).

(*d*) *Cuthbert* v. *Cumming* (1856), 11 Exch. 405, Ex. Ch.; *Furness* v. *Tennant, Sons & Co.* (1892), 8 T. L. R. 336, C. A.; *Steamship Isis Co.* v. *Bahr, supra.*

(*e*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 106. Where the charterer has an option as to what kind of cargo he will supply, the stipulation as to broken stowage may apply to one kind of cargo and not to another (*Duckett* v. *Satterfield* (1868), L. R. 3 C. P. 227).

(*f*) *Cole* v. *Meek* (1864), 15 C. B. (N. S.) 795.

(*g*) *Caffin* v. *Aldridge*, [1895] 2 Q. B. 648, C. A.

(*h*) *Towse* v. *Henderson* (1850), 4 Exch. 890.

(*i*) A guarantee of the ship's carrying capacity in general terms is not to be construed as applying to a particular kind of cargo (*Carnegie* v. *Conner* (1889), 24 Q. B. D. 45).

(*k*) *Mackill* v. *Wright Brothers & Co.* (1888), 14 App. Cas. 106.

(*l*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 100, 107, 113.

(*m*) As to lump freight, see, further, pp. 310, 311, *post.*

(*n*) *The "Norway"* (*Owners*) v. *Ashburner, The "Norway"* (1865), 3 Moo. P. C. C. (N. S.) 245.

(*o*) *Robinson* v. *Knights* (1873), L. R. 8 C. P. 465; *Blanchet* v. *Powell's Llantivit Collieries Co.* (1874), L. R. 9 Exch. 74, where the consignee was held liable to pay full freight, though the quantity stated in the bill of lading was incorrect.

(*p*) *The "Norway"* (*Owners*) v. *Ashburner, The "Norway," supra; Merchant Shipping Co.* v. *Armitage* (1873), L. R. 9 Q. B. 99, Ex. Ch.; and see *Harrowing S.S. Co.* v. *Thomas*, [1913] 2 K. B. 171, C. A.

SECT. 1. Charter-parties.

where the freight is a lump sum, the charterparty specifies the rate at which the freight is payable, and the unit of weight or measurement upon which the amount payable is to be calculated (*q*). Different rates of freight are usually specified where the cargo is to be composed of different kinds of goods (*r*), or where the charterer has the option of ordering the ship to ports in different areas (*s*). Since, in the absence of any stipulation to the contrary, freight is payable on the cargo as delivered (*t*), and is not due until delivery (*a*), provision may be made for freight to be payable on the cargo as shipped (*b*), and also for the payment of at least a portion in advance (*c*). In any case, it is usually provided that sufficient cash for the ship's ordinary disbursements (*d*) is to be advanced to the master, if required by him at the port of loading; such advance, which is to be free of interest and commission, is to be deducted from the freight with the cost of insurance thereon (*e*). The charterparty may expressly provide that the freight is to be in full of trimming and of all port charges, pilotages, and consulages on the ship (*f*).

Time charter.

183. A time charter usually provides for the payment of a stipulated sum per month (*g*) as the hire of the chartered ship (*h*). It is usually provided that the hire, or, as it is often called, the freight, is to be paid in advance (*i*); otherwise the ship may be

(*q*) See p. 308, *post*.

(*r*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 103, 113. Special provision is usually made, when cattle are to be carried, as to the carriage of the necessary fodder (*Holland & Co.* v. *Pritchard & Co.* (1896), 12 T. L. R. 480; *British and South American Steamship Co.* v. *Anglo-Argentine Live Stock and Produce Agency* (1902), 18 T. L. R. 382).

(*s*) *Gibbens* v. *Buisson* (1834), 1 Bing. (N. C.) 283; *Fenwick* v. *Boyd* (1846), 15 M. & W. 632; *Newman and Dale* v. *Lamport and Holt*, [1896] 1 Q. B. 20; see Encyclopædia of Forms and Precedents, Vol. XIV., p. 112.

(*t*) See pp. 307, 308, *post*.

(*a*) See p. 303, *post*.

(*b*) See p. 310, *post*; compare Encyclopædia of Forms and Precedents, Vol. XIV., p. 100.

(*c*) See pp. 103, 311, *post*.

(*d*) For a special agreement relating to bonuses payable to officers and men, see *Miles* v. *Haslehurst & Co.* (1906), 23 T. L. R 142, where the telegram authorising the master to pay the bonuses was framed in ambiguous terms and the charterers were held bound by the construction placed upon the telegram by the master.

(*e*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 107, 114. As to when such advances are to be treated as payments on account of freight, see p. 313, *post*.

(*f*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 101. This stipulation is, however, unnecessary; see p. 218, *post*. For special stipulations throwing port charges and pilotages on the charterer, see *Faith* v. *East India Co.* (1821), 4 B. & Ald. 630; *Newman and Dale* v. *Lamport and Holt*, [1896] 1 Q. B. 20. For loading expenses generally, see p. 218, *post*.

(*g*) This is a calendar month (*Jolly* v. *Young* (1794), 1 Esp. 186); see title TIME, Vol. XXVII., p. 437. Where freight is made payable in proportion for part of a month, a fraction of a day is to be reckoned as a whole day (*Angier Brothers* v. *Stewart Brothers* (1884), Cab. & El. 357).

(*h*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 93, 97.

(*i*) A full month's payment must be made in advance, even though the ship will in all probability be redelivered to the shipowner before the

withdrawn by the shipowner (*k*). The charter usually provides that if the ship is lost, any freight paid in advance and not earned (*l*), reckoning from the date of the loss, is to be returned to the charterer (*m*). If, however, the ship is not lost, but merely delayed, the hire continues to be payable, notwithstanding the loss of time (*n*), unless the delay is attributable to the shipowner's default (*o*), or to some excepted cause (*p*). It is usually stipulated that, in the event of time being lost for more than twenty-four hours through the breakdown of machinery or damage preventing the working of the ship or her tackle (*q*), payment of freight is, except in certain specified cases (*r*), to cease until the ship is in an efficient state to resume her service (*s*).

(v.) *As to Signing Bills of Lading.*

Signing bills of lading.

184. A voyage charter frequently provides for the use of a

expiration of the month (*Tonnelier and Bolckow, Vaughan & Co.* v. *Smith, Weatherill & Co.* (1897), 2 Com. Cas. 258, C. A. (where the stipulation provided for a proportionate payment for part of a month); compare *Reindeer Steamship Co.* v. *Forslind & Son* (1908), 13 Com. Cas. 214, C. A.).

(*k*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 93, 98; pp. 98, 99, *ante*. On withdrawal the shipowner is only entitled to claim freight for the time during which the ship was actually in the charterer's service (*Wehner* v. *Dene Steam Shipping Co.*, [1905] 2 K. B. 92).

(*l*) As to when the freight is not earned, see *Gibbon* v. *Mendez* (1818), 2 B. & Ald. 17, where it was held that no freight was earned if the ship never reached her first port abroad, the charterparty providing for the first payment of freight within ten days after arrival at such port; *Smith* v. *Wilson* (1807), 8 East, 437; *Mackrell* v. *Simond and Hankey* (1776), cited in Abbott on Shipping, 5th ed., p. 332; 14th ed., p. 743; 2 Chit. 666.

(*m*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 95, 98.

(*n*) *Havelock* v. *Geddes* (1809), 10 East, 555 (repairs); *Ripley* v. *Scaife* (1826), 5 B. & C. 167 (repairs); *Moorsom* v. *Greaves* (1811), 2 Camp. 627 (blockade); *Inman Steamship Co.* v. *Bischoff* (1882), 7 App. Cas. 670; *Hough & Co.* v. *Head* (1885), 54 L. J. (Q. B.) 294 (where a stipulation providing for cesser of hire was held not to apply to the particular cause of delay; affirmed on other grounds, 55 L. J. (Q. B.) 43, C. A.); *Brown* v. *Turner, Brightman & Co.*, [1912] A. C. 12.

(*o*) Abbott on Shipping, 5th ed., p. 280; 14th ed., p. 679.

(*p*) *Aktieselskabet et "Lina"* v. *Turnbull & Co.*, [1907] S. C. 507.

(*q*) *Burrell & Sons* v. *Green (F.) & Co.*, [1914] 1 K. B. 293. Where the breakdown does not extend to the ship's tackle hire will be payable in respect of the time occupied in discharging the ship, although, in consequence of the breakdown, no hire is due in respect of the time occupied on the voyage (*Hogarth* v. *Miller, Brother & Co.*, [1891] A. C. 48, where the ship was towed from Las Palmas to Harburg). In that case, however, there was a special arrangement as to the expenses of towage, and it was suggested that if the shipowner had himself provided the tug, he might have been able to claim on a *quantum meruit* as for a substituted service (*ibid., per* Lord WATSON, at p. 60, and *per* Lord HERSCHELL, at p. 64); see also *The Durham City* (1889), 14 P. D. 85; *Giertsen* v. *Turnbull & Co.*, [1908] S. C. 1101.

(*r*) Compare *Re Traae and Lennard & Sons, Ltd.*, [1904] 2 K. B. 377, C. A., where a special stipulation provided that detention by ice was to be for account of charterer unless caused by breakdown of steamer, and it was held that the inability of the ship to reach her port of destination before it was closed by ice, owing to the necessity of repairs through damage on the voyage, was caused by breakdown, and therefore the cesser of hire clause applied.

(*s*) *Fraser and White* v. *Bee* (1900), 17 T. L. R. 101 (where pilotage was payable by the charterers, and it was held to be immaterial that the damage was due to the pilot's negligence); and see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 94, 97; compare *Beatson* v. *Schanck* (1803),

SECT. 1. Charter-parties.

specified form of bill of lading (*t*). It is usually stipulated that the bill of lading is to be signed subject to the qualification that the quality, condition and weight or quantity of the cargo shipped is unknown (*u*); where, however, the stipulation is that the master is to give a clean bill of lading, no qualifications may be inserted (*v*). The conditions (*a*) of the charterparty may be expressly incorporated into the bill of lading (*b*); and provision may be made for the number of sets of bills of lading which the master may be required to sign (*c*), and for the signing of the bills of lading within a specified time (*d*).

Provisions as to freight.

185. As the master cannot, in the absence of express stipulation, be required to insert in the bill of lading a less rate of freight than that reserved by the charterparty (*e*), it is not unusual, where the charterer intends to sublet the ship or to employ her in the carriage of goods belonging to third persons, to provide that the master is to sign bills of lading at any rate of freight without prejudice to the charterparty (*f*). The object of this provision is to facilitate the handling of the cargo by the issue of bills of lading direct to the shippers (*g*), and to prevent the inconvenience which exists where the charterer takes a bill of lading to himself from the master and issues his own bills of lading to the shippers (*h*). It becomes necessary, under such a provision, in the interests of the shipowner either to stipulate for the payment in advance of the difference, where the bill of lading freight is less than the chartered

3 East, 233. After the ship having put back for repairs becomes efficient, hire is payable for the voyage from the port of repairs to the place where the accident happened (*Vogeman* v. *Zanzibar Steamship Co., Ltd.* (1902), 7 Com. Cas. 254, C. A.; compare *Re Traae and Lennard & Sons, Ltd.*, [1904] 2 K. B. 377, C. A.).

(*t*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 102, 108, 118. As to bills of lading generally, see pp. 144 *et seq.*, *post.*

(*u*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 102, 108. As to the effect of this qualification, see p. 156, *post.*

(*v*) See p. 151, *post.*

(*a*) The exceptions of the charterparty (*Serraino & Sons* v. *Campbell*, [1891] 1 Q. B. 283, C. A.; *Diederichsen* v. *Farquharson Brothers*, [1898] 1 Q. B. 150, C. A.), or other stipulations (*Gardner* v. *Trechmann* (1884), 15 Q. B. D. 154; *Gullischen* v. *Stewart Brothers* (1884), 13 Q. B. D. 317, C. A.), are not incorporated, unless the stipulation expressly so provides (*The Northumbria*, [1906] P. 292); see pp. 176, 177, *post.* For a form of stipulation incorporating the exceptions and other stipulations of the charterparty, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 108.

(*b*) See *ibid.*, p. 102. As to incorporation of the charterparty in the bill of lading, see, further, pp. 175 *et seq.*, *post.*

(*c*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 109. As to sets of bills of lading, see p. 151, *post.*

(*d*) For a breach of this stipulation the charterer is only entitled to recover the actual damage sustained, notwithstanding that a fixed sum is made payable for each day that the bill of lading remains unsigned (*Jones* v. *Hough* (1879), 5 Ex. D. 115, C. A.; *The Princess* (1894), 70 L. T. 388; *Rayner* v. *Rederiaktiebolaget Condor*, [1895] 2 Q. B. 289).

(*e*) *Hyde* v. *Willis* (1812), 3 Camp. 202. As to the authority of the master to sign bills of lading generally, see pp. 153 *et seq.*, 173 *et seq.*, *post.*

(*f*) As to the effect of this stipulation, see p. 174, *post.*

(*g*) As to the effect of a bill of lading issued direct to the shipper, see pp. 168, 169, *post.*

(*h*) *Herman* v. *Royal Exchange Shipping Co. and Patton, Junr. & Co.* (1884), Cab. & El. 413. As to the effect of a stipulation that the master is to be the charterer's agent in signing bills of lading, see *Harrison* v. *Huddersfield Steamship Co.* (1903), 19 T. L. R. 386; and see p. 175, *post.*

freight (*i*), or to give him a lien for the chartered freight over all goods carried and over all freights payable to the charterer (*k*). The charterer may also be required by an express stipulation to indemnify the shipowner from all consequences or liabilities that may arise from the master signing bills of lading or in complying with them (*l*).

(vi.) *As to Excepted Perils Relieving the Shipowner.*

Extent of shipowner's liability.

186. Since the shipowner is, at common law, responsible as an insurer for the safety of the goods carried on his ship, except where his failure to carry safely is attributable to the act of God or the King's enemies, or to an inherent defect in the goods, or to the default of their owner (*m*), it is usual for the charterparty to contain an express stipulation specifying certain perils as excepted from the contract (*n*). The effect of this stipulation is to relieve the shipowner from responsibility either for the safety of the goods or for the performance of the contract of carriage (*o*), whenever loss or damage is occasioned to cargo or the performance of the contract is

(*i*) *Byrne* v. *Schiller* (1871), L. R. 6 Exch. 319, Ex. Ch.; *Gardner* v. *Trechmann* (1884), 15 Q. B. D. 154, C. A.; compare *Carr* v. *Wallachian Petroleum Co., Ltd.* (1867), L. R. 2 C. P. 468, Ex. Ch., where the charterers, being unable to supply a cargo, guaranteed a specified sum if the ship was employed elsewhere, and were held liable notwithstanding the loss of the ship; *Anderson, Anderson & Co.* v. *English and American Shipping Co., Ltd., and Bowring (C. J.) & Co.* (1895), 1 Com. Cas. 85.

(*k*) Such a stipulation is not binding on third parties unless incorporated in the bill of lading (*Turner* v. *Haji Goolam Mahomed Azam*, [1904] A. C. 826, P. C.). Notice of the charterparty is not sufficient (*Chappel* v. *Comfort* (1861), 10 C. B. (N. S.) 802), or even a reference to the rate of freight fixed thereby (*Fry* v. *Chartered Mercantile Bank of India* (1866), L. R. 1 C. P. 689; *Gardner* v. *Trechmann*, *supra*); see p. 176, *post*.

(*l*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 99. If, therefore, the charterparty contains a negligence clause, and the charterer presents bills of lading which do not contain a negligence clause, the charterer must indemnify the shipowner against any loss occasioned by the omission of the negligence clause (*Milburn & Co.* v. *Jamaica Fruit Importing and Trading Co. of London*, [1900] 2 Q. B. 540, C. A.). The stipulation does not, however, apply where the loss is occasioned by the original unseaworthiness of his ship (*Park* v. *Duncan & Son* (1898), 25 R. (Ct. of Sess.) 528).

(*m*) *Liver Alkali Co.* v. *Johnson* (1874), L. R. 9 Exch. 338, Ex. Ch.; *Nugent* v. *Smith* (1876), 1 C. P. D. 423, C. A.; *Hill* v. *Scott*, [1895] 2 Q. B. 371; see p. 325, *post*. He may by public notice limit his liability (*Evans* v. *Soule* (1813), 2 M. & S. 1; *Phillips* v. *Edwards* (1859), 3 H. & N. 813). As to railway companies carrying goods by sea, see titles CARRIERS, Vol. IV., pp. 28, 29, 36; RAILWAYS AND CANALS, Vol. XXIII., p. 636; *Western Electric Co.* v. *Great Eastern Rail. Co.*, [1913] 3 K. B. 15.

(*n*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 96, 99, 102, 108, 116. The implied warranty of seaworthiness (as to which see pp. 186 *et seq.*, 211 *et seq.*, *post*) is not excluded by reason of the exceptions (*Steel* v. *State Line Steamship Co.* (1877), 3 App. Cas. 72, followed in *Gilroy, Sons & Co.* v. *Price & Co.*, [1893] A. C. 56; *Tattersall* v. *National Steamship Co.* (1884), 12 Q. B. D. 297; *The Glenfruin* (1885), 10 P. D. 103; *Ship "Maori King"* (*Owners of Cargo*) v. *Hughes*, [1895] 2 Q. B. 550, C. A.), but it may be expressly modified (*Cargo ex Laertes* (1887), 12 P. D. 187). Sometimes the contract excludes liability except for certain specified perils (*East India Co.* v. *Tod* (1788), 1 Bro. Parl. Cas. 405).

(*o*) The onus of proving that an exception applies rests on the shipowner (*Taylor* v. *Liverpool and Great Western Steam Co.* (1874), L. R. 9 Q. B. 546).

SECT. 1. Charter-parties.

prevented (*p*) by reason of any of the perils therein specified (*q*). The perils which are usually (*r*) excepted from the contract are the act of God, the King's enemies, restraints of princes and rulers, perils of the seas, fire, barratry, pirates, collisions, strandings and accidents of navigation, but defects, leakages and breakages, and negligence of servants are also in practice frequently excepted.

Act of God.

187. The act of God. Though this exception is implied at common law (*s*), it is generally inserted in the stipulation, probably to prevent any possibility of the inference being drawn, from its omission from a list of excepted perils, that the parties did not intend to include it (*t*). It denotes natural accidents, such as lightning, earthquake and tempest (*a*). To exempt the shipowner, he must show that the accident was due to natural causes directly and exclusively, and not to human intervention (*b*), and that it could not have been prevented by any amount of foresight, pains, and care reasonably to be expected from him (*c*).

King's enemies.

188. The King's enemies. This exception is also implied at common law (*d*), but is in practice always inserted in the stipulation. It applies only to the acts of public enemies, that is to say, hostile acts committed by the forces of a state at war with the United Kingdom (*e*), or, if the ship chartered is a foreign ship, with the country to which the ship belongs (*f*).

(*p*) Prevention by any other cause not excepted in the contract is insufficient (*The Patria* (1872), L. R. 3 A. & E. 436). It is, further, the duty of the shipowner to repair the damage and proceed if possible, notwithstanding the happening of an excepted peril (*Assicurazioni Generali* v. *S.S. Bessie Morris Co.*, [1892] 2 Q. B. 652, C. A.; see p. 222, *post*).

(*q*) As to the application of the doctrine of proximate cause, see pp. 232, 233, *post*; as to when the excepted perils begin to be operative, see p. 202, *post*. This list of perils should be compared with the perils enumerated in title INSURANCE, Vol. XVII., pp. 432 *et seq.*

(*r*) It is impossible to deal in detail with all the varieties of exceptions which may be introduced to meet particular cases. Such exceptions as have been judicially considered, apart from those referred to in the text, *supra*, and pp. 109—118, *post*, are dealt with in connexion with the duties of the shipowner which they modify. As to the exceptions relieving the charterer, see pp. 129 *et seq.*, *post*.

(*s*) *Nugent* v. *Smith* (1876), 1 C. P. D. 423, C. A.; Abbott on Shipping, 5th ed., p. 251; 14th ed., p. 577; *Thompson* v. *Brown* (1817), 7 Taunt. 656; and see titles CONTRACT, Vol. VII., pp. 428, 429; NEGLIGENCE, Vol. XXI., pp. 467, 468; TORT, Vol. XXVII., pp. 492 *et seq.*

(*t*) As to the application of the maxim "*expressum facit cessare tacitum*," see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 442.

(*a*) Abbott on Shipping, 5th ed., p. 251; 14th ed., p. 577. A leak caused by rats is not within the exception (*Dale* v. *Hall* (1750), 1 Wils. 281), nor is a loss which is attributable to the sweating of the cargo (*The Barcore*, [1896] P. 294).

(*b*) The exception does not apply where, though the loss is occasioned by the act of God, the efficient cause, without which the act of God would have been inoperative, was negligence (*Siordet* v. *Hall* (1828), 4 Bing. 607); and see title NEGLIGENCE, Vol. XXI., pp. 467 *et seq.*

(*c*) *Nugent* v. *Smith*, *supra*, *per* JAMES, L.J., at p. 444.

(*d*) Abbott on Shipping, 5th ed., p. 251; 14th ed., p. 577.

(*e*) It therefore does not apply to confiscation in time of peace (*Spence* v. *Chodwick* (1847), 10 Q. B. 517).

(*f*) *Russell* v. *Niemann* (1864), 17 C. B. (N. S.) 163; compare *Reid* v. *Hoskins*, *Avery* v. *Bowden* (1856), 6 E. & B. 953, 962, Ex. Ch., where a special stipulation in a charterparty between two British subjects providing for what was to be done "in case of war having commenced" was held

Restraints of princes and rulers.

189. Restraints of princes and rulers. This exception includes every case in which the voyage is interrupted by lawful authority (*g*). It therefore applies to seizure of the ship or cargo or of both by the government either of the United Kingdom or of a friendly country for state purposes (*h*). It is not, however, necessary to prove an actual seizure (*i*). It is sufficient if the performance of the contract is rendered impossible by an embargo (*k*), or by a prohibition against landing the cargo (*l*), or otherwise by any intervention of the forces of the government concerned, such as, for instance, in the case of war breaking out between two friendly states, a blockade at the port of discharge, whereby it becomes useless to send the ship to the port of loading (*m*), or a siege, by which it is rendered impossible to carry the cargo to its destination (*n*). The exception does not, however, apply where performance becomes impossible by means of the act or decision of any court or judicial tribunal (*o*); nor does it apply, even where the word "people" is included, to the plundering of the cargo by a mob, since the word "people" is to be construed in connexion with the other words of the exception, and means the supreme power of the country (*p*).

not to apply to the commencement of war between two foreign states. In all probability it does not apply to the acts of pirates (*Russell* v. *Niemann*, (1864), 17 C. B. (N. S.) 163, *per* BYLES, J., at p. 175; compare *Forward* v. *Pittard* (1785), 1 Term Rep. 27, *per* Lord MANSFIELD, C.J., at p. 34).

(*g*) *Russell* v. *Niemann*, *supra*, *per* BYLES, J., at p. 175; *Bruce* v. *Nicolopulo* (1855), 11 Exch. 129. Civil war is within the exception (*Smith and Service* v. *Rosario Nitrate Co.*, [1894] 1 Q. B. 174, C. A.), but not, apparently, an unauthorised seizure by government officials (*Evans* v. *Hutton* (1842), 5 Scott (N. R.), 670). Delay in quarantine does not fall within the exception (*Aktieselskabet et "Lina"* v. *Turnbull & Co.*, [1907] S. C. 507).

(*h*) *Crew, Widgery & Co.* v. *Great Western Steamship Co.*, [1887] W. N. 161. But a seizure due to the negligence of the shipowner in taking on board prohibited goods is not within the exception (*Dunn* v. *Bucknall Brothers, Dunn* v. *Donald Currie & Co.*, [1902] 2 K. B. 614, C. A.). On the other hand, if the contract does not contain any such exception, the shipowner is liable, even though there is no ground for the seizure (*Gosling* v. *Higgins* (1808), 1 Camp. 451).

(*i*) See the cases cited in notes (*k*)—(*n*), *infra*.

(*k*) *Rotch* v. *Edie* (1795), 6 Term Rep. 413.

(*l*) *Aubert* v. *Gray* (1861), 3 B. & S. 163; *Miller* v. *Law Accident Insurance Co.*, [1903] 1 K. B. 712, C. A. There must be an actual prohibition, not merely a belief in its existence (*Brunner* v. *Webster* (1900), 5 Com. Cas. 167).

(*m*) *Geipel* v. *Smith* (1872), L. R. 7 Q. B. 404. A reasonable apprehension of seizure is sufficient (*Anderson* v. *The "San Roman"* (*Owners*), *The "San Roman"* (1873), L. R. 5 P. C. 301; *Nobel's Explosives Co.* v. *Jenkins & Co.*, [1896] 2 Q. B. 326). On the other hand a contract to run a blockade is not unlawful (*The Helen* (1865), L. R. 1 A. & E. 1), and an action may be brought for its breach, the measure of damages depending upon whether, in the opinion of the jury, the blockade could have been successfully run (*Medeiros* v. *Hill* (1832), 8 Bing. 231).

(*n*) *Rodoconachi* v. *Elliott* (1874), L. R. 9 C. P. 518, Ex. Ch.

(*o*) *Finlay* v. *Liverpool and Great Western Steamship Co.* (1870), 23 L. T. 251; *Crew, Widgery & Co.* v. *Great Western Steamship Co.*, *supra*; compare *Spence* v. *Chodwick* (1847), 10 Q. B. 517; *Benson* v. *Duncan* (1849), 3 Exch. 644, Ex. Ch. The sentence of a Prize Court is in a different category (*Stringer* v. *English and Scottish Marine Insurance Co.* (1870), L. R. 5 Q. B. 599, Ex. Ch.), unless it is subsequently reversed (*Hocquard* v. *R.*, *"The Newport"* (1858), 6 W. R. 310, P. C.). As to Prize Courts, see title PRIZE LAW AND JURISDICTION, Vol. XXIII., pp. 285 *et seq.*

(*p*) *Nesbitt* v. *Lushington* (1792), 4 Term Rep. 783.

SECT. 1. Charter-parties.

Perils of the seas.

190. Perils of the seas (*q*). This exception applies in the first instance wherever there is loss or damage to goods caused by the action of the sea (*r*) during transit, which is not attributable to the fault of anybody (*s*). There must, however, be some casualty, something which could not be foreseen as one of the necessary incidents of the voyage (*t*). The exception does not, therefore, cover every loss or damage of which the sea is the immediate cause (*a*). Thus, it does not protect against that natural and inevitable action of the winds and waves which results in what may be described as wear and tear (*b*). Nor does it apply where the loss does not take place at sea (*c*), or where, though the loss takes place at sea, the sea, or the fact that the ship is at sea, has nothing to do with the loss (*d*).

(*q*) The phrase "perils of the seas" has the same meaning as in a policy of marine insurance (*Thames and Mersey Marine Insurance Co.* v. *Hamilton, Fraser & Co.* (1887), 12 App. Cas. 484; *Wilson, Sons & Co.* v. *The "Xantho"* (*Owners of Cargo*) (1887), 12 App. Cas. 503; *Hamilton, Fraser & Co.* v. *Pandorf & Co.* (1887), 12 App. Cas. 518); see, further, title INSURANCE, Vol. XVII., pp. 432 *et seq.*

(*r*) The burden of proof rests on the shipowner (*Beckford* v. *Clerke* (1666), 1 Keb. 830; *Wilson, Sons & Co.* v. *The "Xantho"* (*Owners of Cargo*), *supra*). The exception does not apply to rivers and canals (Abbott on Shipping, 5th ed., p. 257), unless the words "rivers and canals" are included (Phillips on Insurance, s. 1099); for an express exception of "rivers," see *Pyman* v. *Burt* (1884), Cab. & El. 207; and compare *De Rothschild* v. *Royal Mail Steam Packet Co.* (1852), 7 Exch. 734. It, however, covers all perils connected with the sea, and includes pirates (*Pickering* v. *Barkley* (1648), Sty. 132) and wreckers (*Bondrett* v. *Hentigg* (1816), Holt (N. P.), 149), but not confiscation by the order of a court (*Spence* v. *Chodwick* (1847), 10 Q. B. 517; compare *Benson* v. *Duncan* (1849), 3 Exch. 644, Ex. Ch.). As to the meaning of an exception against "dangers of the roads," see *De Rothschild* v. *Royal Mail Steam Packet Co., supra.*

(*s*) *Thames and Mersey Marine Insurance Co.* v. *Hamilton, Fraser & Co., supra, per* Lord BRAMWELL, at p. 492, approving *Pandorf* v. *Hamilton* (1886), 16 Q. B. D. 629, C. A., *per* LOPES, L.J., at p. 633; *The Norway* (1865), Brown. & Lush. 404; *Fletcher* v. *Inglis* (1819), 2 B. & Ald. 315; *Corcoran* v. *Gurney* (1853), 1 E. & B. 456; *The Catharine Chalmers* (1874), 2 Asp. M. L. C. 598; *Ingram and Royle, Ltd.* v. *Services Maritimes du Tréport*, [1913] 1 K. B. 538, reversed, but not on this point (1913), 30 T. L. R. 79, C. A. As to the application of the doctrine of proximate cause, see pp. 232, 233, *post.*

(*t*) *Wilson, Sons & Co.* v. *The "Xantho"* (*Owners of Cargo*), *supra, per* Lord HERSCHELL, at p. 509; *Hamilton, Fraser & Co.* v. *Pandorf & Co., supra, per* Lord HALSBURY, L.C., at p. 524; *Lawrence* v. *Aberdein* (1821), 5 B. & Ald. 107; *Gabay* v. *Lloyd* (1825), 3 B. & C. 793; *Letchford* v. *Oldham* (1880), 5 Q. B. D. 538, C. A.; *The Thrunscoe*, [1897] P. 301; *McFadden* v. *Blue Star Line*, [1905] 1 K. B. 697.

(*a*) *Wilson, Sons & Co.* v. *The "Xantho"* (*Owners of Cargo*), *supra, per* Lord HERSCHELL, at p. 509.

(*b*) *Ibid.*

(*c*) *Thompson* v. *Whitmore* (1810), 3 Taunt. 227; *Phillips* v. *Barber* (1821), 5 B. & Ald. 161; but see *Laurie* v. *Douglas* (1846), 15 M. & W. 746. But an express provision that the goods, whilst elsewhere, are to be at ship's risk means that the shipowner's liability is to be the same as if they were on board (*Nottebohn* v. *Richter* (1886), 18 Q. B. D. 63, C. A.; compare *Johnston* v. *Benson* (1819), 1 Brod. & Bing. 454, where the contract imposed on the shipowner the risk of boats so far as ships are liable thereto, and it was held that he was not liable for a loss occasioned by perils of the sea whilst the goods were in a boat; *Webster & Co. and Anderson & Co.* v. *Bond and Storey* (1884), Cab. & El. 338. But the exception may be so framed as to make the shipowner absolutely liable until the goods are put on board (*Dampskibsselskabet "Skjoldborg"* v. *Calder* (*Charles*) *& Co.* (1912), 17 Com. Cas. 97).

(*d*) *Hamilton, Fraser & Co.* v. *Pandorf & Co., supra, per* Lord

Moreover, a loss which would otherwise fall within the exception is excluded from its operation if the loss would not have taken place but for the shipowner's negligence or failure to fulfil his duty, for example, by providing a seaworthy ship (*e*).

The exception is equally applicable though the inroad of the sea which occasions the loss or damage is induced by some intervention of human agency (*f*), provided that there is no negligence or default on the part of the shipowner or his servants (*g*). Thus, the shipowner is excused where the loss or damage is caused by a collision which is a pure accident on the part of both ships (*h*), or in which the other ship is wholly to blame (*i*), or by a voluntary stranding to avoid sinking (*k*). If, however, the collision is attributable wholly (*l*), or in part (*m*), to the fault of the ship in question, or if the stranding results from negligent navigation on the part of the master or crew (*n*), this exception no longer applies (*o*). Similarly the exception does not apply to a loss occasioned by the barratry of the master or crew (*p*).

191. Fire. The shipowner is in fact protected by statute where goods on board his ship are destroyed or damaged by fire (*q*) without his actual fault or privity (*r*), whether there has been a

Fire.

HALSBURY, L.C., at p. 524; *Laveroni* v. *Drury* (1852), 8 Exch. 166; *Kay* v. *Wheeler* (1867), L. R. 2 C. P. 302, Ex. Ch.; *Thames and Mersey Marine Insurance Co.* v. *Hamilton, Fraser & Co.* (1887), 12 App. Cas. 484, disapproving *West India Telegraph Co.* v. *Home and Colonial Insurance Co.* (1880), 6 Q. B. D. 51, C. A.; *The Patria* (1871), L. R. 3 A. & E. 436; *Stott (Baltic) Steamers, Ltd.* v. *Martin* (1913), 48 L. J. 704.

(*e*) *The Figlia Maggiore* (1868), L. R. 2 A. & E. 106; *Leuw* v. *Dudgeon* (1867), L. R. 3 C. P. 17, n.; *The "Freedom"* (1871), L. R. 3 P. C. 594, with which contrast *The Thrunscoe*, [1897] P. 301; *The Oquendo* (1878), 38 L. T. 151; *The Glenfruin* (1885), 10 P. D. 103. The burden of proving negligence rests on the charterer (*The "Norway" (Owners)* v. *Ashburner, The "Norway"* (1865), 3 Moo. P. C. C. (N. S.) 245; *The Glendarroch*, [1894] P. 226, C. A.).

(*f*) *Hagedorn* v. *Whitmore* (1816), 1 Stark. 157.

(*g*) *Wilson, Sons & Co.* v. *The "Xantho" (Owners of Cargo)* (1887), 12 App. Cas. 503, *per* Lord HERSCHELL, at p. 509, disapproving *Cullen* v. *Butler* (1816), 5 M. & S. 461, where the ship was fired into by mistake and sunk.

(*h*) *Buller* v. *Fisher* (1799), 3 Esp. 67 (where neither vessel was to blame); *Smith* v. *Scott* (1811), 4 Taunt. 126.

(*i*) *Wilson, Sons & Co.* v. *The "Xantho" (Owners of Cargo)*, *supra*, disapproving *Woodley* v. *Michell* (1883), 11 Q. B. D. 47, C. A.

(*k*) *Redman* v. *Wilson* (1845), 14 M. & W. 476; compare *Corcoran* v. *Gurney* (1853), 1 E. & B. 456. The exception does not include stranding in the ordinary course of navigation; see p. 114, *post*.

(*l*) *Lloyd* v. *General Iron Screw Collier Co.* (1864), 3 H. & C. 284.

(*m*) *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521, C. A.

(*n*) *The "Norway" (Owners)* v. *Ashburner, The "Norway,"* *supra*, at p. 246; *The Glendarroch*, *supra*.

(*o*) As to the express exception of negligence, see pp. 116, 117, *post*.

(*p*) *The Chasca* (1875), L. R. 4 A. & E. 446. As to barratry, see pp. 112, 113, *post*.

(*q*) Including damage by smoke and by water used to extinguish a fire (*The Diamond*, [1906] P. 282).

(*r*) M. S. Act, 1894, s. 502; *Asiatic Petroleum Co., Ltd.* v. *Lennard's Carrying Co., Ltd.*, [1914] 1 K. B. 419, C. A. The statutory provision does not exempt the shipowner from liability to contribute towards a general average loss of cargo (*Greenshields, Cowie & Co.* v. *Stephens & Sons, Ltd.*, [1908] A. C. 431; compare *Schmidt* v. *Royal Mail Steamship Co.* (1876), 45 L. J. (Q. B.) 646). Moreover, the operation of the statutory

SECT. 1. Charter-parties.

breach of warranty of seaworthiness or not (*s*). If, however, he is by the terms of his contract with the charterer responsible for the safety of the goods, either before they are put on board or after they leave the ship, and they are destroyed or damaged by fire whilst on the way to or from the ship, the statutory protection no longer applies (*t*). Nor is the shipowner protected by an exception against perils of the seas, since fire is not a peril of the sea (*u*). If, therefore, he is to be fully protected, an express exception against fire is necessary (*a*).

Barratry.

192. Barratry of the master and crew. This exception includes every wrongful act wilfully committed by the master or crew to the prejudice of the shipowner (*b*). There is no barratry where the act is committed with his sanction or privity (*c*). The master to be guilty of barratry must have deliberately violated his duty to his employer and acted against his better judgment (*d*). No act of negligence (*e*), inadvertence (*f*), or mistake (*g*), therefore, amounts to barratry. On the other hand, the master's motive is immaterial; it may equally be barratry whether he intends to benefit himself and deceive the shipowner (*h*), or whether he seeks to

provision may be excluded by the terms of the express contract between the parties (*Virginia Carolina Chemical Co.* v. *Norfolk and North American Steam Shipping Co.*, [1912] 1 K. B. 229, C. A. (in the House of Lords a trial was ordered (reported 17 Com. Cas. 277), but the appeal was subsequently withdrawn on terms agreed between the parties (*Norfolk and North American Steam Shipping Co., Ltd.* v. *Virginia Carolina Chemical Co.*, [1913] A. C. 52)); distinguished in *Ingram and Royle, Ltd.* v. *Services Maritimes du Treport, Ltd.* (1913), 30 T. L. R. 79, C. A. (where the shipowner was not precluded from relying on the statute)).

(*s*) *Virginia Carolina Chemical Co.* v. *Norfolk and North American Steam Shipping Co., supra.*

(*t*) *Morewood* v. *Pollok* (1853), 1 E. & B. 743; compare *Hunter & Co.* v. *M'Gown* (1819), 1 Bli. 573.

(*u*) *Thames and Mersey Marine Insurance Co.* v. *Hamilton, Fraser & Co.* (1887), 12 App. Cas. 484, *per* Lord BRAMWELL, at p. 493.

(*a*) This exception does not protect the shipowner against liability to contribute towards a general average loss of cargo (*Schmidt* v. *Royal Mail Steamship Co., supra;* followed in *Crooks* v. *Allan* (1879), 5 Q. B. D. 38).

(*b*) *Vallejo* v. *Wheeler* (1774), 1 Cowp. 143, *per* Lord MANSFIELD, at p. 154; *Nutt* v. *Bourdieu* (1786), 1 Term Rep. 323; *Heyman* v. *Parish* (1809), 2 Camp. 149; compare *The Chasca* (1875), L. R. 4 A. & E. 446; *Australasian Insurance Co.* v. *Jackson* (1881), 33 L. T. 286, P. C.; Marine Insurance Act, 1906 (6 Edw. 7. c. 41), Sched., Rules for Construction of Policy, r. 11.

(*c*) *Nutt* v. *Bourdieu, supra.* But it may be barratry within the meaning of a policy effected by the charterer (*Ionides* v. *Pender* (1874), L. R. 9 Q. B. 531). An owner cannot be guilty of barratry (*ibid.*), though a part owner may be (*Jones* v. *Nicholson* (1854), 10 Exch. 28).

(*d*) *Todd* v. *Ritchie* (1816), 1 Stark. 240; *Robertson* v. *Ewer* (1786), 1 Term Rep. 127; *Knight* v. *Cambridge* (1724), 8 Mod. Rep. 230; *Goldschmidt* v. *Whitmore* (1811), 3 Taunt. 508; *Mentz, Decker & Co.* v. *Maritime Insurance Co.* (1909), 15 Com. Cas. 17, *per* HAMILTON, J., at p. 24.

(*e*) *Briscoe & Co.* v. *Powell & Co.* (1905), 22 T. L. R. 128, *per* CHANNELL, J., at p. 130; compare *Atkinson and Hewitt* v. *Great Western Insurance Co.* (1872), 27 L. T. 103. This is the case, though such negligence is by statute to be deemed wilful default (*Grill* v. *General Iron Screw Collier Co.* (1866), L. R. 1 C. P. 600).

(*f*) *Knight* v. *Cambridge, supra.*

(*g*) Compare title INSURANCE, Vol. XVII., p. 445.

(*h*) *Mentz, Decker & Co.* v. *Maritime Insurance Co., supra; Ross* v. *Hunter* (1790), 4 Term Rep. 33; *Roscow* v. *Corson* (1819), 8 Taunt. 684.

advance the shipowner's interest (*i*). Thus, he is guilty of barratry where he deviates from his course for the purpose of smuggling goods for his own benefit (*k*), though a mere deviation, not on the face of it fraudulent or criminal, is not barratry (*l*). He is also guilty where he employs the ship in trading with an alien enemy, even though he intends to hand over the profits to the shipowner (*m*).

193. Pirates. This exception is usually inserted, although pirates are equally within the exception against perils of the sea (*n*). All persons are pirates who, in any place within the jurisdiction of the Admiralty (*o*), violently dispossess the master and carry away the ship or any of the goods on board with a felonious intent (*p*); it is immaterial whether they are members of the crew (*q*), passengers (*r*), or strangers (*s*). Even rioters who attack the ship from the shore may be included in the term (*t*). Pirates.

Where the exception includes the word "robbers," the shipowner is only protected where violence has been used; he remains liable to the charterer where the loss is due to pilfering (*a*). Robbers.

Sometimes the exception is extended to include the word "thieves." Here, too, the shipowner may not be protected unless violence has been used (*b*); nor is he protected, even where violence is used, unless he can show that the theft was committed by a stranger to the ship (*c*). For all persons belonging to the ship, Thieves.

(*i*) *Earle* v. *Rowcroft* (1806), 8 East, 126.

(*k*) *Vallejo* v. *Wheeler* (1774), 1 Cowp. 143; *Havelock* v. *Hancill* (1789), 3 Term Rep. 277.

(*l*) *Stamma* v. *Brown* (1742), Stra. 1173; *Phyn* v. *Royal Exchange Assurance Co.* (1798), 7 Term Rep. 505.

(*m*) *Earle* v. *Rowcroft, supra.*

(*n*) *Pickering* v. *Barkley* (1648), Sty. 132; *Barton* v. *Wolliford* (1687), Comb. 56; see note (*r*), p. 110, *ante.*

(*o*) As to the jurisdiction of the Admiralty, see title ADMIRALTY, Vol. I., pp. 59 *et seq.*

(*p*) *R.* v. *Dawson* (1696), 13 State Tr. 451, approved in *A.-G. for the Colony of Hong-Kong* v. *Kwok-a-Sing* (1873), L. R. 5 P. C. 179, 199, 200; *The Magellan Pirates* (1853), 1 Ecc. & Ad. 81; compare *Bolivia Republic* v. *Indemnity Mutual Marine Assurance Co., Ltd.*, [1909] 1 K. B. 785, C. A.

(*q*) *R.* v. *Dawson, supra.*

(*r*) *Palmer* v. *Naylor* (1854), 10 Exch. 382; *A.-G. for the Colony of Hong-Kong* v. *Kwok-a-Sing, supra.*

(*s*) *Pickering* v. *Barkley, supra.*

(*t*) *Nesbitt* v. *Lushington* (1792), 4 Term Rep. 783, *per* Lord KENYON, C.J.

(*a*) *De Rothschild* v. *Royal Mail Steam Packet Co.* (1852), 7 Exch. 734; *Taylor* v. *Liverpool and Great Western Steam Co.* (1874), L. R. 9 Q. B. 546. As to his duty to provide a strong room for bullion, see *Queensland National Bank* v. *Peninsular and Oriental Steam Navigation Co.*, [1898] 1 Q. B. 567, C. A.

(*b*) See title INSURANCE, Vol. XVII., p. 444; *Taylor* v. *Liverpool and Great Western Steam Co., supra; Steinman & Co.* v. *Angier Line*, [1891] 1 Q. B. 619, C. A., *per* BOWEN, L.J., at p. 621. As to the statutory limitation upon his liability in certain cases, see M. S. Act, 1894, s. 502, and pp. 612, 613, *post.*

(*c*) *Taylor* v. *Liverpool and Great Western Steam Co., supra*, followed in *Steinman & Co.* v. *Angier Line, supra.*

SECT. 1. Charter-parties.

whether as members of the crew or as passengers (*d*), and for all persons in his service employed on board the ship (*e*), he is responsible. Even where the exception is so framed as to include thieves of whatever kind, whether on board or not, he remains responsible for all persons in his service, and is only excused when the thief, though lawfully on board, has nothing to do with the service of the ship (*f*).

Collisions.

194. Collisions, strandings, and accidents of navigation. In the case of a collision (*g*) this exception (*h*), does not protect the shipowner, where the collision is attributable either wholly or in part to the negligence or default of his own master or crew (*i*).

Strandings.

A ship is not stranded within the meaning of the exception where she takes the ground in the ordinary course of navigation (*k*), unless owing to the state of the ground there is some hidden danger, the existence of which could not reasonably have been anticipated (*l*). To bring the case within the exception, the stranding must be accidental (*m*), as, for instance, where the ship runs into a tidal harbour for shelter and takes the ground (*n*). If, therefore, the stranding is due to negligence of the master the exception does not apply (*o*).

Accidents of navigation.

An accident is that which happens without the fault of anybody (*p*) for whom the shipowner is responsible (*q*). An act is none the less an accident because it is attributable to the negligence

(*d*) *Taylor* v. *Liverpool and Great Western Steam Co.* (1874), L. R. 9 Q. B. 546; compare *The Prinz Heinrich* (1897), 14 T. L. R. 48.

(*e*) *Steinman & Co.* v. *Angier Line*, [1891] 1 Q. B. 619, C. A.

(*f*) *Ibid.* (where the theft was committed by the stevedore's men, and it was held to be immaterial that the charterer appointed the stevedore); but see *Royal Mail Steam Packet Co.* v. *Macintyre* (1911), 16 Com. Cas. 231.

(*g*) As to collisions generally, see pp. 359 *et seq.*, *post.*

(*h*) This exception, though usually inserted, is unnecessary, since the perils excepted are equally within the exception against perils of the seas (*Martin* v. *Crokatt* (1811), 14 East, 465; *Wilson, Sons & Co.* v. *The "Xantho"* (*Owners of Cargo*) (1887), 12 App. Cas. 503, overruling *Woodley* v. *Michell* (1883), 11 Q. B. D. 47, C. A.; compare *Sailing Ship "Garston" Co.* v. *Hickie, Borman & Co.* (1886), 18 Q. B. D. 17, C. A.); see p. 111, *ante.*

(*i*) *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521, 531, 543, C. A. (where the fact that the owner of the ship at fault was also the owner of the ship on which the goods covered by the exception were carried was held to be immaterial); *Grill* v. *General Iron Screw Collier Co.* (1868), L. R. 3 C. P. 476, Ex. Ch.

(*k*) *Thompson* v. *Whitmore* (1810), 3 Taunt. 227; *Magnus* v. *Buttermer* (1852), 11 C. B. 876.

(*l*) *Letchford* v. *Oldham* (1880), 5 Q. B. D. 538, C. A.

(*m*) As to what is meant by "accidental," see the text, *infra.*

(*n*) *Corcoran* v. *Gurney* (1853), 1 E. & B. 456.

(*o*) *The "Norway"* (*Owners*) v. *Ashburner, The "Norway"* (1864), 3 Moo. P. C. C. (N. S.) 246; compare *The William* (1806), 6 Ch. Rob. 316. The burden of proving negligence is on the charterer (*The Glendarroch*, [1894] P. 226, C. A.).

(*p*) *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.*, *supra*, *per* Lord ESHER, M.R., at p. 530.

(*q*) *Lloyd* v. *General Iron Screw Collier Co.* (1864), 3 H. & C. 284, *per* BRAMWELL, B., at p. 293; *Wilson, Sons & Co.* v. *The "Xantho"* (*Owners of Cargo*), *supra.*

or default of a stranger (*r*). Where, however, the negligence or default is on the part of the master or crew, the exception no longer applies (*s*).

Since the exception is limited to accidents of navigation, it only applies whilst the ship is being navigated in the course of her voyage, and ceases to be operative as soon as she is finally (*t*) moored in dock with the intention that she is to remain there until her cargo is discharged (*u*). It does not apply to accidents which take place before the commencement of the voyage, such as, for instance, accidents arising out of the stowage of the cargo (*a*).

Latent defects.

195. Latent defects (*b*) in or accidents to hull and/or machinery and/or boilers (*c*). This exception does not exclude the implied warranty of seaworthiness (*d*); for that purpose special words must be inserted (*e*); nor does it apply where the shipowner is guilty of negligence (*f*).

Leakage and breakage.

196. Leakage and breakage. This exception covers loss or damage arising from leakage or breakage of the goods which are the subject-matter of the contract (*g*), but not loss or damage caused to such goods by the leakage or breakage of other goods carried on board unless expressly so stated (*h*). It does not apply where there is negligence on the part of the shipowner or his servants (*i*): in case of negligence, therefore, it is immaterial whether the loss or damage is attributable to the leakage or breakage of the goods

(*r*) *Sailing Ship "Garston" Co.* v. *Hickie, Borman & Co.* (1887), 18 Q. B. D. 17, C. A.

(*s*) *Lloyd* v. *General Iron Screw Collier Co.* (1864), 3 H. & C. 284; compare *Tattersall* v. *National Steamship Co.* (1884), 12 Q. B. D. 297. But this exception may be extended in its scope by a negligence clause (*The Southgate*, [1893] P. 329); see pp. 116, 117, *post.*

(*t*) *Laurie* v. *Douglas* (1846), 15 M. & W. 746.

(*u*) *The Accomac* (1890), 15 P. D. 208, C. A., explaining *Laurie* v. *Douglas*, *supra.*

(*a*) *The "Freedom"* (1871), L. R. 3 P. C. 594; *The Oquendo* (1878), 38 L. T. 151; compare *Hayn* v. *Culliford* (1879), 4 C. P. D. 182, C. A.; but see *The Southgate*, [1893] P. 329.

(*b*) These words are necessary, since, for instance, the breaking of a shaft through a latent defect is not an "accident" within the meaning of the exception (*The Glenfruin* (1885), 10 P. D. 103).

(*c*) Compare *Mercantile Steamship Co.* v. *Tyser* (1881), 7 Q. B. D. 73.

(*d*) *The Glenfruin, supra; Ship "Maori King"* (*Owners of Cargo*) v. *Hughes*, [1895] 2 Q. B. 550, C. A.

(*e*) *Cargo ex Laertes* (1887), 12 P. D. 187.

(*f*) *Siordet* v. *Hall* (1828), 4 Bing. 607; compare *Tattersall* v. *National Steamship Co.* (1884), 12 Q. B. D. 297.

(*g*) *Ohrloff* v. *Briscall, The "Helene"* (1866), L. R. 1 P. C. 231.

(*h*) *Thrift* v. *Youle & Co* (1877), 2 C. P. D. 432; *Barrow* v. *Williams & Co.* (1890), 7 T. L. R. 37 (rust).

(*i*) *Ohrloff* v. *Briscall, The "Helene," supra;* compare *Chiesman & Co.* v. *S.S. Modena* (*Owners*) (1911), 16 Com. Cas. 292. The burden of proof is on the charterer (*Czech* v. *General Steam Navigation Co.* (1867), L. R. 3 C. P. 14; *Moes, Moliere and Tromp* v. *Leith and Amsterdam Shipping Co.* (1867), 5 Macph. (Ct. of Sess.) 988, followed in *Horseley* v. *Baxter Brothers & Co.* (1893), 20 R. (Ct. of Sess.) 333; *Craig and Rose* v. *Delargy* (1879), 6 R. (Ct. of Sess.) 1269; compare *Lindsay & Son* v. *Scholefield* (1897), 24 R. (Ct. of Sess.) 530 ("inherent deterioration").

SECT. 1. Charter-parties.

themselves (*k*), or of other parts of the cargo (*l*), or of the ship's stores (*m*).

Negligence.

197. Negligence. Since the various exceptions already mentioned do not protect the shipowner where the peril which causes the loss is attributable to the negligence of persons in his service, it is usual for the charterparty to contain a negligence clause extending the scope of the exceptions to such negligence (*n*). A negligence clause is valid and enforceable (*o*), provided that it is clear and unambiguous in its terms (*p*). It must expressly refer to negligence, since it is always strictly construed against the shipowner (*q*). A clause will not, therefore, be held to protect him against the consequences of negligence merely because it is framed in terms so wide as to be capable of including negligence (*r*).

A negligence clause does not exclude the implied condition that the ship is to be seaworthy (*s*); nor does it protect the shipowner against the consequences of his personal negligence or default (*t*). Moreover, it applies only to such acts of negligence as fall strictly within its scope (*a*). Thus, an exception as to negligence in

(*k*) *Phillips* v. *Clark* (1857), 2 C. B. (N. S.) 156; *The Pearlmoor*, [1904] P. 286 (heating).

(*l*) *The Nepoter* (1869), L. R. 2 A. & E. 375.

(*m*) *Czech* v. *General Steam Navigation Co.* (1867), L. R. 3 C. P. 14.

(*n*) For examples of negligence clauses, see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 102, 108, 117.

(*o*) *The Cressington*, [1891] P. 152; *Blackburn* v. *Liverpool, Brazil and River Plate Steam Navigation Co.*, [1902] 1 K. B. 290; *Briscoe & Co.* v. *Powell & Co.* (1905), 22 T. L. R. 128; *Marriott* v. *Yeoward Brothers*, [1909] 2 K. B. 987; *Alexander* v. *Malcolmson* (1868), 2 I. R. C. L. 621; compare *Raynes* v. *Ballantyne* (1898), 14 T. L. R. 399, H. L. For the United States, the Harter Act (Public Statutes, No. 57 of 1893) prohibits the insertion of negligence clauses in bills of lading and other shipping documents, but relieves a shipowner who has exercised due diligence from responsibility in certain cases. This statute is frequently incorporated into contracts for the carriage of goods to and from the United States, and has been considered in the following cases:—*Dobell & Co.* v. *Steamship Rossmore Co.*, [1895] 2 Q. B. 408, C. A.; *The Glenochil*, [1896] P. 10; *The Rodney*, [1900] P. 112; *Rowson* v. *Atlantic Transport Co.*, [1903] 2 K. B. 666, C. A.; *Elder, Dempster & Co.* v. *Dunn* (1909), 15 Com. Cas. 49, H. L.

(*p*) *Mendl & Co.* v. *Ropner & Co.*, [1913] 1 K. B. 27.

(*q*) *Price & Co.* v. *Union Lighterage Co.*, [1904] 1 K. B. 412, C. A.; *The Pearlmoor*, [1904] P. 286; *Leuw* v. *Dudgeon* (1867), L. R. 3 C. P. 17, n.

(*r*) Thus, an exception of loss or damage capable of being covered by insurance is not sufficient (*Moore* v. *Harris* (1876), 1 App. Cas. 318, P. C.; *Price & Co.* v. *Union Lighterage Co.*, *supra*; *Travers* (*Joseph*) *& Sons, Ltd.* v. *Cooper* (1913), 30 T. L. R. 93), unless negligence is expressly referred to (*Rosin and Turpentine Import Co.* v. *Jacobs & Sons* (1910), 15 Com. Cas. 111, H. L.).

(*s*) *Steel* v. *State Line Steamship Co.* (1877), 3 App. Cas. 72, followed in *Gilroy, Sons & Co.* v. *Price & Co.*, [1893] A. C. 56; *Dobell & Co.* v. *Steamship Rossmore Co.*, *supra*; *Seville Sulphur and Copper Co.* v. *Colvils, Lowden & Co.* (1888), 15 R. (Ct. of Sess.) 616. As to the implied condition of seaworthiness, see pp. 186, 187, 211 *et seq.*, *post*.

(*t*) *S.S.* "*City of Lincoln*" (*Master and Owners*) v. *Smith*, [1904] A. C. 250, P. C.; compare *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521, C. A., *per* BRETT, L.J., at p. 539. Where the owner is also master, an exception as to "negligence of the master" covers his acts as master, though not his acts as owner (*Westport Coal Co.* v. *McPhail*, [1898] 2 Q. B. 130, C. A.).

(*a*) *The Cressington*, *supra*; *Rowson* v. *Atlantic Transport Co.*, [1903]

navigation (*b*) protects the shipowner only during the course of the voyage; it does not cover negligence in stowage (*c*) or negligence after the voyage is ended, though the cargo is not yet discharged (*d*). The clause may, however, be so framed as to cover the whole time that the ship is employed in the performance of the contract (*e*), and to apply to all acts of negligence of whatever description (*f*), including negligent stowage (*g*). But the exception does not protect the shipowner where the negligence which causes the loss is attributable partly to his servants and partly to strangers (*h*).

Negligence clauses vary considerably in their scope and language (*i*), and are constantly being extended in consequence of judicial decisions (*k*). Negligence is sometimes treated as a substantive peril and inserted in the list of exceptions (*l*). More usually a negligence clause is added to the list by way of qualification. Thus, according to a form in common use, it is stipulated that the specified perils are to be excepted even when occasioned by the negligence, default, or error in judgment of the pilot (*m*), master, mariner, or other persons employed by the shipowner or for whose acts he is responsible, not resulting, however, in any case from want of due diligence by the shipowner or by the ship's husband or manager (*n*).

2 K. B. 666, C. A. The exception covers such acts of negligence, however reckless (*The Torbryan*, [1903] P. 194, C. A.; *Briscoe & Co.* v. *Powell & Co.* (1905), 22 T. L. R. 128).

(*b*) As to what constitutes negligence in navigation, see *Cunningham* v. *Colvils, Lowden & Co.* (1888), 16 R. (Ct. of Sess.) 295.

(*c*) *Hayn* v. *Culliford* (1879), 4 C. P. D. 182, C. A.: *The Ferro*, [1893] P. 38; compare *Canada Shipping Co.* v. *British Shipowners' Mutual Protection Association* (1889), 23 Q. B. D. 342, C. A. But the exception apparently covers acts connected with the navigation of the ship, though done before the voyage begins (*The Southgate*, [1893] P. 329; compare *Good* v. *London Steam-Ship Owners' Association* (1871), L. R. 6 C. P. 563; *The Warkworth* (1884), 9 P. D. 145, C. A.; *Carmichael* v. *Liverpool Sailing Ship Owners' Mutual Indemnity Association* (1887), 19 Q. B. D. 242, C. A.), unless expressly limited to negligence "during the voyage" (*Seville Sulphur and Copper Co.* v. *Colvils, Lowden & Co.* (1888), 15 R. (Ct. of Sess.) 616; see *contra*, *The Carron Park* (1890), 15 P. D. 203).

(*d*) *The Accomac* (1890), 15 P. D. 208, C. A.

(*e*) *The Duero* (1869), L. R. 2 A. & E. 393; *Norman* v. *Binnington* (1890), 25 Q. B. D. 475; *The Carron Park, supra*; *De Clermont and Donner* v. *General Steam Navigation Co.* (1891), 7 T. L. R. 187, 188; *Smackman* v. *General Steam Navigation Co.* (1908), 13 Com. Cas. 196. The use of the word "management" is sufficient (*The Glenochil*, [1896] P. 10).

(*f*) *Packwood* v. *Union-Castle Mail Steamship Co.* (1903), 20 T. L. R. 59. On the other hand, certain acts of negligence may be expressly excluded from the scope of the exception (*Mendl & Co.* v. *Ropner & Co.*, [1913] 1 K. B. 27).

(*g*) *Baerselman* v. *Bailey*, [1895] 2 Q. B. 301, C. A.; *Wade* v. *Cockerline* (1905), 10 Com. Cas. 115, C. A.; *The Torbryan, supra*.

(*h*) *The Accomac, supra*.

(*i*) See the cases cited in the preceding notes.

(*k*) Compare *Rathbone Brothers & Co.* v. *MacIver* (*D.*), *Sons & Co.*, [1903] 2 K. B. 378, C. A., *per* ROMER, L.J., at p. 388.

(*l*) *The Duero, supra*; *Hayn* v. *Culliford, supra*; *The Accomac, supra*; *The Carron Park, supra*.

(*m*) As to pilots, see pp. 596 *et seq.*, *post*.

(*n*) *Wade* v. *Cockerline, supra*; compare *The Torbryan, supra*; *The Cressington*, [1891] P. 152.

SECT. 1. Charter-parties.

How far exceptions mutual.

198. The exceptions are, strictly speaking, inserted for the protection of the shipowner (*o*). They do not in the absence of words implying mutuality protect the charterer (*p*), and he is not excused from performing his part of the contract because his failure to do so is occasioned by a peril excepted in the charterparty (*q*). The charterparty may, however, contain a stipulation by which the shipowner and the charterer mutually exempt each other from all liabilities arising from the excepted perils (*r*), and in this case the charterer is protected equally with the shipowner (*s*). More usually the charterparty, in the stipulations dealing with the obligations imposed on the charterer, defines the circumstances in which he is to be excused from the performance of them (*t*).

(vii.) *As to Loading and Discharge.*

Custom of the port.

199. The loading and discharge of a cargo are governed by the customs of the particular port concerned (*a*), except where such customs are expressly excluded (*b*), or are otherwise inconsistent with the terms of the charterparty (*c*). Where, on the other hand, it is intended that the customs of the port are to apply, it is not unusual to insert a stipulation to that effect (*d*).

A charterparty usually stipulates that the cargo is to be brought to and taken from alongside at the charterer's risk and expense (*e*). Where, however, it is necessary to employ boats for the purpose, the risk and expense of so doing may be imposed, by express stipulation, upon the shipowner (*f*). In the same way the charterparty may extend the obligations of the charterer, and may require him to provide either wholly (*g*) or in part (*h*) for the shipment, stowage, or discharge of the cargo (*i*). In this case he may be protected by

(*o*) For his liability in the absence of exceptions, see p. 325, *post.*

(*p*) *Braemont Steamship Co.* v. *Weir & Co.* (1910), 15 Com. Cas. 101, distinguishing on this ground *Barrie* v. *Peruvian Corporation* (1896), 2 Com. Cas. 50, followed, but doubted, in *Re Newman and Dale Steamship Co. and British and South American Steamship Co.*, [1903] 1 K. B. 262.

(*q*) *Braemont Steamship Co.* v. *Weir & Co. supra* (where the exception "strikes" was held not to be mutual).

(*r*) *Brown* v. *Turner, Brightman & Co.*, [1912] A. C. 12; see Encyclopædia of Forms and Precedents, Vol. XIV., p. 99.

(*s*) Compare *Barrie* v. *Peruvian Corporation, supra*, where the exception "perils of the sea" was held to be mutual; *Re Newman and Dale Steamship Co. and British and South American Steamship Co., supra* ("fires").

(*t*) See pp. 129 *et seq.*, *post.*

(*a*) See p. 140, *post.*

(*b*) *Brenda Steamship Co.* v. *Green*, [1900] 1 Q. B. 518, C. A.; see Encyclopædia of Forms and Precedents, Vol. XIV., p. 116.

(*c*) *Northmoor Steamship Co.* v. *Harland and Wolff, Ltd.*, [1903] 2 I. R. 657.

(*d*) *Stephens* v. *Wintringham* (1898), 3 Com. Cas. 169; see Encyclopædia of Forms and Precedents, Vol. XIV., p. 107; and see p. 276, *post.*

(*e*) *Stephens* v. *Wintringham, supra*; *Brenda Steamship Co.* v. *Green, supra*; see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 103, 107, 114; and see pp. 198, 268, *post.*

(*f*) *Nottebohn* v. *Richter* (1886), 18 Q. B. D. 63, C. A.; see p. 199, *post.*

(*g*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 102; and see pp. 205, 207, 267, *post.*

(*h*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 103, 114.

(*i*) As to the effect of a stevedore being appointed by the charterer, see pp. 206, 207, *post.*

a negligence clause against the negligence, default, or error in judgment of the persons employed by him (*k*). When his responsibility ceases at the ship's side, he may be empowered to place an agent on board for the purpose of supervising his interests (*l*).

(viii.) *As to the Time for Loading and Discharge.*

Sailing telegrams.

200. As it is the duty of the charterer to have his cargo ready for the ship on her arrival at the port of loading (*m*), the charterparty usually stipulates for the sending of a sailing telegram, that is to say, a telegram giving notice to the charterer of the probable date of arrival (*n*). To enable the charterer to complete the preparation the sailing telegram must be sent some time beforehand; the charterparty, therefore, fixes the length of notice which is to be given, either by specifying a particular number of days (*o*) or, more usually, by providing that the telegram is to be sent from the last port of call on the outward voyage (*p*). This stipulation is not treated as a condition, and it is usually provided that the effect of a breach is to extend the time allowed to the charterer for loading (*q*).

Time for loading.

201. The charterparty may stipulate that the cargo is to be loaded within a specified period (*r*). This period, according to the ordinary form of stipulation (*s*), begins when written notice is given to the charterer that the ship is ready to receive cargo (*t*). Sometimes it may be stipulated that the period is not to begin before a certain date, unless both ship and cargo are ready (*a*). It is a condition of the charterparty that the charterer is to provide a cargo within the specified period, and his failure to do so entitles the shipowner to treat the contract as at an end (*b*), and also to sue for damages (*c*). The cause of the charterer's failure is immaterial, whether it is attributable to his own default (*d*) or to circumstances beyond his control (*e*). It is, however, usual to stipulate that where, owing to

(*k*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 103.

(*l*) See *ibid.*, p. 114. As to the position of a supercargo, see *Davidson* v. *Gwynne* (1810), 12 East, 381, 398.

(*m*) See pp. 190 *et seq.*, *post.*

(*n*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 101, 107, 117. As to the shipowner's duty to give notice of readiness to load, see p. 186, *post.*

(*o*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 107.

(*p*) See *ibid.*, pp. 101, 117. It is not sufficient to send a telegram from the last port of call if the stipulation provides for a definite period of notice (*Gordon* v. *Powis* (1892), 8 T. L. R. 397).

(*q*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 107, 117.

(*r*) See *ibid.*, pp. 101, 114.

(*s*) As to the necessity of notice of readiness, where there is no express stipulation, see p. 186, *post.* As to a special stipulation fixing the commencement of the period at some other date, see *France, Fenwick & Co., Ltd.* v. *Spackman* (*Philip*) *& Sons* (1913), 18 Com. Cas. 52.

(*t*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 101; and p. 186, *post.*

(*a*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 114.

(*b*) See pp. 191, 192, 196, *post.*

(*c*) See *ibid.* As to the measure of damages, see pp. 207 *et seq.*, *post.*

(*d*) See pp. 191, 192, 200, *post.*

(*e*) *Barret* v. *Dutton* (1815), 4 Camp. 333; *Kearon* v. *Pearson* (1861),

SECT. 1. Charter-parties.

the happening of one or other of certain specified events (*f*), the loading of the cargo is delayed, any time lost thereby is not to be counted as part of the period (*g*), and where it becomes impossible, for the same reason, to perform the contract, the charterparty is to become void (*h*). In this case the charterer is absolved from his obligation to procure a cargo, and is not responsible for his inability to do so (*i*).

Where the detention of the ship at the port of loading beyond the specified time is attributable to the default of the shipowner or of persons for whom he is responsible, the charterer is not liable to pay demurrage (*k*).

Time for discharge.

202. The stipulation relating to the discharge of the cargo may specify the period within which the discharge is to take place (*l*), or may fix it inferentially by providing that a given quantity of cargo is to be discharged per day (*m*). If the period is exceeded, the charterer must pay damages (*n*), unless, as in the case of loading, the cause of delay is expressly covered by some provision in the

7 H. & N. 386; *Holman & Sons* v. *Peruvian Nitrate Co.* (1878), 5 R. (Ct. of Sess.) 657; see pp. 191, 192, 200, *post.*

(*f*) See pp. 194, 201, *post.* The liability remains where the particular cause of delay is not covered (*Fenwick* v. *Schmalz* (1868), L. R. 3 C. P. 313; *Stephens* v. *Harris & Co.* (1887), 57 L. J. (Q. B.) 203, C. A.; *Kay* v. *Field* (1882), 10 Q. B. D. 241, C. A.; compare *Grant & Co.* v. *Coverdale, Todd & Co.* (1884), 9 App. Cas. 470; *Re Richardsons and Samuel* (*M.*) *& Co.*, [1898] 1 Q. B. 261, C. A.).

(*g*) *Petersen* v. *Dunn & Co.* (1895), 43 W. R. 349; *Hudson* v. *Ede* (1868), L. R. 3 Q. B. 412, Ex. Ch., followed in *Smith and Service* v. *Rosario Nitrate Co.*, [1894] 1 Q. B. 174, C. A.; see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 101, 107, 108, 114; *Lilly & Co.* v. *Stevenson & Co.* (1895), 22 R. (Ct. of Sess.) 278.

(*h*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 101, 114, 115.

(*i*) See p. 194, *post.*

(*k*) *Seeger* v. *Duthie* (1860), 8 C. B. (N. S.) 45, Ex. Ch.; *Harris* v. *Best, Ryley & Co.* (1893), 68 L. T. 76, C. A. (where the delay was caused by the negligence of the stevedores, who, though appointed by the charterer, were the servants of the shipowner); *Harris* v. *Haywood Gas Coal Co.* (1877), 14 Sc. L. R. 605.

(*l*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 114; p. 271, *post.* It is not as a rule necessary to give notice of readiness to unload; see p. 263, *post.* As to a special stipulation fixing the commencement of the period for unloading, see *Horsley Line, Ltd.* v. *Roechling Brothers*, [1908] S. C. 866.

(*m*) *Harper* v. *M'Carthy* (1806), 2 Bos. & P. (N. R.) 258; see Encyclopædia of Forms and Precedents, Vol. XIV., p. 103; see *Turner, Brightman & Co.* v. *Bannatyne* (1903), 9 Com. Cas. 306, C. A.; *Scotson* v. *Pegg* (1861), 6 H. & N. 295 (where a signed contract was made by the consignee); and contrast *Dobell* v. *Watts, Ward & Co.* (1891), 7 T. L. R. 622, C. A. In this case non-working days by the custom of the port are excluded (*British and Mexican Shipping Co., Ltd.* v. *Lockett Brothers & Co., Ltd.*, [1911] 1 K. B. 264, C. A.). As to the custom of the port generally, see title CUSTOM AND USAGES, Vol. X., pp. 290 *et seq.* The charterer is not entitled to the whole of the last day if the period, as calculated, includes only a portion of it (*Yeoman* v. *R.*, [1904] 2 K. B. 429, C. A.; *Horsley Line, Ltd.* v. *Roechling Brothers, supra;* but see *Houlder* v. *Weir*, [1905] 2 K. B. 267, where *Yeoman* v. *R.*, *supra*, was distinguished).

(*n*) *Bessey* v. *Evans* (1815), 4 Camp. 131; *Thiis* v. *Byers* (1876), 1 Q. B. D. 244; *Budgett & Co.* v. *Binnington & Co.*, [1891] 1 Q. B. 35, C. A.;

charterparty (*o*), or unless the delay is attributable to some default on the part of the shipowner (*p*). The fact that the delay is attributable to the fault of third persons over whom the charterer or shipowner has no control is immaterial (*q*).

Customary dispatch.

203. Sometimes the charterparty, instead of fixing a definite period for loading or unloading, may stipulate merely that the cargo is to be loaded and discharged with customary dispatch (*r*). The effect of this stipulation is that the charterer has a reasonable time within which to perform his obligation either of providing a cargo or of taking delivery (*s*); and where the charterparty is silent there is an implication that a reasonable time will be allowed (*t*). In considering what is a reasonable time the actual circumstances of the particular case must be taken into consideration (*u*), and the charterer is not to be held responsible for delay attributable to circumstances beyond his control (*a*).

Lay days.

204. The period specified in the charterparty is usually expressed in days, which are known as lay days (*b*). At the

Kruuse v. *Drynan & Co.* (1891), 18 R. (Ct. of Sess.) 1110, distinguishing *Wyllie* v. *Harrison & Co.* (1885), 13 R. (Ct. of Sess.) 92; *Granite City Steamship Co.* v. *Ireland & Son* (1891), 19 R. (Ct. of Sess.) 124.

(*o*) *Letricheux and David* v. *Dunlop & Co.*, *The Abertawe* (1891), 19 R. (Ct. of Sess.) 209; *The Alne Holme*, [1893] P. 173; see p. 273, *post.*

(*p*) *Benson* v. *Blunt* (1841), 1 Q. B. 870; *Möller* v. *Jecks* (1865), 19 C. B. (N. S.) 332; *Young* v. *Moeller* (1855), 5 E. & B. 755, Ex. Ch.; *Erichsen* v. *Barkworth* (1858), 3 H. & N. 894, Ex. Ch.; *Hansen* v. *Donaldson* (1874), 1 R. (Ct. of Sess.) 1066; *Thorsen* v. *M'Dowall and Neilson, The "Theodor Korner"* (1892), 19 R. (Ct. of Sess.) 743; *Budgett & Co.* v. *Binnington & Co.*, [1891] 1 Q. B. 35, C. A. (where the inability of the shipowner owing to a strike to unload the ship did not prevent the consignee from being responsible for the delay). The shipowner is not responsible where the delay is caused by the goods having been stowed under other goods (*Harman* v. *Gandolph* (1815), Holt (N. P.), 35); and see the cases cited in note (*q*), *infra.*

(*q*) *Straker* v. *Kidd* (1878), 3 Q. B. D. 223; *Porteus* v. *Watney* (1878), 3 Q. B. D. 534, C. A., disapproving *Rogers* v. *Hunter* (1827), 2 C. & P. 601, and *Dobson* v. *Droop* (1830), 4 C. & P. 112; compare *Leer* v. *Yates* (1811), 3 Taunt. 387; and see p. 272, *post.*

(*r*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 107.

(*s*) *Ford* v. *Cotesworth* (1870), L. R. 5 Q. B. 544, Ex. Ch.; *Fowler* v. *Knoop* (1879), 4 Q. B. D. 299, C. A.; *Postlethwaite* v. *Freeland* (1880), 5 App. Cas. 599; and see pp. 274, 275, *post.*

(*t*) *Postlethwaite* v. *Freeland, supra, per* Lord SELBORNE, L.C., at p. 608; *Hick* v. *Raymond and Reid*, [1893] A. C. 22.

(*u*) *Postlethwaite* v. *Freeland, supra; Castlegate Steamship Co.* v. *Dempsey*, [1892] 1 Q. B. 854, C. A.; *Hick* v. *Raymond and Reid, supra; Rodgers* v. *Forresters* (1810), 2 Camp. 483; *Kell* v. *Anderson* (1843), 10 M. & W. 498; *Shadforth* v. *Cory* (1863), 32 L. J. (Q. B.) 379, Ex. Ch.

(*a*) *Ford* v. *Cotesworth, supra; Good & Co.* v. *Isaacs*, [1892] 2 Q. B. 555, C. A.; *The Jaederen*, [1892] P. 351; *Lyle Shipping Co.* v. *Cardiff Corporation*, [1900] 2 Q. B. 638, C. A. *Wright* v. *New Zealand Shipping Co.* (1878), 4 Ex. D. 165, C. A., followed in *Tillett & Co.* v. *Cwm Avon Works Proprietors* (1886), 2 T. L. R. 675, must be regarded as no longer law (*Lyle Shipping Co.* v. *Cardiff Corporation, supra, per* A. L. SMITH, L.J., at p. 645; see also *Postlethwaite* v. *Freeland, supra, per* Lord BLACKBURN, at pp. 609, 617; *Hick* v. *Raymond and Reid, supra, per* Lord WATSON, at p. 32).

(*b*) Sometimes the period is expressed in hours; see Encyclopædia of Forms and Precedents, Vol. XIV., p. 101.

SECT. 1. Charter-parties.

expiration of the lay days, the charterer may be allowed, in consideration of an additional payment, called demurrage (*c*), a further number of days, known as demurrage days (*d*). Sometimes no further time is expressly allowed, but it is simply stipulated that the charterer is to pay demurrage at the rate of so much a day for every day that the ship is detained beyond the lay days (*e*). It is therefore important, for the purpose both of ascertaining when the lay days expire and the payment of demurrage begins and of calculating the amount of demurrage payable, to define what is meant by the word "day" in a charterparty (*f*). In practice its meaning is usually made more or less clear by the insertion of qualifications (*g*).

Demurrage days.

Construction.

205. The principal terms used in a charterparty relating to the time to be occupied in loading or discharge are the following, namely:—

Days.

Days. If used without any qualification, the term means consecutive days, including Sundays and holidays (*h*), unless there is a custom of the port to the contrary (*i*), or unless it is clear from the context that the parties intended a different meaning (*k*).

Running days.

Running days. This term also means consecutive days, including Sundays and holidays, unless such meaning is excluded by a custom of the port or by the context (*l*). In practice, it is usual to exclude Sundays and holidays, whether general or local, unless actually used for working (*m*).

Working days.

Working days. This term excludes Sundays and general holidays (*n*), but not days on which, owing to the state of the weather, it is impossible to work (*o*), even though it is not the

(*c*) See pp. 124, 125, *post.*

(*d*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 114.

(*e*) See *ibid.*, pp. 101, 103, 109. In such a case, if the ship is detained and remains after a reasonable time has expired, the shipowner can only claim the specified rate (*Western Steamship Co.* v. *Amaral Sutherland & Co.*, [1913] 3 K. B. 366).

(*f*) Time is always reckoned by days, and not by hours (*Hough* v. *Athya & Son* (1879), 6 R. (Ct. of Sess.) 961), unless the contract expressly makes demurrage payable per hour (*Marshall* v. *Bolckow* (1881), 6 Q. B. D. 231). As to time generally, see title TIME, Vol. XXVII., pp. 431 *et seq.*

(*g*) See the text, *infra.*

(*h*) *Niemann* v. *Moss* (1860), 6 Jur. (N. S.) 775; *Laing* v. *Hollway* (1878), 3 Q. B. D. 437, C. A.; see title TIME, Vol. XXVII., p. 453.

(*i*) *Cochran* v. *Retberg* (1800), 3 Esp. 121; *Nielsen* v. *Wait* (1885), 16 Q. B. D. 67, C. A.

(*k*) *Commercial Steamship Co.* v. *Boulton* (1875), L. R. 10 Q. B. 346; and contrast *Niemann* v. *Moss, supra.*

(*l*) *Niemann* v. *Moss, supra; Laing* v. *Hollway, supra.*

(*m*) *The Valhalla* (1908), *Times*, July 27th; see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 101, 103, 107, 114. Unless the stipulation specially so provides, the fact that the excluded days are used does not make them count (*Nelson (James) & Sons, Ltd.* v. *Nelson Line (Liverpool), Ltd.*, [1908] A. C. 108); see also *Houlder* v. *Weir*, [1905] 2 K. B. 267; *Whittal & Co.* v. *Rahtken's Shipping Co., Ltd.*, [1907] 1 K. B. 783; *Branckelow Steamship Co., Ltd.* v. *Lamport and Holt*, [1907] 1 K. B. 787, n. Nor are they counted towards dispatch money (*The Glendevon*, [1893] P. 269).

(*n*) *Commercial Steamship Co.* v. *Boulton, supra; Nielsen* v. *Wait, supra*, at p. 71; see title TIME, Vol. XXVII., p. 454.

(*o*) *Thiis* v. *Byers* (1876), 1 Q. B. D. 244; but see *Harper* v. *M'Carthy*

custom of the port to count such days (*p*). It is therefore not unusual to qualify the term and to stipulate that only "weather working days" are to be counted (*q*). Where this is the case the charterer is not responsible for delay caused by bad weather (*r*). If it is only possible, owing to the weather, to work for a portion of a day, the day is not to be taken into account unless the work actually done amounts substantially to a day's work or half a day's work, in which case the day is to be counted as a day or half a day accordingly (*s*). Where a ship is chartered for the carriage of a cargo of coal, the term "colliery working days" may be used for the purpose of defining the period within which the charterer is to provide a cargo (*t*). This term means days which are ordinary working days at the colliery in normal circumstances, although no work may in fact be done at the colliery upon such days (*a*).

Weather working days.

Colliery working days.

Days of twenty-four hours. In the absence of any stipulation in the charterparty, a day is reckoned as consisting of twenty-four consecutive hours (*b*), counted from midnight to midnight (*c*), and fractions of a day are not taken into consideration (*d*). If, therefore, the charterer on the ship being placed at his disposal in the middle of a day at once begins to load or unload, that day is to be counted as a day under the charterparty, even though he is unable to do more than a few hours' work in the time (*e*), and if he finishes the loading or unloading before the expiration of the second day he is to be deemed to have used two days, notwithstanding that the whole work may have been done within twenty-four hours from the time

Days of twenty-four hours.

(1806), 2 Bos. & P. (N. R.) 258, which does not seem to have been followed in later cases.

(*p*) *Holman & Sons* v. *Peruvian Nitrate Co.* (1878), 5 R. (Ct. of Sess.) 657; *Bennetts & Co.* v. *Brown*, [1908] 1 K. B. 490. But such days may be excluded where both parties are acquainted with the custom (*British and Mexican Shipping Co., Ltd.* v. *Lockett Brothers & Co., Ltd.*, [1911] 1 K. B. 264, C. A. ("surf days")). As to the length of a "working day," see note (*c*), *infra*.

(*q*) Compare *British and Mexican Shipping Co., Ltd.* v. *Lockett Brothers & Co., Ltd.*, *supra*, where the charterparty stipulated for discharge according to the custom of the port, but not less than thirty mille per working day, and it was held that "surf days," by the custom of the port, were excluded.

(*r*) But where the cargo is discharged into lighters, a day is a "weather working day" if the weather permits of the cargo being discharged into the lighters, even though the lighters cannot safely land the cargo owing to surf (*Holman & Sons* v. *Peruvian Nitrate Co.*, *supra*; *Bennetts & Co.* v. *Brown*, *supra*).

(*s*) *Branckelow Steamship Co.* v. *Lamport and Holt*, [1897] 1 Q. B. 570.

(*t*) The phrase is not always used in connexion with coal charterparties; see *Weir & Co.* v. *Pirie & Co.* (No. 1) (1898), 3 Com. Cas. 263, C. A., where no time was expressed; *Shamrock Steamship Co., Ltd.* v. *Storey & Co.* (1899), 5 Com. Cas. 21, where the time was expressed in "running hours.

(*a*) *Saxon Steamship Co.* v. *Union Steamship Co.* (1900) 69 L. J. (Q. B.) 907, H. L., overruling *Clink* v. *Hickie, Borman & Co.* (No. 2) (1899), 4 Com. Cas. 292, C. A.

(*b*) *Laing* v. *Hollway* (1878), 3 Q. B. D. 437, C. A.

(*c*) *The Katy*, [1895] P. 56, C. A. The length of a "working day" depends upon the custom of the port (*Nielsen* v. *Wait* (1885), 16 Q. B. D. 67, C. A.; *Mein* v. *Ottmann* (1904), 6 F. (Ct. of Sess.) 276).

(*d*) *Commercial Steamship Co.* v. *Boulton* (1875), L. R. 10 Q. B. 346; *Yeoman* v. *R.*, [1904] 2 K. B. 429.

(*e*) *The Katy*, *supra*; compare *Hough* v. *Athya & Son* (1879), 6 R. (Ct. of Sess.) 961.

SECT. 1. Charter-parties.

when it began (*f*). To obviate this construction the parties may provide that, for the purposes of the charterparty, the term "day" is to signify a conventional day, having no relation to an astronomical day or to the ordinary civil day (*g*). The conventional day may be a period of twenty-four consecutive hours, commencing from a specified time (*h*), or, where the language of the charterparty is so framed, as, for instance, where the phrase used is "working day of twenty-four hours," the stipulation means that only the hours available for work are to be taken into consideration, and that twenty-four of such hours, whether consecutive or not, are to be taken together and treated as a day (*i*).

Conventional day.

(ix.) *Demurrage and Damages for Detention.*

Charterer's right to demurrage days.

206. The specification of lay days and demurrage days (*j*) in the charterparty is equivalent to a contract on the part of the charterer that he will not delay the ship for a further period (*k*), and also to a contract on the part of the shipowner that during those days the ship is to be at the charterer's disposal (*l*). The charterer has therefore the right to make use of both the lay days and the demurrage days for the due performance of his obligation either to load or to discharge, and commits no breach of contract in detaining the ship until the expiration of the demurrage days (*m*). If the

(*f*) *Commercial Steamship Co.* v. *Boulton* (1875), L. R. 10 Q. B. 346.

(*g*) *Watson Brothers Shipping Co.* v. *Mysore Manganese Co.* (1910), 15 Com. Cas. 159, *per* HAMILTON, J.

(*h*) *Turnbull, Scott & Co.* v. *Cruickshank & Co.* (1904), 7 F. (Ct. of Sess.) 265; *Leonis Steamship Co.* v. *Rank* (No. 2) (1908), 13 Com. Cas. 161; compare *Mein* v. *Ottmann* (1904), 6 F. (Ct. of Sess.) 276, where a working day within the meaning of the charterparty was held to be a period of twelve, and not twenty-four hours, from 6 a.m.

(*i*) *Forest Steamship Co.* v. *Iberian Iron Ore Co.* (1899), 5 Com. Cas. 83, H. L.; *Watson Brothers Shipping Co.* v. *Mysore Manganese Co.*, *supra.*

(*j*) See pp. 121, 122, *ante.*

(*k*) *Randall* v. *Lynch* (1810), 2 Camp. 352, followed in *Thiis* v. *Byers* (1876), 1 Q. B. D. 244; *Postlethwaite* v. *Freeland* (1880), 5 App. Cas. 599. The stipulation applies only to the time allowed at the ports mentioned in the stipulation (*Stevenson* v. *York* (1790), 2 Chit. 570; *Marshall* v. *De la Torre* (1795), 1 Esp. 367 (in both of which cases delay at intermediate ports was not covered); *Alcock* v. *Taylor* (1836), 2 Har. & W. 58 (where delay at the port of discharge was excluded); *Sweeting* v. *Darthez* (1854), 14 C. B. 538 (where the stipulation applied to the loading and intermediate ports, but not to the port of discharge)).

(*l*) *Dimech* v. *Corlett* (1858), 12 Moo. P. C. C. 199, 231; *Wilson and Coventry* v. *Thoresen's Linie* (1910), 15 Com. Cas. 262; *Lilly & Co.* v. *Stevenson & Co.* (1895), 22 R. (Ct. of Sess.) 278. But there may be a special stipulation empowering the shipowner to carry on the goods beyond their destination, if in the opinion of the master discharge cannot be effected without undue delay (*Searle* v. *Lund* (1904), 90 L. T. 529, C. A. (where the shipowner was held not to be excused, since any delay would have been attributable to his agent's default at a previous port).

(*m*) *Dimech* v. *Corlett* (1858), 12 Moo. P. C. C. 199, 231; *Wilson and Coventry* v. *Thoresen's Linie*, *supra.* The liability to pay demurrage depends upon the detention of the ship, and not upon the conduct of the charterer (*Porteus* v. *Watney* (1878), 3 Q. B. D. 534, C. A.; *Straker* v. *Kidd* (1878), 3 Q. B. D. 223). He is only excused where the detention is by the default of the shipowner (*Benson* v. *Blunt* (1841), 1 Q. B. 870; *Bradley* v. *Goddard* (1863), 3 F. & F. 638). The shipowner is not in default

charterparty does not specify the number of lay days, demurrage, where stipulated for, will become payable at the expiration of a reasonable time (*n*), and will continue to be payable, if the charterparty does not specify the number of demurrage days, until the expiration of such further time as may be reasonable in the circumstances (*o*). In this case also the charterer is entitled to detain the ship until she has been on demurrage for a reasonable time (*p*). Any further detention of the ship after the expiration of the demurrage days, or of a reasonable time for demurrage, as the case may be, is a breach of the charterer's contract for which he is liable in damages, the measure of damages being, as a general rule (*q*), the daily rate of demurrage mentioned in the charterparty (*r*).

Where demurrage payable.

207. Demurrage in the strict sense of the word (*s*) is only payable where there is an express stipulation to that effect (*t*). In the absence of any such stipulation the shipowner is not entitled to claim demurrage as such (*u*), nor can the charterer claim the right to detain the ship beyond the expiration of the time allowed by the charterparty for loading or discharging, as the case may be (*a*). If, therefore, he detains her for any further term, he is guilty of a

merely because he is unable to deliver (*Budgett & Co.* v. *Binnington & Co.*, [1891] 1 Q. B. 35, C. A.); the cause of his inability must be within his control (*Hansen* v. *Donaldson & Sons* (1874), 1 R. (Ct. of Sess.) 1066); see p. 272, *post*.

(*n*) *Postlethwaite* v. *Freeland* (1880), 5 App. Cas. 599; *Hick* v. *Raymond and Reid*, [1893] A. C. 22; *Hulthen* v. *Stewart & Co.*, [1903] A. C. 389; see, further, p. 274, *post*. The same principle applies when the ship is detained at a port not covered by the stipulation (*Sweeting* v. *Darthez*, (1854), 14 C. B. 538).

(*o*) *Wilson and Coventry* v. *Thoresen's Linie* (1910), 15 Com. Cas. 262; *Lilly & Co.* v. *Stevenson & Co.*, (1895), 22 R. (Ct. of Sess.) 278.

(*p*) *Wilson and Coventry* v. *Thoresen's Linie*, *supra*.

(*q*) Either party may show that the actual loss is greater or less, as the case may be (*Moorsom* v. *Bell* (1811), 2 Camp. 616). Where, however, the charterparty does not specify any period of demurrage or provide that the demurrage rate is only to apply to a reasonable number of days, the demurrage rate applies in fact to the whole period during which the ship is detained (*Western Steamship Co.* v. *Amaral Sutherland & Co.*, [1913] 3 K. B. 366).

(*r*) *Moorsom* v. *Bell*, *supra*.

(*s*) In popular use the word covers damages for detention (*Lockhart* v. *Falk* (1875), L. R. 10 Exch. 135, approved in *Great Western Railway* v. *Phillips & Co., Ltd.*, [1908] A. C. 101, *per* Lord MACNAGHTEN, at p. 107).

(*t*) *Alcock* v. *Taylor* (1836), 2 Har. & W. 58, where the stipulation applied only to the loading; compare *Evans* v. *Forster* (1830), 1 B. & Ad. 118. The shipowner may in his turn contract to pay a specified sum per day if he is responsible for the ship's delay (*Seeger* v. *Duthie* (1860), 8 C. B. (N. S.) 45, 72, Ex. Ch.; *Jones* v. *Hough* (1879), 5 Ex. D. 115, C. A.); the contract may be so worded as to apply to delay during the voyage only, and not to delay in starting (*Valente* v. *Gibbs* (1859), 6 C. B. (N. S.) 270).

(*u*) *Stevenson* v. *York* (1790), 2 Chit. 570; *Marshall* v. *De la Torre* (1795), 1 Esp. 367; *Randall* v. *Lynch* (1810), 12 East, 179; compare *Cropton* v. *Pickernell* (1847), 16 M. & W. 829; *Horn* v. *Bensusan* (1841), 9 C. & P. 709.

(*a*) Whether, in the case of the port of loading, the ship is entitled to depart at once is doubtful; see *Wilson and Coventry* v. *Thoresen's Linie*, *supra*, where BRAY, J., at p. 267, declined to decide the point. As to landing the cargo at the port of discharge, see pp. 257, 258, *post*.

SECT. 1. Charter-parties.

breach of contract, and is liable to pay damages for her detention as soon as the lay days expire (*b*).

Days saved.

208. Where the charterparty specifies the number of lay days to be allowed for loading and discharge respectively, the charterer is not at liberty to take into account any days saved at the port of loading, and to add them to the lay days allowed for discharge so as to escape liability for demurrage at the port of discharge (*c*), unless he is expressly permitted to do so by the terms of the charterparty (*d*).

When demurrage ceases.

209. The payment of demurrage ceases as soon as the charterer has fully performed his obligation of providing or taking away the cargo, and he is not responsible for any further delay not attributable to his default (*e*). Thus, if after the ship has been fully laden and her clearances obtained (*f*) she is unable to sail owing to bad weather, or is driven back to the port of loading, after sailing, by a storm, the shipowner's claim for demurrage does not continue or revive, as the case may be (*g*). On the other hand, the payment of demurrage is not suspended where the loading is interrupted by an excepted peril (*h*), unless the stipulation expressly so provides (*i*). Where, however, the ship by reason of a collision or otherwise is rendered unavailable for loading, or if she leaves the port, no demurrage is payable for the period whilst she is under repair or whilst she is absent (*k*).

When time begins to run.

210. Time does not begin to run against the charterer until the

(*b*) *Lockhart* v. *Falk* (1875), L. R. 10 Exch. 132; *Gray* v. *Carr* (1871), L. R. 6 Q. B. 522, Ex. Ch.; *Clink* v. *Radford & Co.*, [1891] 1 Q. B. 625, C. A.; *Dunlop & Sons* v. *Balfour, Williamson & Co.*, [1892] 1 Q. B. 507, C. A.; compare *Kish* v. *Cory* (1875), L. R. 10 Q. B. 553, Ex. Ch.; *The Angerona* (1814), 1 Dods. 382; and pp. 202, 271, *post*. The distinction between demurrage and damages for detention is that the first is liquidated and the second unliquidated damages (*Moor Line, Ltd.* v. *Distillers Co.*, [1911] S. C. 514).

(*c*) *Marshall* v. *Bolckow* (1881), 6 Q. B. D. 231; *Avon Steamship Co.* v. *Leask & Co.* (1890), 18 R. (Ct. of Sess.) 280.

(*d*) *Molière Steamship Co.* v. *Naylor, Benzon & Co.* (1897), 2 Com. Cas. 92. If the charterer has elected to be paid dispatch money (see pp. 128, 129, *post*) at the port of loading, he cannot afterwards add the days in respect of which he has been paid to the days allowed for unloading for the purpose of avoiding demurrage at the port of discharge (*Oakville Steamship Co.* v. *Holmes* (1899), 5 Com. Cas. 48); compare *Rowland and Marwood's Steamship Co.* v. *Wilson, Sons & Co.* (1897), 2 Com. Cas. 198, where a power to average for purposes of demurrage did not enable the time saved in loading to be added to time saved in discharging for the purposes of dispatch money.

(*e*) *Barret* v. *Dutton* (1815), 4 Camp. 333; *Smith* v. *Wilson* (1817), 6 M. & S. 78; compare *General Steam Navigation Co.* v. *Slipper* (1862), 11 C. B. (N. S.) 493.

(*f*) It is the duty of the shipowner to obtain clearances (*Barret* v. *Dutton*, *supra*).

(*g*) *Jamieson & Co.* v. *Laurie* (1796), 6 Bro. Parl. Cas. 474; *Pringle* v. *Mollett* (1840), 6 M. & W. 80; compare *Lannoy* v. *Werry* (1717), 4 Bro. Parl. Cas. 630; *Connor* v. *Smythe* (1814), 5 Taunt. 654.

(*h*) *Saxon Steamship Co.* v. *Union Steamship Co.* (1900), 69 L. J. (Q. B.) 907, H. L.

(*i*) *Lilly & Co.* v. *Stevenson & Co.* (1895), 22 R. (Ct. of Sess.) 278.

(*k*) *Tyne and Blyth Shipping Co.* v. *Leech, Harrison, and Forwood*, [1900] 2 Q. B. 12.

ship has been placed at his disposal (*l*). She is not at his disposal until she has reached the place named in the charterparty as the place where she is to take in or deliver her cargo, as the case may be, and until she is ready to do so (*m*). Where the place is merely designated in general terms, as for instance by the name of a port, difficult questions arise as to when the ship can be said to have arrived, within the meaning of the charterparty, at such port (*n*). Even where a particular dock is specified similar questions may arise (*o*). It is, therefore, not unusual to insert an express stipulation that the ship is to load or discharge at a particular berth (*p*). In this case she must be actually alongside the berth before the lay days begin to run (*q*).

Written notice of readiness.

211. A stipulation is frequently inserted providing for the giving of written notice that the ship is ready to load or discharge as the case may be (*r*). The stipulation may further provide that time is to run from the giving of such notice after arrival, whether the ship has reached her berth or not (*s*).

"In turn."

212. Sometimes the charterparty provides that the ship is to be loaded or discharged "in turn" or "in regular turn" (*t*). In this case the ship must take her turn with other ships in due order, and time does not begin to run against the charterer until her turn arrives (*a*). He is not, therefore, responsible for any delay arising from the ship having to wait for her turn in the ordinary course (*b*), but only for such delay as is attributable to his own default (*c*), as for instance where the ship loses her turn owing to the fact that he is not ready to deliver or take the cargo (*d*). Where, on the

(*l*) *Nelson* v. *Dahl* (1879), 12 Ch. D. 568, C. A., *per* BRETT, L.J., at p. 581; *Tharsis Sulphur and Copper Co.* v. *Morel Brothers & Co.*, [1891] 2 Q. B. 647, C. A.; *Leonis Steamship Co., Ltd.* v. *Rank, Ltd.*, [1908] 1 K. B. 499, C. A.

(*m*) *Nelson* v. *Dahl, supra; Bastifell* v. *Lloyd* (1862), 1 H. & C. 388; see pp. 182, 260, *post.*

(*n*) See pp. 182 *et seq.*, 260, *post.*

(*o*) See pp. 183 *et seq.*, 260, *post.*

(*p*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 100.

(*q*) *Strahan* v. *Gabriel* (1879), cited 12 Ch. D. 590; *Murphy* v. *Coffin* (1883), 12 Q. B. D. 87, not followed in *The Carisbrook* (1890), 15 P. D. 98; see pp. 184, 261, *post.*

(*r*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 101, 103. As to notice in the absence of any stipulation, see p. 186, *post.* As to delay caused by rules made by shore labourers, see *Northfield Steamship Co.* v. *Compagnie L'Union Des Gaz*, [1912] 1 K. B. 434, C. A.; as to delay caused by failure of colliery to produce specified coal, see *Arden Steamship Co., Ltd.* v. *Mathurin & Son*, [1912] S. C. 211.

(*s*) See Encyclopædia of Forms and Predecents, Vol. XIV., p. 103.

(*t*) See the cases cited in notes (*f*)—(*n*), p. 128, *post.*

(*a*) *Kell* v. *Anderson* (1842), 10 M. & W. 498; *Bastifell* v. *Lloyd, supra; Shadforth* v. *Cory* (1868), 32 L. J. (Q. B.) 379, Ex. Ch.

(*b*) *Robertson* v. *Jackson* (1845), 2 C. B. 412; *The Cordelia*, [1909] P. 27. But the charterer is responsible for any delay arising from the fact that the practice of the person loading or unloading the ship differs from that in ordinary use in the port (*Lawson* v. *Burness* (1862), 1 H. & C. 396).

(*c*) *Jones* v. *Adamson* (1875), 1 Ex. D. 60 (where he was also held liable for a further delay caused by bad weather); *Elliott* v. *Lord* (1883), 5 Asp. M. L. C. 63, P. C.

(*d*) *Cawthron* v. *Trickett* (1864), 15 C. B. (N. S.) 754.

SECT. 1. Charter-parties.

other hand, the ship loses her turn in consequence of some default on the part of the shipowner, any loss occasioned by the delay falls on the shipowner and not on the charterer (*e*).

The meaning of the term "in turn" varies according to circumstances. Ships may be entitled to take their turn in order of arrival (*f*) or in order of readiness (*g*); steamships may have precedence over sailing ships (*h*); and one kind of cargo may be loaded before another (*i*). In any particular case the meaning to be attached to the term may have to be ascertained by reference to the custom of the port (*k*). If there is only one person at the port from whom the cargo can be obtained (*l*), or to whom it can be delivered (*m*), the practice followed by him will bind the shipowner as being the custom of the port; if, however, there are several persons available, the practice of the person actually chosen, if differing from the custom of the port, will not excuse a delay which would not have happened if the charterer had chosen a person whose practice accorded with the custom of the port (*n*).

Dispatch money.

213. Since the charterer is entitled to the whole of the lay days for the purpose of loading or discharging his cargo (*o*), it is not unusual for the charterparty to contain a stipulation providing for the payment of what is called dispatch money by the shipowner to the charterer, for any time saved either in the loading or in the discharging (*p*). As in the case of demurrage (*q*), dispatch money is payable at a given rate per day or hour saved (*r*). In reckoning the time saved the language of the particular stipulation must be

(*e*) *Taylor* v. *Clay* (1846), 9 Q. B. 713; *Tyne and Blyth Shipping Co.* v. *Leech, Harrison and Forwood*, [1900] 2 Q. B. 12.

(*f*) *King* v. *Hinde* (1883), 12 L. R. Ir. 113.

(*g*) *Lawson* v. *Burness* (1862), 1 H. & C. 396.

(*h*) *King* v. *Hinde, supra.*

(*i*) *Leidemann* v. *Schultz* (1853), 14 C. B. 38.

(*k*) See pp. 276, 277, *post.* The custom is binding on the shipowner, though unknown to him (*Robertson* v. *Jackson* (1845), 2 C. B. 412; *King* v. *Hinde, supra.*

(*l*) *King* v. *Hinde, supra; Temple, Thomson and Clarke* v. *Runnalls* (1902), 18 T. L. R. 822, C. A.; see, *contra, Clacevich* v. *Hutcheson & Co.* (1887), 15 R. (Ct. of Sess.) 11.

(*m*) *Robertson* v. *Jackson, supra.*

(*n*) *Hudson* v. *Clementson* (1856), 18 C. B. 213; *Lawson* v. *Burness, supra.*

(*o*) See p. 124, *ante.*

(*p*) Dispatch money may be made payable only in respect of time saved in discharging (*Rowland and Marwood's Steamship Co.* v. *Wilson, Sons & Co.* (1897), 2 Com. Cas. 198). As to the meaning of "time saved," see *Laing* v. *Hollway* (1878), 3 Q. B. D. 437, C. A.; *Re Nelson & Sons, Ltd. and Nelson Line, Liverpool, Ltd., Nelson & Sons, Ltd.* v. *Nelson Line, Liverpool, Ltd.*, [1907] 2 K. B. 705, C. A., *per* BUCKLEY, L.J., at p. 724 (reversed, without reference to this point, [1908] A. C. 108); *Re Royal Mail Steam Packet Co., Ltd., and River Plate Steamship Co., Ltd.*, [1910] 1 K. B. 600.

(*q*) See p. 122, *ante.*

(*r*) Both dispatch money and demurrage may be included in the same clause (*Laing* v. *Hollway, supra; Re Nelson & Sons, Ltd., and Nelson Line, Liverpool, Ltd., Nelson & Sons, Ltd.* v. *Nelson Line, Liverpool, Ltd., supra; Re Royal Mail Steam Packet Co., Ltd., and River Plate Steamship Co., Ltd., supra*), or they may be dealt with in separate clauses (*The Glendevon*, [1893] P. 269).

taken into account (*a*). Unless there is something in the contract to show the contrary, the charterer is entitled to be credited with the whole of the time saved; if dispatch money is payable per hour he counts every hour saved, whether a working hour or not, so that a day saved amounts to twenty-four hours for the purpose of dispatch money (*b*). Similarly, every day saved counts, whether or not it is a day excepted from the lay days by the charterparty (*c*), such as a Sunday or a holiday (*d*), unless upon the construction of the charterparty it appears to have been the intention of the parties that such excepted days were not to be counted for this purpose (*e*).

(x.) *Exceptions Relieving the Charterer.*

Scope of exceptions.

214. It is usual for the charterer to protect himself by express stipulation against the consequences of delay in the performance of his obligations (*f*). Sometimes the exceptions which relieve the shipowner from responsibility are made equally available for the charterer (*g*). More frequently the stipulations which define the charterer's obligations do not impose upon him an absolute duty to fulfil them, but exempt him from liability where his failure to do so is occasioned by certain specified events, which are thus excepted from the charterparty (*h*). The stipulation in its ordinary form provides that any time lost, whether in the loading or in the

(*a*) See the cases cited in notes (*b*), (*c*), *infra*.

(*b*) *Laing* v. *Hollway* (1878), 3 Q. B. D. 437, C. A.

(*c*) *Re Royal Mail Steam Packet Co., Ltd., and River Plate Steamship Co., Ltd.*, [1910] 1 K. B. 600; *Mawson Shipping Co., Ltd.* v. *Beyer*, [1914] 1 K. B. 304.

(*d*) If work is done upon an excepted day by arrangement, that day does not become a lay day unless there is an agreement to that effect, which is not to be implied from the mere fact of working on that day by consent; dispatch money is, therefore, payable as upon the original period (*Nelson (James) & Sons* v. *Nelson Line (Liverpool), Ltd.*, [1908] A. C. 108).

(*e*) *The Glendevon*, [1893] P. 269; *Re Nelson & Sons, Ltd., and Nelson Line, Liverpool, Ltd., Nelson & Sons, Ltd.* v. *Nelson Line, Liverpool, Ltd.*, [1907] 2 K. B. 705, C. A. It should be noted, however, that in *Re Nelson & Sons, Ltd., and Nelson Line, Liverpool, Ltd., Nelson & Sons, Ltd.* v. *Nelson Line, Liverpool, Ltd., supra*, FLETCHER MOULTON, L.J., dissented from the majority of the Court of Appeal, and disapproved of *The Glendevon, supra*; whilst, in *Re Royal Mail Steam Packet Co., Ltd., and River Plate Steamship Co., Ltd., supra*, BRAY, J., expressed his agreement with the reasoning of FLETCHER MOULTON, L.J.

(*f*) For examples, see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 101, 102, 107, 109, 114, 116.

(*g*) *Bruce* v. *Nicolopulo* (1855), 11 Exch. 129; *Smith* v. *Dart & Son* (1884), 14 Q. B. D. 105; *Brown* v. *Turner, Brightman & Co.*, [1912] A. C. 12; see Encyclopædia of Forms and Precedents, Vol. XIV., p. 99. It has been held that the ordinary exceptions in a charterparty (for which see pp. 107 *et seq.*, *ante*) also protect the charterer; see *Barrie* v. *Peruvian Corporation* (1896), 2 Com. Cas. 50 (voyage charter), where it was held that the wording of the particular clause clearly implied mutuality. This case, however, though followed, was doubted in *Re Newman and Dale Steamship Co. and British and South American Steamship Co.*, [1903] 1 K. B. 262 (voyage charter), and was not followed in *Braemount Steamship Co.* v. *Weir & Co.* (1910), 15 Com. Cas. 101 (time charter), where it was held that a clause in the ordinary form was not mutual; compare Abbott on Shipping, 5th ed., p. 428; 14th ed., p. 867. "The common exception of the restraint of princes and rulers applies only to the case of the master" (*Smith* v. *Dart & Son, supra, per* A. L. SMITH, J., at p. 109); and see p. 118, *ante*.

(*h*) For examples, see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 101, 107.

SECT. 1. Charter-parties.

discharge, in consequence of the happening of an excepted event, is not to be counted, unless actually used (*i*). The extent of this protection may be limited by a proviso that no deduction of time is to be allowed if the ship is already on demurrage when the event happens (*k*), or if the charterer fails to give due notice of its happening to the master or shipowner (*l*). Where the event takes place at the port of loading and prevents the charterer from loading a cargo, the stipulation may provide that the charterparty is to become null and void, except as regards any cargo already shipped (*m*). The charterer is thus relieved from the obligation to supply any further cargo. Sometimes, however, a proviso is inserted that the charterparty is not to become null and void, if part of the cargo has already been put on board (*n*).

Construction.

215. Any stipulation relieving the charterer from responsibility being inserted for his benefit is to be construed against him (*o*), and the words used are to be taken in their obvious meaning (*p*). Where, however, the words are ambiguous, this meaning is to be gathered from the surrounding circumstances to which the charterparty was intended to apply (*q*). The burden of proving that the stipulation is operative in any particular case rests on the charterer (*r*). It is not sufficient to show that an excepted event happened, and as a matter of fact prevented the charterer from fulfilling his obligation in the way which he had chosen (*s*). He must go further and show either that the way he had chosen was the only practicable way of performing his obligation (*t*), and that it

(*i*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 101, 107. As to the effect of such a stipulation where the charterer is otherwise in default, see *Lilly & Co.* v. *Stevenson & Co.* (1895), 22 R. (Ct. of Sess.) 278.

(*k*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 103.

(*l*) See *ibid.*, p. 102.

(*m*) See *ibid.*, p. 109.

(*n*) *Steel, Young & Co.* v. *Grand Canary Coaling Co.* (1904), 9 Com. Cas. 275, H. L. As to the case where the delay is such as wholly to frustrate the adventure, see *Fenwick* v. *Schmalz* (1868), L. R. 3 C. P. 313; and see p. 194, *post.*

(*o*) *Hudson* v. *Ede* (1867), L. R. 2 Q. B. 566, *per* BLACKBURN, J., at p. 578; *Grant & Co.* v. *Coverdale, Todd & Co.* (1884), 9 App. Cas. 470, distinguished in *Sailing Ship Allerton Co.* v. *Falk* (1888), 6 Asp. M. L. C. 287; and see p. 193, *post.*

(*p*) *Hudson* v. *Ede, supra;* see p. 138, *post.*

(*q*) *Hudson* v. *Ede, supra,* distinguished in *Kay* v. *Field* (1882), 10 Q. B. D. 241, C. A., and in *Grant & Co.* v. *Coverdale, Todd & Co., supra; Sailing Ship Allerton Co.* v. *Falk, supra,* distinguishing *Grant & Co.* v. *Coverdale, Todd & Co., supra; Re Lockie and Craggs & Sons* (1901), 7 Com. Cas. 7, with which contrast *Re Richardsons and Samuel (M.) & Co.*, [1898] 1 Q. B. 261, C. A.

(*r*) *The Village Belle* (1874), 30 L. T. 232.

(*s*) *Ibid.; Postlethwaite* v. *Freeland* (1880), 5 App. Cas. 599; *Kay* v. *Field, supra; Stephens* v. *Harris & Co.* (1887), 57 L. J. (Q. B.) 203, C. A.; *Granite City Steamship Co.* v. *Ireland & Son* (1891), 19 R. (Ct. of Sess.) 124; *Gardiner* v. *Macfarlane, M'Crindell & Co.* (1893), 20 R. (Ct. of Sess.) 414; *Re Richardsons and Samuel (M.) & Co., supra; Bulman and Dickson* v. *Fenwick & Co.*, [1894] 1 Q. B. 179, C. A.

(*t*) *Hudson* v. *Ede, supra,* applied in *Stephens* v. *Harris & Co., supra;* compare *Granite City Steamship Co.* v. *Ireland & Son, supra.* If the charterer has ordered the ship, in accordance with the charterparty, to proceed to a particular port for discharge, the subsequent outbreak of a strike at such port does not preclude him from claiming the protection of

was not, according to known mercantile usage, possible to perform it in any other way (*a*), or, if other ways of performing it were available, that the event would have affected them all (*b*).

Principal exceptions :

216. The principal exceptions which are inserted for the special protection of the charterer are the following (*c*), namely :—

(1) strikes and lock-outs ;

(1) Strikes and lock-outs (*d*). The phrase implies a labour dispute (*e*); it does not, therefore, cover the case where workmen abandon their work through fear of an epidemic (*f*), or where the employer dismisses them because he has no work for them (*g*). The exception may be limited to workmen essential to the loading or discharge of the cargo (*h*); it may extend to workmen connected with the supply of the cargo (*i*), or it may be framed in general

a strike clause, and he is not bound to stop the ship or name another port (*Bulman and Dickson* v. *Fenwick & Co.*, [1894] 1 Q. B. 179, C. A.); but it is otherwise if he orders the ship to a port of loading where to his knowledge there is a strike (*Brown* v. *Turner, Brightman & Co.*, [1912] A. C. 12).

(*a*) *Sailing Ship Allerton Co.* v. *Falk* (1888), 6 Asp. M. L. C. 287, distinguishing *Grant & Co.* v. *Coverdale, Todd & Co.* (1884), 9 App. Cas. 470.

(*b*) *The Village Belle* (1874), 30 L. T. 232; compare *Bruce* v. *Nicolopulo* (1855), 11 Exch. 129.

(*c*) It is impossible to deal in detail with all exceptions that may be employed. Such exceptions as have been judicially considered are referred to in this sub-section, or in the sections dealing with the duties of the charterer which are modified by their insertion in the contract. As to "detention by railways," see *Letricheux and David* v. *Dunlop & Co., The "Abertawe"* (1891), 19 R. (Ct. of Sess.) 209, and contrast *Granite City Steamship Co.* v. *Ireland & Son* (1891), 19 R. (Ct. of Sess.) 124.

(*d*) As to the effect of a strike on the charterer's obligations in the absence of an express exception, see pp. 273, 274, *post*. As to the effect of a strike clause upon the payment of hire under a time charter, see *Brown* v. *Turner, Brightman & Co., supra*. For a strike clause intended to protect the shipowners, see *Wiles & Co., Ltd.* v. *Ocean Steamship Co., Ltd.* (1912), 107 L. T. 825. Certain clauses known as the "I. S. F. Strike Expenses Clauses" have been prepared by the International Shipping Federation; see *Times*, 8th December, 1913. These clauses, which are intended to be incorporated in charterparties and bills of lading, will, if adopted, confer extensive powers of dealing with the cargo on the shipowner in the event of a strike, and provide for the apportionment of any expenses incurred between the shipowner and the cargo owner.

(*e*) *Re Richardsons and Samuel (M.) & Co.*, [1898] 1 Q. B. 261, C. A.; *Horsley Line, Ltd.* v. *Roechling Brothers*, [1908] S. C. 866; compare *Gordon Steamship Co., Ltd.* v. *Moxey, Savon & Co., Ltd.* (1913), 18 Com. Cas. 170. Where the exception concludes with the phrase "or any other cause beyond the charterer's control," an unauthorised holiday taken by the workmen will be covered (*Re Allison & Co. and Richards* (1904), 20 T. L. R. 584, C. A.).

(*f*) *Stephens* v. *Harris & Co.* (1887), 6 Asp. M. L. C. 192, affirmed, without deciding this point (1887), 57 L. J. (Q. B.) 203, C. A.; *Mudie* v. *Strick & Co., Ltd.* (1909), 14 Com. Cas. 135 (not affected on this point by the order for a new trial made (1909), 14 Com. Cas. 227, C. A.). But the exception may be framed in terms sufficiently wide to cover the case (*Beatson* v. *Schank* (1803), 3 East, 233).

(*g*) *Re Richardsons and Samuel (M.) & Co., supra*.

(*h*) *Reid* v. *Lee & Sons* (1901), 17 T. L. R. 771; *Langham Steamship Co., Ltd.* v. *Gallagher* (1912), 12 Asp. M. L. C. 109. Where the exception refers to a general strike, as, for instance, of lightermen, it is sufficient if there is a general strike amongst a particular class of lightermen, though other classes of lightermen do not strike, provided that the charterer is thereby prevented from fulfilling his contract (*Aktieselskabet Shakespeare* v. *Ekman & Co.* (1902), 18 T. L. R. 605, C. A.).

(*i*) *Petersen* v. *Dunn & Co.* (1895), 43 W. R. 349; *Lilly & Co.* v. *Stevenson & Co.* (1895), 22 R. (Ct. of Sess.) 278.

SECT. 1. Charter-parties.

terms (*k*). Usually it does not apply to workmen in the employment of the shipper or receiver of the cargo if by the use of reasonable diligence he could have procured other suitable labour (*l*).

(2) riots etc.;

(2) Riots and civil commotions (*m*).

(3) accidents;

(3) Accidents (*n*) beyond the charterer's control. This exception applies only to what is strictly an accident (*o*), and not to something which is one of the ordinary operations of nature, such as, for instance, a fall of snow (*p*).

(4) ice etc.;

(4) Ice, frost, fog, storm etc. The charterer is not protected against these perils, unless they are specially excepted (*q*).

(5) war.

(5) War. Where the outbreak of war renders the charterparty illegal (*r*) the charterer is discharged from the obligation of performing his contract (*s*).

Negligence.

A negligence clause is sometimes inserted exempting the charterer from responsibility for any negligence, default or error in judgment

(*k*) *The Alne Holme*, [1893] P. 173; *Petersen* v. *Dunn & Co.* (1895), 43 W. R. 349; *London and Northern Steamship Co., Ltd.* v. *Central Argentine Rail. Co.* (1913), 108 L. T. 527. A strike of workmen unconnected with the ship or cargo in any way is not within the exception, even though its ultimate effect is to delay the ship (*Gardiner* v. *Macfarlane, M'Crindell & Co.* (1893), 20 R. (Ct. of Sess.) 414; *Granite City Steamship Co.* v. *Ireland & Son* (1891), 19 R. (Ct. of Sess.) 124). If the delay is caused by a strike covered by the exception, it is immaterial that the strike has already ended before the arrival of the ship (*Leonis Steamship Co.* v. *Rank, Ltd.* (No. 2) (1908), 13 Com. Cas. 295, C. A., followed in *Moor Line, Ltd.* v. *Distillers Co.*, [1912] S. C. 514); compare *Gordon Steamship Co.* v. *Moxey, Savon & Co.* (1913), 18 Com. Cas. 170.

(*l*) *Bulman and Dickson* v. *Fenwick & Co.*, [1894] 1 Q. B. 179, C. A.; compare Encyclopædia of Forms and Precedents, Vol. XIV., pp. 108, 116.

(*m*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 103. These words have, presumably, the same meaning as in a policy of insurance, as to which see title INSURANCE, Vol. XVII., p. 527, note (*n*).

(*n*) Another word used is "causes." In *Hibernian SS. Co., Ltd.* v. *Suttons, Ltd.* (1912), 47 I. L. T. 39 (default of a railway company to provide wagons was held to be within the words "or any cause beyond the personal control of the charterers." The phrase may also take the form "unavoidable accidents and hindrances" (*Crawford and Rowat* v. *Wilson, Sons & Co.* (1896), 1 Com. Cas. 277, C. A., where the phrase was held to apply to rebellion). Whatever its form, the phrase is usually placed at the end of a list of exceptions, and the *ejusdem generis* rule accordingly applies (*Re Richardsons and Samuel (M.) & Co.*, [1898] 1 Q. B. 261, C. A.; *SS. Knutsford, Ltd.* v. *Tillmans & Co.*, [1908] A. C. 406; *Mudie* v. *Strick* (1909), 14 Com. Cas. 135; *Thorman* v. *Dowgate Steamship Co.*, [1910] 1 K. B. 410), unless it is impossible to apply it (*Larsen* v. *Sylvester & Co.*, [1908] A. C. 295; *Abchurch Steamship Co.* v. *Stinnes*, [1911] S. C. 1010); compare *Arden Steamship Co., Ltd.* v. *Mathwin* (*William*) *& Son*, [1912] S. C. 211; *Glasgow Navigation Co.* v. *Iron Ore Co.*, [1909] S. C. 1414; *Aktieselskabet Adalands* v. *Whitaker* (*Michael*), *Ltd.* (1913), 18 Com. Cas. 229; *France, Fenwick & Co., Ltd.* v. *Spackman* (*Phillip*) *& Sons* (1912), 18 Com. Cas. 52.

(*o*) *Gardiner* v. *Macfarlane, M'Crindell & Co.* (1893), 20 R. (Ct. of Sess.) 414.

(*p*) *Fenwick* v. *Schmalz* (1868), L. R. 3 C. P. 313.

(*q*) *SS. Knutsford, Ltd.* v. *Tillmans & Co., supra; Fenwick* v. *Schmalz, supra.* As to the scope of such an exception, see *Grant & Co.* v. *Coverdale, Todd & Co.* (1884), 9 App. Cas. 470, distinguished in *Sailing Ship Allerton Co.* v. *Falk* (1888), 6 Asp. M. L. C. 287; *Kay* v. *Field* (1882), 10 Q. B. D. 241, C. A.

(*r*) *Esposito* v. *Bowden* (1857), 7 E. & B. 763, Ex. Ch.; *Avery* v. *Bowden* (1856), 6 E. & B. 953, 962, Ex. Ch.; and contrast *The Teutonia* (1872), L. R. 4 P. C. 171.

(*s*) See p. 193, *post.*

of trimmers or stevedores employed in loading or discharging the cargo (*t*).

(xi.) *Cesser of Liability Clause.*

Effect of cesser clause.

217. A charterparty usually contains a stipulation, known as a cesser clause, providing that the charterer's liability under the charterparty is to cease as soon as the cargo is shipped (*a*). Such a stipulation is valid (*b*), but its effect varies according to the language in which it is framed (*c*). Whatever form the stipulation may take, the exemption as regards future liabilities arising after the loading appears to be absolute (*d*). As regards antecedent liabilities, the cesser of liability depends upon the wording of the clause. The clause may expressly deal with such liabilities; it may provide that the liability in respect of them is to continue (*e*) or to cease, either absolutely (*f*), or conditionally upon their discharge (*g*) More usually there is no express reference to antecedent liabilities, and the extent of the exemption then depends upon the construction to be placed upon the particular stipulation employed (*h*). If it is clear from the words of the stipulation that all liabilities under the charterparty, antecedent as well as future, are to cease on loading, the exemption is equally absolute in the case of antecedent liabilities as in the case of future liabilities (*i*). If, on the other hand, the words used are open to a different interpretation, the charterer's liability as to antecedent breaches of the charterparty will cease only in so far as an equivalent is given to the shipowner (*k*) in the shape of a remedy available against the consignee (*l*). The cesser clause will, therefore,

Antecedent liabilities.

(*t*) See Encyclopædia of Forms amd Precedents, Vol. XIV., p. 102. As to the general effect of a negligence clause, see pp. 116, 117, *ante*.

(*a*) For examples, see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 104, 117. The effect of the clause is to exempt the charterer from liability, whether he is an agent only, as is usually the case, or a principal (*Bannister* v. *Breslauer* (1867), L. R. 2 C. P. 497; *Francesco* v. *Massey* (1873), L. R. 8 Exch. 101). The fact that he is the consignee of the cargo makes no difference (*Sanguinetti* v. *Pacific Steam Navigation Co.* (1877), 2 Q. B. D. 238, C. A.), unless he is otherwise liable under the bill of lading (*Gullischen* v. *Stewart Brothers* (1884), 13 Q. B. D. 317, C. A.; *Bryden* v. *Niebuhr* (1884), Cab. & El. 241; *contra*, *Barwick* v. *Burnyeat, Brown & Co.* (1877), 36 L. T. 250).

(*b*) *Oglesby* v. *Yglesias* (1858), E. B. & E. 930, Ex. Ch.

(*c*) *Gray* v. *Carr* (1871), L. R. 6 Q. B. 522, Ex. Ch., *per* BRAMWELL, B., at p. 549.

(*d*) *Oglesby* v. *Yglesias*, *supra*; *French* v. *Gerber* (1876), 1 C. P. D. 737; affirmed (1877), 2 C. P. D. 247, C. A.

(*e*) *Lister* v. *Van Haansbergen* (1876), 1 Q. B. D. 269, where the words "loading excepted" in the cesser clause were held to extend to delay in loading, so that the charterer remained liable notwithstanding the shipment of a full and complete cargo.

(*f*) *Oglesby* v. *Yglesias*, *supra*.

(*g*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 104.

(*h*) *Clink* v. *Radford & Co.*, [1891] 1 Q. B. 625, C. A.

(*i*) *Milvain* v. *Perez* (1861), 3 E. & E. 495; *French* v. *Gerber*, *supra*; *Restitution Steamship Co.* v. *Pirie & Co.* (1889), 7 Asp. M. L. C. 11, n., C. A.; *Salvesen & Co.* v. *Guy & Co.* (1885), 13 R. (Ct. of Sess.) 85.

(*k*) *Lockhart* v. *Falk* (1875), L. R. 10 Exch. 132; *Christoffersen* v. *Hansen* (1872), L. R. 7 Q. B. 509; *Clink* v. *Radford & Co.*, *supra*, doubting *Bannister* v. *Breslauer*, *supra*.

(*l*) This remedy takes the form of a lien over the cargo; see pp. 134, 135, *post*.

SECT. 1. Charter-parties.

be construed as inapplicable to the particular breach complained of if the effect of a different construction would be to leave the shipowner unprotected in respect of that particular breach (*m*). To ascertain the extent of the protection conferred by a cesser clause, the lien clause which follows it (*n*) and which embodies the remedy given to the shipowner as the corollary of the charterer's release must be read with it, and the two clauses must, if possible, be taken as co-extensive (*o*). No liability is destroyed by the cesser clause, unless it is re-created in someone else by the lien clause (*p*). The construction of the cesser clause is, therefore, governed by the construction of the lien clause, and if that clause confers no lien on the shipowner in respect of the claim which is in question, the charterer's liability is not taken away by the cesser clause (*q*). Accordingly the cesser clause usually provides that it is not to take effect unless the cargo shipped is sufficient to satisfy the various liens which the shipowner may possess over the cargo (*r*).

Construction of cesser clause.

(xii.) *Lien Clause.*

Liens usually conferred.

218. The cesser clause is always followed by a lien clause, which expresses the consideration received by the shipowner in exchange for his release of the charterer (*s*). The liens usually conferred by the clause are for freight, advance freight, dead freight, demurrage, and general average (*t*), but other liens are sometimes included (*a*). Of these liens the lien for freight, strictly so called (*b*), and for general average exist at common law, and are specified in the clause merely to prevent any inference being drawn from their omission (*c*). There

(*m*) *Clink* v. *Radford & Co.*, [1891] 1 Q. B. 625, C. A., *per* Lord ESHER, M.R., at p. 627; *Dunlop & Sons*, v. *Balfour, Williamson & Co.*, [1892] 1 Q. B. 507, C. A.

(*n*) See the text, *infra*.

(*o*) *Clink* v. *Radford & Co.*, *supra*, *per* FRY, L.J., at p. 632; *Dunlop & Sons* v. *Balfour, Williamson & Co.*, *supra*; *Hansen* v. *Harrold*, [1894] 1 Q. B. 619, C. A.; see also *Williams & Co.* v. *Canton Insurance Office, Ltd.*, [1901] A. C. 462.

(*p*) *Clink* v. *Radford & Co*, *supra*, *per* FRY, L.J., at p. 632; *Francesco* v. *Massey* (1873), L. R. 8 Exch. 101; *Kish* v. *Cory* (1875), L. R. 10 Q. B. 553, Ex. Ch.; *Sanguinetti* v. *Pacific Steam Navigation Co.* (1877), 2 Q. B. D. 238, C. A.

(*q*) *Christoffersen* v. *Hansen* (1872), L. R. 7 Q. B. 509; *Pedersen* v. *Lotinga* (1857), 5 W. R. 290; *Lockhart* v. *Falk* (1875), L. R. 10 Exch. 132, followed in *Dunlop & Sons* v. *Balfour, Williamson & Co.*, *supra*, and in *Gardiner* v. *Macfarlane, M'Crindell & Co.* (1889), 16 R. (Ct. of Sess.) 658. It is otherwise as regards future liabilities (*French* v. *Gerber* (1876), 1 C. P. D. 737; affirmed (1877), 2 C. P. D. 247, C. A.).

(*r*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 117. A clause in this form has been held to apply to liabilities arising at the port of loading (*Bannister* v. *Breslauer* (1867), L. R. 2 C. P. 497), but the correctness of the decision was doubted in *Clink* v. *Radford & Co.*, *supra*, where, however, the clause was differently worded. In *Gardiner* v. *Macfarlane, M'Crindell & Co.*, *supra*, a clause in this form was held not to apply to detention at the port of loading.

(*s*) See p. 133, *ante*.

(*t*) For examples see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 104, 117. As to such liens, see pp. 283 *et seq.*, *post*.

(*a*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 118; and p. 285, *post*.

(*b*) As to the meaning of "freight," see p. 103, *ante*, pp. 209, 307 *et seq.*, *post*.

(*c*) As to the maxim "*expressum facit cessare tacitum*," see title DEEDS AND OTHER INSTRUMENTS, Vol. X., p. 442.

is, however, no lien at common law for advance freight (*d*), dead freight (*e*), or demurrage (*f*); any such lien must be created by special contract (*g*). The lien given for dead freight includes unliquidated damages for failing to supply a full cargo (*h*); and the lien for demurrage applies not only to demurrage in the technical sense of the word (*i*), but also to a claim for damages for detention (*k*), unless it is clear from the context that the word was intended to bear its technical meaning only (*l*). It is immaterial whether the claim for demurrage or damages, as the case may be, arises in connexion with the loading (*m*) or the discharge, unless the cesser clause plainly excludes antecedent liabilities from its operation (*n*).

(xiii.) *Penalty Clause.*

Damages.

219. The charterparty usually contains a penalty clause, which is to come into operation in the event of either party failing to perform the contract (*o*). Under this clause a fixed sum may be made payable (*p*), which is to be regarded as liquidated damages (*q*);

(*d*) *Kirchner* v. *Venus* (1859), 12 Moo. P. C. C. 361, disapproving *Gilkison* v. *Middleton* (1857), 2 C. B. (N. S.) 134, and *Neish* v. *Graham* (1857), 8 E. & B. 505; *How* v. *Kirchner* (1857), 11 Moo. P. C. C. 21; *Tamvaco* v. *Simpson* (1866), L. R. 1 C. P. 363, Ex. Ch.

(*e*) *Phillips* v. *Rodie* (1812), 15 East, 547; *Birley* v. *Gladstone* (1814), 3 M. & S. 205; *Rederiactieselskabet "Superior"* v. *Dewar and Webb*, [1909] 1 K. B. 948; varied on appeal, [1909] 2 K. B. 998, C. A.

(*f*) *Birley* v. *Gladstone*, *supra*.

(*g*) *Re Child, Ex parte Nyholm* (1873), 29 L. T. 634; *McLean and Hope* v. *Fleming* (1871), L. R. 2 Sc. & Div. 128; *Wehner* v. *Dene Steam Shipping Co.*, [1905] 2 K. B. 92.

(*h*) *McLean and Hope* v. *Fleming*, *supra*, followed in *Kish* v. *Taylor*, [1912] A. C. 604. The contrary view was taken in *Pearson* v. *Göschen* (1864), 17 C. B. (N. S.) 352, followed in *Gray* v. *Carr* (1871), L. R. 6 Q. B. 522, Ex. Ch., where it was held that "dead freight" in the lien clause did not cover a claim for unliquidated damages, is no longer law.

(*i*) As to demurrage, see pp. 124, 125, *ante*.

(*k*) *Bannister* v. *Breslauer* (1875), L. R. 10 Q. B. 553, doubted in *Gray* v. *Carr*, *supra*, but approved in *Kish* v. *Cory* (1875), L. R. 10 Q. B. 553, Ex. Ch.; *Harris* v. *Jacobs* (1885), 15 Q. B. D. 247, C. A.; *Restitution Steamship Co.* v. *Pirie & Co.* (1889), 6 Asp. M. L. C. 428, 7 Asp. M. L. C. 11, n., C. A.; *Rederiactieselskabet "Superior"* v. *Dewar and Webb*, [1909] 2 K. B. 998, C. A.; see also *Sanguinetti* v. *Pacific Steam Navigation Co.* (1877), 2 Q. B. D. 238, C. A.

(*l*) This inference may be drawn where the charterparty uses the word "demurrage" in its technical sense in other stipulations (*Gray* v. *Carr*, *supra*; *Francesco* v. *Massey* (1875), L. R. 8 Exch. 101; *Lockhart* v. *Falk* (1875), L. R. 10 Exch. 132; *Clink* v. *Radford & Co.*, [1891] 1 Q. B. 625, C. A.; *Dunlop & Sons* v. *Balfour, Williamson & Co.*, [1892] 1 Q. B. 507, C. A.).

(*m*) *Sanguinetti* v. *Pacific Steam Navigation Co.*, *supra*; *Francesco* v. *Massey*, *supra*; *Kish* v. *Cory*, *supra*.

(*n*) *Pederson* v. *Lotinga* (1857), 28 L. T. (O. S.) 267; *Lockhart* v. *Falk*, *supra*; *Lister* v. *Van Haansbergen* (1876), 1 Q. B. D. 269.

(*o*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 96, 99, 104, 109, 118. As to the construction of penalty clauses, see title DAMAGES, Vol. X., pp. 328 *et seq.*; and see titles BONDS, Vol. III., pp. 93 *et seq.*; EQUITY, Vol. XIII., pp. 151 *et seq.*

(*p*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 96, 99.

(*q*) *Sparrow* v. *Paris* (1862), 7 H. & N. 594; *Heugh* v. *Escombe* (1861), 4 L. T. 517. As to what is meant by liquidated damages, see title DAMAGES, Vol. X., pp. 304, 328, 329. If the sum specified is in the nature of a penalty,

SECT. 1. Charter-parties.

more usually the damages are unliquidated, but must not exceed the estimated amount of freight (*r*).

(xiv.) *Other Stipulations.*

Arbitration etc. clauses.

220. Any other stipulations may be inserted in the charterparty which the parties think it convenient to insert. Thus, there may be stipulations relating to arbitration (*s*), average (*t*), insurance (*u*), brokerage and other commissions (*a*), and payment of dock dues (*b*). Of these the stipulations relating to brokerage and other commissions alone call for comment.

Brokerage clause.

221. Where a charterparty is negotiated through a broker (*c*), a stipulation is usually inserted providing for the payment to him of a commission (*d*). The rate of commission is usually 5 per cent., and it may be expressly made payable on the gross amount of freight and demurrage receivable under the charterparty (*e*). The stipulation may provide when the commission is to become due, as,

a larger sum may be recovered as damages (*Winter* v. *Trimmer* (1762), 1 Wm. Bl. 395; *Harrison* v. *Wright* (1811), 13 East, 343).

(*r*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 104, 109, 118. As to the measure of damages for breach of the contract of carriage, see pp. 288 *et seq.*, *post*. In this case a deduction will have to be made for expenses and an allowance of any profit actually earned (*Smith* v. *M'Guire* (1858), 3 H. & N. 554; compare *Staniforth* v. *Lyall* (1830), 7 Bing. 169).

(*s*) *The Dawlish*, [1910] P. 339; *The Swindon* (1902), 18 T. L. R. 681, C. A.; and compare *The Cap Blanco*, [1913] P. 130; see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 75, 99. As to the scope of such a clause, see *Thomas* (*T. W.*) *& Co., Ltd.* v. *Portsea Steamship Co., Ltd.*, [1912] A. C. 1; *S.S. Den of Airlie Co.* v. *Mitsui & Co.* (1912), 17 Com. Cas. 116, C. A. As to arbitration generally, see title ARBITRATION, Vol. I., pp. 437 *et seq.*

(*t*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 109; see p. 323, *post*.

(*u*) *Aira Force Steamship Co.* v. *Christie & Co.* (1893), 9 T. L. R. 104, C. A., where a stipulation in a time charter that the shipowner was to pay for insurance was held not to relieve the charterer from liability for the negligence of his servants.

(*a*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 99, 103, 104, 109, 110, 118; and see the text, *infra*.

(*b*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 101, 109; compare *Cobridge Steamship Co. Ltd.* v. *Bucknall Steamship Lines, Ltd.* (1909), 14 Com. Cas. 141, and *Societa Anonima Ungherese di Armamenti Marittimo* v. *Hamburg South American Steamship Co.* (1912), 106 L. T. 957.

(*c*) Where there is a managing owner (see p. 35, *ante*), it is his duty to procure employment for the ship, and he is not entitled, in the absence of a special contract, to retain commissions on the charterparties or freights procured by him or by brokers employed by him (*Williamson* v. *Hine*, [1891] 1 Ch. 390; *Manners* v. *Raeburn and Verel* (1884), 11 R. (Ct. of Sess.) 899; compare *Benson* v. *Heathorn* (1842), 1 Y. & C. Ch. Cas. 326; *Miller* v. *Mackay* (1864), 34 Beav. 295). As to contracts to pay commission, see *Smith* v. *Lay* (1856), 3 K. & J. 105; *Salter* v. *Adey* (1855), 1 Jur. (N. S.) 930; *The Meredith* (1885), 10 P. D. 69. As to secret commissions, see *Brenan* v. *Preston* (1854), 2 W. R. 138.

(*d*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 99, 104, 110, 118. The stipulation appearing in the charterparty may be disregarded if inapplicable to the actual contract (*Holl* v. *Pinsent* (1821), 6 Moore (C. P.), 228).

(*e*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 118.

for instance, on the signing of the charterparty (*f*), or the loading of the cargo (*g*), or the earning of the freight (*h*).

When commission payable.

In the absence of any such stipulation, the right of the broker to receive his commission depends upon the ordinary principles of agency (*i*). Thus, the loss of the ship or cargo, or the charterer's failure to supply a full cargo, whereby little or no freight is payable, does not affect the broker's right to have his commission calculated upon the full amount which might have become payable under the charterparty, since he has already earned his commission by procuring the charterparty (*k*). Similarly, he is entitled to commission if, though he does not himself actually complete the negotiations, the signing of the charterparty is directly (*l*) attributable to his intervention (*m*). If, on the other hand, the event upon which his commission was to become payable never takes place, he cannot, in the absence of any default on the part of his principal (*n*), claim any commission (*o*).

Reporting of ship.

The stipulation may also provide that the ship is to be reported by the broker at the custom-house on her return (*p*). In this case the broker is not entitled to any remuneration unless she in fact returns (*q*).

Services to ship.

222. Other stipulations may confer upon specified persons the right of performing services to the ship in return for a commission (*r*). Where the services include the procuring of a homeward cargo at the port of discharge (*s*) commission is payable, even though the homeward cargo is procured through other persons (*t*). The shipowner is not, however, bound under such a stipulation to take on board a homeward cargo at the port of discharge under the

(*f*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 99, 110, 118.

(*g*) *Ward & Co.* v. *Weir & Co.* (1899), 4 Com. Cas. 216 (where the commission was alternatively made payable if the ship was lost, and it was held, distinguishing *Sibson and Kerr* v. *Ship "Barcraig" Co.* (1896), 24 R. (Ct. of Sess.) 91, that the commission was payable though the ship was lost on an intermediate voyage); see Encyclopædia of Forms and Precedents, Vol. XIV., p. 104.

(*h*) See *White* v. *Turnbull, Martin & Co.* (1898), 3 Com. Cas. 183, C. A.

(*i*) See title AGENCY, Vol. I., pp. 190, 191. Specific performance of a contract to employ a particular person as broker will not be granted (*Brett* v. *East India and London Shipping Co.* (1862), 2 Hem. & M. 404); see title SPECIFIC PERFORMANCE, Vol. XXVII., p. 10.

(*k*) *Hill* v. *Kitching* (1846), 3 C. B. 299.

(*l*) *Gibson* v. *Crick* (1862), 1 H. & C. 142.

(*m*) *Burnett* v. *Bouch* (1840), 9 C. & P. 620; *Kynaston* v. *Nicholson* (1863), 1 Mar. L. C. 350. As to a claim by a broker for commissions on future charterparties, see *Allan* v. *Sundius* (1862), 1 H. & C. 123, where evidence of a custom to pay such commissions was held admissible, but it was intimated that the custom, if proved, would be strictly construed.

(*n*) But see *Broad* v. *Thomas* (1830), 7 Bing. 99, and *Read* v. *Rann* (1830), 10 B. & C. 438, in both of which cases it was held that there was no custom entitling the broker to charge for his trouble in procuring a charterparty, though his principal broke off the negotiations.

(*o*) *White* v. *Turnbull, Martin & Co., supra.*

(*p*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 110, 118.

(*q*) *Cross* v. *Pagliano* (1870), L. R. 6 Exch. 9.

(*r*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 109; and compare *ibid.*, p. 103.

(*s*) The stipulation must clearly include this (*Phillipps* v. *Briard* (1856), 1 H. & N. 21).

(*t*) *Robertson* v. *Wait* (1853), 8 Exch. 299.

SECT. 1. Charterparties.

charterparty; and if he proceeds elsewhere and loads there, no commission is payable (*a*).

By whom commission payable.

223. The liability to pay commission is, by the terms of the charterparty, imposed, as a rule, upon the shipowner, even though the broker is in fact employed by the charterer (*b*). Except where the person to whom the commission is payable is himself a party to the contract, or where he has actually rendered services to the shipowner, he cannot sue the shipowner, but only his own principal, the charterer (*c*); and any action which may be brought against the shipowner must be brought by the charterer (*d*). The same principle applies where the charterer is not himself liable to pay commission, as, for instance, where the shipowner fails to employ the charterer's agent to procure a homeward cargo; the charterer may sue the shipowner for the full amount of the commission due, and will hold it, when received, as trustee for his agent (*e*).

SUB-SECT. 4.—*The Construction of Charterparties.*

(i.) *General Principles of Construction.*

Rules of construction:

224. A charterparty, like any other mercantile document (*f*), is to be construed so as to give effect, as far as possible, to the intention of the parties as expressed in the written contract (*g*). The rules of construction to be applied are the same as for any other written instrument (*h*), and may be shortly stated as follows, namely:—

(1) meaning of words used;

(1) The words used are to be understood in their plain, ordinary and popular meaning (*i*), unless the context shows that the parties, for the purposes of their contract, intended to place a different

(*a*) *Cross* v. *Pagliano* (1870), L. R. 6 Exch. 9.

(*b*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 99, 104, 110.

(*c*) *Barnetson* v. *Petersen Brothers* (1902), 5 F. (Ct. of Sess.) 86; compare *The Nuova Raffaelina* (1871), L. R. 3 A. & E. 483.

(*d*) *Robertson* v. *Wait* (1853), 8 Exch. 299. The broker can sue the shipowner if he was employed by the shipowner (*White* v. *Turnbull, Martin & Co.* (1898), 3 Com. Cas. 183, C. A.). When the ship is consigned to the charterer's agents free of commissions, any commission which the shipowner is compelled to pay to such agents is recoverable from the charterer (*Russell* v. *Griffith* (1860), 2 F. & F. 118).

(*e*) *Robertson* v. *Wait, supra.*

(*f*) As to the construction of contracts, generally, see title CONTRACT, Vol. VII., pp. 509 *et seq.*, and of documents generally, see title DEEDS AND OTHER INSTRUMENTS, Vol. X., pp. 433 *et seq.* As the rules governing the construction of charterparties are equally applicable to the construction of bills of lading, cases relating to the construction of bills of lading are included in the present sub-section. It is not, however, necessary for the contract to be expressed in writing (*Lidgett* v. *Williams* (1845), 4 Hare, 456, 462).

(*g*) *Constable* v. *Clovery* (1626), Palm. 397. Where the charterparty contains no provision relating to the events that have happened, it is to be presumed that the parties intended to stipulate for that which is fair and reasonable, having regard to their mutual interests and to the main objects of the contract, and the meaning of the contract is to be taken to be that which the parties, as fair and reasonable men, would presumably have agreed upon if they had taken such events into consideration, and had made express provision to meet them (*Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38, *per* Lord WATSON, at p. 59).

(*h*) See titles CONTRACT, Vol. VII., pp. 510 *et seq.*; DEEDS AND OTHER INSTRUMENTS, Vol. X., pp. 433 *et seq.*

(*i*) *Robertson* v. *French* (1803), 4 East, 130, *per* Lord ELLENBOROUGH, C.J.,

meaning upon them (*k*), or unless, by the usage of some particular trade, business, or port (*l*), they have to such an extent acquired a secondary or technical meaning that it is clearly the meaning intended by the parties (*m*).

(2) reference to surrounding circumstances;

(2) The words used are to be construed with reference to the surrounding circumstances to which they were intended by the parties to apply (*n*).

(3) *contra proferentem*;

(3) Exceptions and stipulations inserted for the protection of one of the parties are, if capable of being construed as conferring either a wider or a narrower protection, to be construed most strongly against the party whom they were intended to protect (*o*). Thus, a stipulation that the shipowner is not to be liable for damage capable of being covered by insurance does not cover the theft of the goods (*p*), or damage attributable to negligence (*q*), or to the unseaworthiness of his ship (*r*).

(4) *ejusdem generis*;

(4) General words, if preceded by words of more specific application, are to be construed as limited to things *ejusdem generis* with those which have been specifically mentioned before (*s*). This rule does not, however, apply where the specific words cannot be reduced under one genus, and in this case general words will receive their full signification (*t*).

at p. 136; *Croockewit* v. *Fletcher* (1857), 1 H. & N. 893, *per* MARTIN, B., at p. 911; *Sailing Ship "Garston" Co.* v. *Hickie* (1885), 15 Q. B. D. 580, C. A., *per* BRETT, M.R., at p. 587; *Mendl & Co.* v. *Ropner & Co.*, [1913] 1 K. B. 27; compare title CONTRACT, Vol. VII., p. 510.

(*k*) *Robertson* v. *French* (1803) 4 East, 130.

(*l*) See p. 140, *post*.

(*m*) *Robertson* v. *French*, *supra*. Where it is shown that a term or phrase has acquired a peculiar meaning in a particular trade, it is *primâ facie* to be taken as used with that meaning when used in relation to that trade (*Myers* v. *Sarl* (1860), 3 E. & E. 306, *per* BLACKBURN, J., at p. 319).

(*n*) *The "Norway" (Owners)* v. *Ashburner, The "Norway"* (1865), 3 Moo. P. C. C. (N. S.) 245; *Dimech* v. *Corlett* (1858), 12 Moo. P. C. C. 199, 224; compare *Johnson* v. *Greaves* (1810), 2 Taunt. 344; *Potter (John) & Co.* v. *Burrell & Son*, [1897] 1 Q. B. 97, C. A.

(*o*) *Taylor* v. *Liverpool and Great Western Steam Co.* (1874), L. R. 9 Q. B. 546, *per* LUSH, J., at p. 549, as explained in *Norman* v. *Binnington* (1890), 25 Q. B. D. 475, *per* A. L. SMITH, J., at p. 477; *Burton* v. *English* (1883), 12 Q. B. D. 218, C. A., *per* BOWEN, L.J., at p. 224; *Elderslie Steamship Co.* v. *Borthwick*, [1905] A. C. 93, discussed in *Wiener* v. *Wilsons and Furness-Leyland Line* (1910), 15 Com. Cas. 294, C. A.; *Produce Brokers Co.* v. *Furness, Withy & Co.* (1912), 17 Com. Cas. 165, *per* SCRUTTON, J., at p. 170.

(*p*) *Taylor* v. *Liverpool and Great Western Steam Co.*, *supra*.

(*q*) *Price & Co.* v. *Union Lighterage Co.*, [1904] 1 K. B. 412, C. A.

(*r*) *Nelson Line (Liverpool), Ltd.* v. *Nelson (James) & Sons, Ltd.*, [1908] A. C. 16; and see *Ingram and Royle, Ltd.* v. *Services Maritimes du Treport* (1913), 30 T. L. R. 79, C. A.

(*s*) In the following cases the thing in question was excluded as not being *ejusdem generis*:—*Re Richardsons and Samuel (M.) & Co.*, [1898] 1 Q. B. 261, C. A.; *S.S. Knutsford, Ltd.* v. *Tillmanns & Co.*, [1908] A. C. 406, following *Thames and Mersey Marine Insurance Co.* v. *Hamilton, Fraser & Co.* (1887), 12 App. Cas. 484; *Mudie* v. *Strick & Co., Ltd.* (1909), 14 Com. Cas. 135 (new trial ordered without affecting this point, S. C., 14 Com. Cas. 227, C. A.); *Thorman* v. *Dowgate Steamship Co., Ltd.*, [1910] 1 K. B. 410. In the following cases the thing in question was included:—*Re Lockie and Craggs & Sons* (1901), 7 Com. Cas. 7; *Re Allison & Co. and Richards* (1904), 20 T. L. R. 584, C. A. As to the *ejusdem generis* rule generally, see titles CONTRACT, Vol. VII., p. 516; DEEDS AND OTHER INSTRUMENTS, Vol. X., pp 469, 470.

(*t*) *Larsen* v. *Sylvester & Co.*, [1908] A. C. 295; *France Fenwick & Co., Ltd*

SECT. 1. Charter-parties.

(5) admission of parol evidence;

(5) Parol evidence is not admissible to vary the terms of the charterparty (*u*), but only to explain them if ambiguous (*a*) or used in a technical meaning (*b*), or to supplement them by proving an independent collateral undertaking (*c*). Since, however, it is well known that different trades and different ports have usages of their own which regulate the supply (*d*), loading (*e*), or discharging (*f*) of the cargo, or by which the extent of the duties (*g*), rights (*h*), or liabilities (*i*) of the parties are to be determined, the parties must be taken, in the absence of anything to show the contrary (*k*), to have contracted with reference to such usages, and to have intended to incorporate them in their contract (*l*). Parol evidence of such usages is, therefore, admissible for the purpose of supplementing the written terms of the charterparty (*m*), or, where the written terms are ambiguous or used in a technical meaning, for the purpose of explaining them and making clear the intention of the parties (*n*). Where, however, the usage is plainly inconsistent with

v. *Spackman* (*Philip*) *& Sons* (1913), 18 Com. Cas. 52; compare *Anderson* v. *Anderson*, [1895] 1 Q. B. 749, C. A., *per* Lord ESHER, M.R., at p. 753.

(*u*) *Leduc* v. *Ward* (1888), 20 Q. B. D. 475, C. A.; *The Alhambra* (1881), 6 P. D. 68, C. A.

(*a*) *The Curfew*, [1891] P. 131; *The Nifa*, [1892] P. 411; *Adams* v. *Wall* (1877), 37 L. T. 70.

(*b*) *Birch* v. *Depeyster* (1816), 4 Camp. 385; *Hibbert* v. *Owen* (1859), 2 F. & F. 502.

(*c*) *Hassan* v. *Runciman & Co.* (1904), 10 Com. Cas. 19. As to the admission of parol evidence to connect the different parts of the contract, see *Hibbert* v. *Owen*, *supra*; and see title EVIDENCE, Vol. XIII., pp. 566, 567.

(*d*) But see *Cockburn* v. *Alexander* (1848), 6 C. B. 791, where the custom was excluded.

(*e*) *Benson* v. *Schneider* (1817), 7 Taunt. 273; *Pust* v. *Dowie* (1864), 5 B. & S. 20; *Cuthbert* v. *Cumming* (1855), 11 Exch. 405.

(*f*) *Norden Steam Co.* v. *Dempsey* (1876), 1 C. P. D. 654; *Nielsen* v. *Wait* (1885), 16 Q. B. D. 67, C. A.; *Aktieselkab Helios* v. *Ekman & Co.*, [1897] 2 Q. B. 83, C. A.; *Marzetti* v. *Smith & Son* (1883), 49 L. T. 580, C. A.; see also *Catley* v. *Wintringham* (1792), Peake, 202 [150], with which contrast *Robinson* v. *Turpin* (1805), Peake, 203, n.

(*g*) *Norden Steam Co.* v. *Dempsey*, *supra*.

(*h*) *The "Norway"* (*Owners*) v. *Ashburner*, *The "Norway"* (1865), 3 Moo. P. C. C. (N. S.) 245.

(*i*) *Dickenson* v. *Lano* (1860), 2 F. & F. 188; *Russian Steam-Navigation Co.* v. *Silva* (1863), 13 C. B. (N. S.) 610; *Hutchinson* v. *Tatham* (1873), L. R. 8 C. P. 482; *Browne* v. *Byrne* (1854), 3 E. & B. 703; *Hall* v. *Janson* (1855), 4 E. & B. 500; *Lilly, Wilson & Co.* v. *Smales, Eeles & Co.*, [1892] 1 Q. B. 456, C. A.; *Falkner* v. *Earle* (1863), 3 B. & S. 360.

(*k*) The conduct of the parties may be sufficient (*Bottomley* v. *Forbes* (1838), 5 Bing. (N. C.) 121).

(*l*) *Robinson* v. *Mollett* (1875), L. R. 7 H. L. 802; *Anglo-Hellenic Steamship Co., Ltd.* v. *Dreyfus* (*Louis*) *& Co.* (1913), 108 L. T. 36. The custom must, however, be reasonable (*Hathesing* v. *Laing*, *Laing* v. *Zeden* (1873), L. R. 17 Eq. 92; *Robinson* v. *Mollett*, *supra*, *per* BRETT, J., at p. 818; *Marwood* v. *Taylor* (1901), 6 Com. Cas. 178, C. A.; *Sea Steamship Co.* v. *Price, Walker & Co.* (1903), 8 Com. Cas. 292), and must not be inconsistent with the general law (*Meyer* v. *Dresser* (1864), 16 C. B. (N. S.) 646; *Atwood* v. *Sellar* (1880), 5 Q. B. D. 286, C. A.).

(*m*) But not for the purpose of introducing a fresh contract (*Phillipps* v. *Briard* (1856), 1 H. & N. 21, *per* POLLOCK, C.B., at p. 27).

(*n*) *Cochran* v. *Retberg* (1800), 3 Esp. 121; *Russian Steam-Navigation Co.* v. *Silva*, *supra*; *Leidemann* v. *Schultz* (1853), 14 C. B. 38; *Buckle* v. *Knoop* (1867), L. R. 2 Exch. 125.

an express term of the charterparty (*o*), or where the language of the charterparty is clear and unambiguous (*p*), the charterparty prevails and the inconsistent usage is rejected (*q*).

(6) functions of court and jury;

(6) The construction of the charterparty is a question for the court and not for the jury (*r*); but where parol evidence is admitted, the effect of the evidence is for the jury (*s*).

(7) conflict of laws.

(7) Where any question arises involving a conflict of laws, the law of the ship's flag prevails (*a*), unless it is clear from the express language of the charterparty (*b*), or otherwise (*c*), that the parties intended some other law to prevail.

Effect of writing and print.

225. Charterparties are, in practice, made out on printed forms, of a more or less standardised character; and contain blank spaces for the purpose of enabling the parties to adapt the form used to their particular contract by filling in the necessary details in writing (*d*). So far as possible, those terms of the charterparty which are in print (*e*) are to be treated as forming the contract

(*o*) *Robinson* v. *Mollett* (1875), L. R. 7 H. L. 802; *Holman* v. *Wade* (1877), *Times*, 11th May; *Hayton* v. *Irwin* (1879), 5 C. P. D. 130, C. A.; *The Alhambra* (1881), 6 P. D. 68, C. A.; *Kearon* v. *Radford & Co.* (1895), 11 T. L. R. 226; *Gulf Line, Ltd.* v. *Laycock* (1901), 7 Com. Cas. 1; *Sea Steamship Co.* v. *Price, Walker & Co.* (1903), 8 Com. Cas. 292; *Metcalfe, Simpson & Co.* v. *Thompson, Pattrick and Woodwark* (1902), 18 T. L. R. 706 (where the charterparty provided for loading "as fast as the steamer can receive, but according to the custom of the port," and it was held that a custom as to an average rate of loading, if proved, would be inconsistent with the above stipulation). The charterparty may expressly provide that the custom is not to apply (*Brenda Steamship Co.* v. *Green*, [1900] 1 Q. B. 518, C. A.).

(*p*) *Lewis* v. *Marshall* (1844), 7 Man. & G. 729; *Krall* v. *Burnett* (1877), 25 W. R. 305; *Bennetts & Co.* v. *Brown*, [1908] 1 K. B. 490; *The Nifa*, [1892] P. 411.

(*q*) *Phillipps* v. *Briard* (1856), 1 H. & N. 21.

(*r*) *Oppenheim* v. *Fraser* (1876), 34 L. T. 524.

(*s*) *Shore* v. *Wilson* (1842), 9 Cl. & Fin. 355, H. L., *per* ERSKINE, J., at p. 511; *Alexander* v. *Vanderzee* (1872), L. R. 7 C. P. 530, Ex. Ch.

(*a*) *Lloyd* v. *Guibert* (1865), L. R. 1 Q. B. 115, Ex. Ch.; *Droege* v. *Suart, The "Karnak"* (1869), L. R. 2 P. C. 505; *The Express* (1872), L. R. 3 A. & E. 597; *The Gaetano and Maria* (1882), 7 P. D. 137, C. A.; *The August*, [1891] P. 328; compare *Peninsular and Oriental Steam Navigation Co.* v. *Shand* (1865), 3 Moo. P. C. C. (N. S.) 272; *Moore* v. *Harris* (1876), 1 App. Cas. 318, P. C.; *Re Missouri Steamship Co.* (1889), 42 Ch. D. 321, C. A.; but see *Denholme & Co.* v. *Halmoe* (1887), 25 Sc. L. R. 112; and see title CONFLICT OF LAWS, Vol. VI., p. 241.

(*b*) *The Gaetano and Maria, supra, per* BRETT, L.J., at p. 147; *The Cap Blanco*, [1913] P. 130. As to general average "per foreign adjustment," see title INSURANCE, Vol. XVII., pp. 508 *et seq.*

(*c*) An intention to adopt English law is shown by the charterparty being in English and in the English form (*Anderson* v. *The "San Roman"* (*Owners*), *The "San Roman"* (1873), L. R. 5 P. C. 301, where a German ship was chartered in Germany; *The Wilhelm Schmidt* (1871), 25 L. T. 34, where a German ship was chartered by a German subject at Constantinople; *The Industrie*, [1894] P. 58, C. A., where a German ship was chartered in England; see *contra*, *The Express*, *supra*, where a German ship was chartered by a German subject in Constantinople). The same inference is to be drawn from the language and form of the bill of lading (*Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521, C. A.; *The Patria* (1871), L. R. 3 A. & E. 436).

(*d*) For various forms of charterparties, see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 92 *et seq.*

(*e*) A clause in smaller type may control the effect of a clause printed in larger type (*Elderslie Steamship Co.* v. *Borthwick*, [1905] A. C. 93).

SECT. 1. Charter-parties.

equally with those which are in writing (*f*). The printed terms are, however, the words of a common form, representing the usual terms of a charterparty, which are intended to suit each particular case as far as they can, but which are not introduced in contemplation of any particular case (*g*). On the other hand, the written terms embody the special stipulations which the parties, after consideration of all the circumstances, have introduced for the purpose of meeting their particular requirements (*h*). More weight, therefore, is to be given to the written than to the printed terms (*i*); if they conflict and cannot be reconciled, the written terms must be preferred, and the printed terms treated as though they had been struck out of the charterparty (*k*).

Additions and alterations.

The principles governing the effect of an addition, alteration, erasure, or obliteration after the completion of a written document (*l*) apply equally in the case of a charterparty (*m*). The charterparty is, therefore, not avoided when its stipulations are varied by subsequent agreement (*n*), but it may be otherwise if the variation is not assented to by both parties (*o*).

(ii.) *Conditions Precedent.*

Statements on face of charterparty.

226. All statements of fact, other than immaterial representations (*p*), and all undertakings as to the future contained in the stipulations of a charterparty, form part of the contract and bind the person from whom they proceed (*q*). If, therefore, the fact is untrue, or the undertaking is not fulfilled, such person is guilty of a breach of contract, which entitles the injured party to recover

(*f*) *Gumm* v. *Tyrie* (1865), 6 B. & S. 298, Ex. Ch.; *The Nifa*, [1892] P. 411; *Briscoe & Co.* v. *Powell & Co.* (1905), 22 T. L. R. 128; compare *Dixon* v. *Heriot* (1862), 2 F. & F. 760.

(*g*) *Grant & Co.* v. *Coverdale, Todd & Co.* (1884), 9 App. Cas. 470, *per* Lord SELBORNE, L.C., at p. 474; *Glynn* v. *Margetson & Co.*, [1893] A. C. 351.

(*h*) *Robertson* v. *French* (1803), 4 East, 130, *per* Lord ELLENBOROUGH, at p. 134; followed in *Glynn* v. *Margetson & Co.*, *supra*; compare title INSURANCE, Vol. XVII., p. 342.

(*i*) *Scrutton* v. *Childs* (1877), 36 L. T. 212. As to the effect of a written statement in a bill of lading as to quantities, when the bill of lading contains the printed phrase "weight, etc. unknown," see p. 156, *post*.

(*k*) *Scrutton* v. *Childs*, *supra*; *Moore* v. *Harris* (1876), 1 App. Cas. 310, 327, P. C.; *Baumvoll Manufactur von Scheibler & Co.* v. *Gilchrest & Co.*, [1892] 1 Q. B. 253, C. A. (affirmed, *sub nom. Baumwoll Manufactur von Carl Scheibler* v. *Furness*, [1893] A. C. 8), *per* Lord ESHER, M.R., at p. 257; *France, Fenwick & Co., Ltd.* v. *Spackman (Philip) & Sons* (1913), 18 Com. Cas. 52; compare *Cross* v. *Pagliano* (1870), L. R. 6 Exch. 9. The fact that a printed stipulation or phrase has been struck out or altered may be taken into consideration as showing the intention of the parties (*London Transport Co.* v. *Trechmann Brothers*, [1904] 1 K. B. 635, C. A.).

(*l*) See title DEEDS AND OTHER INSTRUMENTS, Vol. X., pp. 411 *et seq.*

(*m*) *Croockewit* v. *Fletcher* (1857), 1 H. & N. 893.

(*n*) *Hall* v. *Brown* (1814), 2 Dow, 367, H. L., where, however, no alteration was made on the face of the charterparty, it being varied by subsequent instructions.

(*o*) *Croockewit* v. *Fletcher*, *supra*.

(*p*) *Hunter* v. *Fry* (1819), 2 B. & Ald. 421, *per* ABBOTT, C.J., at p. 424; *Behn* v. *Burness* (1863), 3 B. & S. 751, Ex. Ch., *per* WILLIAMS, J., at p. 754; *Engman* v. *Palgrave, Brown & Son* (1898), 4 Com. Cas. 75.

(*q*) An oral representation not embodied in the charterparty may amount to a collateral warranty (*Hassan* v. *Runciman & Co.* (1904), 10 Com. Cas. 19; compare *Snell* v. *Marryatt* (1808), cited in Abbott on Shipping, 5th ed., p. 213; 14th ed., p. 468).

damages, and may also justify him in refusing to perform his own part of the contract, on the ground that the charterparty has been discharged by the breach (*r*).

Test of condition precedent.

227. A charterparty is not discharged by a breach of contract, unless the stipulation which has been broken is a condition precedent to the performance by the injured party of his own obligations (*s*). The question whether any particular stipulation is a condition precedent or not is one of construction, to be determined by the court (*t*) according to the fair intention of the parties (*a*). Where the stipulation is expressly called a condition precedent, or where the charterparty is expressly made null and void in the event of its non-performance, the intention of the parties to make the stipulation a condition precedent is clear. In any other case the circumstances in which, and the purposes for which, the charterparty was entered into must also be taken into consideration as indicating the intention of the parties (*b*); and there must be nothing, either in such circumstances or in the language of the stipulation (*c*), inconsistent with the conclusion that the parties intended the stipulation to be an essential (*d*) part of their contract (*e*). The non-performance of the stipulation must go to the root and consideration of the contract as a whole, and not merely to a part of it (*f*); it must be clear that the injured party never intended to bind himself to perform any part of his own obligations unless the obligations of the other party were duly performed (*g*). A stipulation of any other kind is to be regarded as an independent agreement, the breach of which entitles to damages only (*h*).

(*r*) *Behn* v. *Burness* (1863), 3 B. & S. 751, Ex. Ch., *per* WILLIAMS, J., at p. 755.

(*s*) As to what is sufficient fulfilment of a condition precedent, see *Reusse* v. *Meyers* (1813), 3 Camp. 475; *Fraser* v. *Telegraph Construction Co.* (1872), L. R. 7 Q. B. 566, *per* BLACKBURN, J., at p. 571. See also *Kish* v. *Taylor*, [1912] A. C. 604.

(*t*) *Stavers* v. *Curling* (1836), 3 Bing. (N. C.) 355, *per* TINDAL, C.J., at p. 368. The court must take into consideration the surrounding circumstances as found by the jury (*Behn* v. *Burness*, *supra*, *per* WILLIAMS, J., at p. 756; *Oppenheim* v. *Fraser* (1876), 34 L. T. 524).

(*a*) *Stavers* v. *Curling*, *supra*, *per* TINDAL, C.J., at p. 368; *Tarrabochia* v. *Hickie* (1856), 1 H. & N. 183, *per* POLLOCK, C.B., at p. 187; *Bradford* v. *Williams* (1872), L. R. 7 Exch. 259, *per* MARTIN, B., at p. 261; *Dimech* v. *Corlett* (1858), 12 Moo. P. C. C. 199; compare *Seeger* v. *Duthie* (1860), 8 C. B. (N. S.) 45, 72, Ex. Ch., where a stipulation that the ship was to be ready by a named date was held to be a condition, whilst another stipulation that the master was to attend at the charterer's office daily for the purpose of signing bills of lading was held not to be a condition.

(*b*) *Behn* v. *Burness*, *supra*, *per* WILLIAMS, J., at p. 757; *Oppenheim* v. *Fraser*, *supra*.

(*c*) *Storer* v. *Gordon* (1814), 3 M. & S. 308.

(*d*) *Hall* v. *Cazenove* (1804), 4 East, 477.

(*e*) See title CONTRACT, Vol. VII., pp. 520, 521.

(*f*) *Davidson* v. *Gwynne* (1810), 12 East, 381, *per* Lord ELLENBOROUGH, C.J., at p. 389; *Ritchie* v. *Atkinson* (1808), 10 East, 295.

(*g*) *Rae* v. *Hackett* (1844), 12 M. & W. 724; *Armstrong* v. *Allan Brothers & Co.* (1892), 8 T. L. R. 613.

(*h*) *Storer* v. *Gordon*, *supra*, followed in *Fothergill* v. *Walton* (1818), 8 Taunt. 576; *Hall* v. *Cazenove*, *supra*; *Ohlsen* v. *Drummond* (1785), 4 Doug. (K. B.) 356. But if the non-performance of a stipulation not amounting to a condition precedent wholly frustrates the object of the

SECT. 1. Charter-parties.

Effect of subsequent events.

228. A stipulation which was not originally intended to be a condition cannot be turned into a condition by subsequent events (*i*). On the other hand, subsequent events may prevent the injured party from relying upon a stipulation as a condition precedent and thus claiming that he is discharged from his duty of performing his part of the contract; and in this case he is entitled to recover damages only (*k*). This takes place where the injured party waives his right to repudiate the contract (*l*), or where he has already received the whole or any substantial part of the consideration for his own promise (*m*).

SECT. 2.—*Bills of Lading.*

SUB-SECT. 1.—*The Nature of a Bill of Lading.*

Definition.

229. A bill of lading (*a*) is a document signed by the shipowner, or by the master, or other agent of the shipowner (*b*), which states that certain specified goods have been shipped upon a particular ship, and which purports to set out the terms on which such goods have been delivered to and received by the ship (*c*). After signature it is handed to the shipper, who may either retain it or transfer it to a third person (*d*). This person may be named in the bill of lading as the person to whom delivery of the goods is to be made on arrival at their destination, in which case he is known as the consignee (*e*); if he is not named in the bill of lading, he is usually known as the holder or indorsee of the bill of lading (*f*). The effect of a bill of lading depends partly upon the position of the person in whose hands it is, and partly upon the circumstances of the particular case.

Acknowledgement of receipt.

230. A bill of lading is, in the first instance, an acknowledgment of the receipt of the goods specified therein (*g*). Except as

adventure, the charterer is excused (*Tarrabochia* v. *Hickie* (1856), 1 H. & N. 183).

(*i*) *Behn* v. *Burness* (1863), 3 B. & S. 751, Ex. Ch., discussing *Freeman* v. *Taylor* (1831), 8 Bing. 124, *Tarrabochia* v. *Hickie, supra*, and *Dimech* v. *Corlett* (1858), 12 Moo. P. C. C. 199; *Jackson* v. *Union Marine Insurance Co.* (1874), L. R. 10 C. P. 125, Ex. Ch., *per* BRAMWELL, B., at pp. 143, 148.

(*k*) *Behn* v. *Burness, supra*; *Pust* v. *Dowie* (1864), 5 B. & S. 20; *Engman* v. *Palgrave, Brown & Son* (1898), 4 Com. Cas. 75.

(*l*) *Havelock* v. *Geddes* (1809), 10 East, 555; *Dimech* v. *Corlett, supra*; *Bentsen* v. *Taylor, Sons & Co.* (2), [1893] 2 Q. B. 274, C. A.; *Re Tyrer and Hessler & Co.* (1902), 7 Com. Cas. 166, C. A.

(*m*) *Davidson* v. *Gwynne* (1810), 12 East, 381; *Elliott* v. *Von Glehn* (1849), 13 Q. B. 632; *Behn* v. *Burness, supra*; *Stanton* v. *Richardson*, *Richardson* v. *Stanton* (1872), L. R. 7 C. P. 421, *per* BRETT, J., at p. 436; *Pust* v. *Dowie, supra*.

(*a*) For forms of bills of lading, see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 114, 120, 128.

(*b*) As to the signature of a bill of lading, see pp. 153 *et seq.*, *post*.

(*c*) *Sewell* v. *Burdick* (1884), 10 App. Cas. 74, *per* Lord BRAMWELL, at p. 105.

(*d*) Abbott on Shipping, 5th ed., p. 383; 14th ed., p. 843.

(*e*) The insertion of a name in the bill of lading does not, however, bind the shipper; he may, therefore, revoke the consignment to the named consignee at any time until such consignee has received the bill of lading or the goods (*Mitchel* v. *Ede* (1840), 11 Ad. & El. 888). The shipper must, however, recall the bill of lading already issued, or indemnify the master against any liability thereunder (*Davidson* v. *Gwynne, supra*; *Tindall* v. *Taylor* (1854), 4 E. & B. 219).

(*f*) See p. 158, *post*.

(*g*) *Bates* v. *Todd* (1831), 1 Mood. & R. 106; *Berkley* v. *Watling* (1837),

against the person actually signing it (*h*), it is not conclusive, and may be controverted by evidence showing that the goods were never in fact received (*i*). A shipowner, therefore, who has not signed the bill of lading is not necessarily bound by the acknowledgment of receipt signed by his agent (*k*). The agent has no authority to sign a bill of lading either for goods which have not been shipped (*l*), or for a greater quantity of goods than has actually been put on board (*m*); and this limitation upon his authority must be taken to be known to all persons to whose hands a bill of lading may come (*n*). The shipowner, therefore, is not estopped by the signature of his agent (*o*) from proving either that the goods stated in the bill of lading to have been shipped were not shipped (*p*), or that the quantities specified in the bill of lading are incorrect, and that he has delivered all the goods which were in fact put on board (*q*). Nevertheless, it is not to be presumed that the agent in signing the bill of lading was acting in excess of his authority, and the burden of falsifying the bill of lading rests on the shipowner (*r*).

When conclusive.

The bill of lading may, however, by an express stipulation be made conclusive evidence of the quantity shipped (*s*). In this case

7 Ad. & El. 29; *Leduc* v. *Ward* (1888), 20 Q. B. D. 475, C. A., *per* Lord ESHER, M.R., at p. 479.

(*h*) See pp. 153, 155, *post.*

(*i*) *Grant* v. *Norway* (1851), 10 C. B. 665; *Leduc* v. *Ward*, *supra*, *per* Lord ESHER, M.R., at p. 479; *Hine Brothers* v. *Free, Rodwell & Co., Ltd.* (1897), 2 Com. Cas. 149. The burden of proof is on the shipowner (*Smith & Co.* v. *Bedouin Steam Navigation Co.*, [1896] A. C. 70; *Harrowing* v. *Katz & Co.* (1895), 26th November, not reported, H. L., affirming S. C. (1894), 10 T. L. R. 400, C. A.; *Bennett and Young* v. *Bacon* (*John*), *Ltd.* (1897), 2 Com. Cas. 102, C. A.). As to when the goods are received so as to make the shipowner responsible, see p. 202, *post.* By French law (*Elder, Dempster & Co.* v. *Dunn* (1909), 15 Com. Cas. 49, H. L.), and by German law (*Minna Craig Steamship Co.* v. *Chartered Mercantile Bank of India, London and China*, [1897] 1 Q. B. 460, C. A.) a bill of lading is conclusive.

(*k*) *Bates* v. *Todd* (1831), 1 Mood. & R. 106; *Meyer* v. *Dresser* (1864), 16 C. B. (N. S.) 646.

(*l*) *Grant* v. *Norway*, *supra.* It is immaterial that the goods had been brought alongside and a mate's receipt given (*Thorman* v. *Burt, Boulton & Co.* (1886), 54 L. T. 349, C. A.).

(*m*) *Brown* v. *Powell Coal Co.* (1875), L. R. 10 C. P. 562.

(*n*) *Grant* v. *Norway*, *supra*; followed in *Cox* v. *Bruce* (1886), 18 Q. B. D. 147, C. A. (quality of goods).

(*o*) As to when a signature must be taken to be the shipowner's signature, though signed by another person acting in a ministerial capacity, see p. 153, *post.*

(*p*) *Grant* v. *Norway*, *supra*; *Pyman* v. *Burt* (1884), Cab. & El. 207, doubted in *Lishman* v. *Christie* (1887), 19 Q. B. D. 333, C. A.; compare *Thin* v. *Liverpool, Brazil, and River Plate Steam Navigation Co.* (1901), 18 T. L. R. 226. In accordance with the same principle, the signature of a second set of bills of lading in respect of the same goods does not bind the shipowner (*Hubbersty* v. *Ward* (1853), 8 Exch. 330).

(*q*) *McLean and Hope* v. *Fleming* (1871), L. R. 2 Sc. & Div. 128; *Brown* v. *Powell Coal Co.*, *supra*; *Jessel* v. *Bath* (1867), L. R. 2 Exch. 267.

(*r*) *McLean and Hope* v. *Fleming*, *supra*, *per* Lord CHELMSFORD, at p. 130; *British Columbia Saw-Mill Co.* v. *Nettleship* (1868), L. R. 3 C. P. 499; *Smith & Co.* v. *Bedouin Steam Navigation Co.*, *supra*; *Bennett and Young* v. *Bacon* (*John*), *Ltd.*, *supra.*

(*s*) Such a stipulation is usual in bills of lading relating to timber, being introduced to avoid questions arising as to whether a loss took place

SECT. 2. Bills of Lading.

the shipowner is bound, in the absence of fraud, by the statement in the bill of lading, and cannot escape liability by showing that the goods specified or some portion of them had not been shipped (*t*), or even that they had been lost before shipment by an excepted peril (*a*). The cause of the misstatement is immaterial; it may be a pure miscalculation (*b*), or it may be a mistaken belief that in the circumstances the goods had to be signed for, though not put on board (*c*). If there is a miscalculation the shipowner cannot, where there are two or more classes of goods concerned, escape liability for delivering less than the specified quantity of one class of goods by showing that he has delivered more than the specified quantity of another class, since as against him both quantities are equally conclusive (*d*). Where, however, words are inserted qualifying the statement as to quantity (*e*), or where the charter-party contains an inconsistent condition which is incorporated in the bill of lading (*f*), the bill of lading is no longer to be regarded as conclusive evidence of the quantity shipped, and the shipowner, in spite of the stipulation, is not precluded from showing that the whole or part of the goods specified was not shipped.

Document of title.

231. The bill of lading is a symbol of the right of property in the goods specified therein (*g*). Its possession is equivalent to the possession of the goods themselves (*h*), and its transfer, being a symbolical delivery of the goods (*i*), has by mercantile usage (*k*) the same effect as an actual delivery in the same circumstances (*l*).

before or after shipment (*Fisher, Renwick & Co.* v. *Calder & Co.* (1896), 1 Com. Cas. 456, *per* MATHEW, J., at p. 458).

(*t*) *Lishman* v. *Christie* (1887), 19 Q. B. D. 333, C. A.; *Oostzee Stoomvart Maats* v. *Bell and Harrison* (1906), 11 Com. Cas. 214. But the shipowner is not bound by his bill of lading if the master signs it expressly as agent for the charterer (*Harrison* v. *Huddersfield Steamship Co.* (1903), 19 T. L. R. 386).

(*a*) *Fisher, Renwick & Co.* v. *Calder & Co., supra.*

(*b*) *Mediterranean and New York Steamship Co.* v. *Mackay* (*A. F. & D.*), [1903] 1 K. B. 297, C. A.

(*c*) *Lishman* v. *Christie, supra.*

(*d*) *Mediterranean and New York Steamship Co.* v. *Mackay* (*A. F. & D.*), *supra.* But the consignee must give credit for the value of the excess (*ibid.*).

(*e*) *Lohden & Co.* v. *Calder & Co.* (1898), 14 T. L. R. 311.

(*f*) *Oostzee Stoomvart Maats* v. *Bell and Harrison, supra* (where the incorporated charterparty provided both that freight was to be payable on the intake quantity of cargo and that the bill of lading was to be conclusive evidence as to quantity, and it was held that freight was only payable on the actual intake quantity).

(*g*) *Barber* v. *Meyerstein* (1870), L. R. 4 H. L. 317; *Sanders* v. *Maclean* (1883), 11 Q. B. D. 327, C. A., *per* BOWEN, L.J., at p. 341.

(*h*) *Cole* v. *North Western Bank* (1875), L. R. 10 C. P. 354, Ex. Ch., *per* BLACKBURN, J., at p. 362; compare *Wright* v. *London Dock Co.* (1859), 5 Jur. (N. S.) 1411, C. A.

(*i*) *Burdick* v. *Sewell* (1884), 13 Q. B. D. 159, C. A. (affirmed, *sub nom. Sewell* v. *Burdick* (1884), 10 App. Cas. 74), *per* BOWEN, L.J., at p. 170; *Sanders* v. *Maclean, supra, per* BOWEN, L.J., at p. 341; see title SALE OF GOODS, Vol. XXV., pp. 206 *et seq.* After the transfer of one bill of lading belonging to a set, the transfer of a second bill of lading belonging to the same set is inoperative (*Barber* v. *Meyerstein, supra*).

(*k*) *Lickbarrow* v. *Mason* (1794), 5 Term Rep. 683; 1 Smith, L. C., 11th ed., p. 693.

(*l*) *Cole* v. *North Western Bank, supra*; *Barber* v. *Meyerstein, supra*;

On a transfer, therefore, of a bill of lading by way of sale (*m*), mortgage or pledge (*n*), the property in the goods passes either absolutely or otherwise, according to the intention of the parties, to the transferee, provided that the transferor was competent to dispose of the goods (*o*); and the right of the original owner of the goods to stop them in transit is wholly or partially defeated (*p*). Since, however, a bill of lading is not in the full sense of the word (*q*) a negotiable instrument, the title of the transferor to the bill of lading and his competency to dispose of the goods specified therein are important elements to be taken into consideration (*r*).

As regards the shipowner the bill of lading is a document of title, entitling its holder on production to delivery of the goods (*s*). A delivery, therefore, to the holder of the bill of lading, even where he is not in fact entitled to the goods, discharges the shipowner, provided that it is made in good faith without notice of any defect in the holder's title (*t*). On the other hand the shipowner is not discharged, however *bonâ fide* his act may be, by delivery to the wrong person without production of the bill of lading (*a*).

Contract of carriage.

232. The contract of carriage need not necessarily be expressed in a charterparty. In the absence of a charterparty (*b*) the terms upon which the parties have agreed may be ascertained by reference not only to documents of a more or less informal character, such as berth notes (*c*), advice notes (*d*), freight notes (*e*), or mate's

Gurney v. *Behrend* (1854), 3 E. & B. 622, *per* Lord CAMPBELL, C.J., at p. 146; *Pease* v. *Gloahec, The "Marie Joseph"* (1866), L. R. 1 P. C. 219, 228; *Sewell* v. *Burdick* (1884), 10 App. Cas. 74. Hence the indorsement of the bill of lading is *primâ facie* evidence that the property in the specified goods has passed to the indorsee (*Dracachi* v. *Anglo-Egyptian Navigation Co.* (1868), L. R. 3 C. P. 190).

(*m*) *Wright* v. *Campbell* (1767), 4 Burr. 2046.

(*n*) *Sewell* v. *Burdick, supra.* A deposit of bills of lading to secure an advance is a pledge (*ibid.*).

(*o*) See title SALE OF GOODS, Vol. XXV., pp. 184, 185; and compare *The Argentina* (1867), L. R. 1 A. & E. 370.

(*p*) *Lickbarrow* v. *Mason* (1794), 5 Term Rep. 683; 1 Smith, L. C., 11th ed., p. 693; *Leask* v. *Scott* (1877), 2 Q. B. D. 376, C. A.; *Kemp* v. *Falk* (1882), 7 App. Cas. 573, following *Re Westzinthus* (1833), 5 B. & Ad. 817, and *Spalding* v. *Ruding* (1843), 6 Beav. 376.

(*q*) See pp. 166 *et seq.*, *post.*

(*r*) Abbott on Shipping, 5th ed., p. 390; 14th ed., p. 848; see pp. 163 *et seq.*, 383, *post.*

(*s*) *Barber* v. *Meyerstein* (1870), L. R. 4 H. L. 317.

(*t*) *The Tigress* (1863), Brown. & Lush. 38; *Glyn Mills & Co.* v. *East and West India Dock Co.* (1882), 7 App. Cas. 591, *per* Lord BLACKBURN, at p. 610; *Barber* v. *Meyerstein, supra; Gabarron* v. *Kreeft, Kreeft* v. *Thompson* (1875), L. R. 10 Exch. 274; and see title SALE OF GOODS, Vol. XXV., pp. 184 *et seq.*

(*a*) *Short* v. *Simpson* (1866), L. R. 1 C. P. 248; *The Stettin* (1889), 14 P. D. 142; compare *Erichsen* v. *Barkworth* (1858), 3 H. & N. 601. It is immaterial that the true owner did not become holder of the bill of lading till after the wrongful delivery (*Bristol and West of England Bank* v. *Midland Rail Co.*, [1891] 2 Q. B. 653, C. A.; *Pirie & Sons* v. *Warden* (1871), 9 Macph. (Ct. of Sess.) 523).

(*b*) As to charterparties, see pp. 84 *et seq.*, *ante.*

(*c*) See note (*b*), p. 84, *ante.*

(*d*) *Armstrong* v. *Allan Brothers & Co.* (1892), 8 T. L. R. 613; see note (*e*), *infra.*

(*e*) *Lipton* v. *Jescott Steamers* (1895), 1 Com. Cas. 32, C. A. (where refer-

SECT. 2. Bills of Lading.

receipts (*f*), but also to advertisements (*g*), and even to conversations (*h*), and the general course of business followed on previous occasions by the parties (*i*). Where, however, as is usually the case, there is a bill of lading relating to the goods, the terms of the contract on which the goods are carried are to be ascertained from the bill of lading (*k*). In some cases the bill of lading is to be regarded as evidence only of a pre-existing contract (*l*), and the person accepting it is not necessarily bound by all its stipulations (*m*), but may be entitled to repudiate them on the ground that, as he did not know, and could not reasonably be expected to know, of their existence, his assent to them is not to be inferred from his acceptance of the bill of lading without objection (*n*). The bill of lading, however, as between the shipowner and an indorsee constitutes the contract (*o*), and it may also constitute the contract as between the shipowner and the shipper (*p*). Though the contract of carriage will generally be made before the goods are sent to the ship, the contract may afterwards be reduced into writing and expressed in the bill of lading (*q*).

Where there is a charterparty.

Where there is a charterparty the bill of lading is, nevertheless, as between the shipowner and an indorsee, the contract on which the goods are carried (*r*). As between the shipowner and the charterer it may in some cases have the effect of modifying the

ences to a particular form of bill of lading had been stamped on advice notes and freight notes). An advice note is a receipt, and a freight note is an invoice (*Lipton* v. *Jescott Steamers* (1895), 1 Com. Cas. 32, C. A.).

(*f*) See p. 151, *post*.

(*g*) *Phillips* v. *Edwards* (1858), 3 H. & N. 813.

(*h*) *Runquist* v. *Ditchell* (1799), 3 Esp. 64.

(*i*) *Lipton* v. *Jescott Steamers*, *supra*.

(*k*) *Leduc* v. *Ward* (1888), 20 Q. B. D. 475, C. A., *per* Lord ESHER, M.R., at p. 479; *Glyn Mills & Co.* v. *East and West India Dock Co.* (1882), 7 App. Cas. 591, *per* Lord SELBORNE, L.C., at p. 596; compare *Chappel* v. *Comfort* (1861), 10 C. B. (N. S.) 802, *per* WILLES, J., at p. 810.

(*l*) *Sewell* v. *Burdick* (1884), 10 App. Cas. 74, *per* Lord BRAMWELL, at p. 105; *Wagstaff* v. *Anderson* (1880), 5 C. P. D. 171, as reported 49 L. J. (Q. B.) 485, C. A., *per* BRAMWELL, L.J., at pp. 488, 489.

(*m*) *Crooks* v. *Allan* (1879), 5 Q. B. D. 38 (where an unusual clause was printed in the middle of about thirty lines of small type without any marks to draw attention to it); compare *Lewis* v. *M'Kee* (1868), L. R. 4 Exch. 58, Ex. Ch.; *Dennis (W.) & Sons, Ltd.* v. *Cork Steamship Co.*, [1913] 2 K. B. 393.

(*n*) *Crooks* v. *Allan*, *supra*.

(*o*) *Glyn Mills & Co.* v. *East and West India Dock Co.*, *supra*, *per* Lord SELBORNE, L.C., at p. 596. Except where the indorsee is agent only of the charterer (*Gledstanes* v. *Allen* (1852), 12 C. B. 202; *Kern* v. *Deslandes* (1861), 10 C. B. (N. S.) 205, as explained in *Fry* v. *Chartered Mercantile Bank of India* (1866), L. R. 1 C. P. 689).

(*p*) *Van Casteel* v. *Booker* (1848), 2 Exch. 691, *per* PARKE, B., at p. 708; *Hayn* v. *Culliford* (1879), 4 C. P. D. 182, C. A., *per* BRAMWELL, L.J., at p. 185; *Glyn Mills & Co.* v. *East and West India Dock Co.*, *supra*, *per* Lord SELBORNE, L.C., at p. 596; *Fraser* v. *Telegraph Construction Co.* (1872), L. R. 7 Q. B. 566, *per* BLACKBURN, J., at p. 571; *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521, C. A., *per* BRETT, L.J., at p. 530; compare Bills of Lading Act, 1855 (18 & 19 Vict. c. 111).

(*q*) *Leduc* v. *Ward*, *supra*, *per* Lord ESHER, M.R., at p. 479.

(*r*) *Fry* v. *Chartered Mercantile Bank of India*, *supra*; *Leduc* v. *Ward*, *supra*. As to the incorporation of the charterparty in the bill of lading, see pp. 175 *et seq.*, *post*.

contract as contained in the charterparty (*s*), though in general the charterparty will prevail, and the bill of lading will operate solely as an acknowledgment of receipt (*t*).

Through bills of lading.

233. Where the goods have to be carried for a portion of the journey by land (*u*) upon a conveyance belonging to some person other than the shipowner (*a*), it is the practice for the shipowner or other person with whom the contract of carriage is made in the first instance to charge an inclusive rate for the sea voyage and the land transit, and to issue to the shipper what is called a through bill of lading. This through bill of lading usually incorporates by reference the regular form of bill of lading used by the shipowner (*b*), which thus becomes a part of the contract (*c*), except in so far as its terms are inconsistent with the express terms of the through bill of lading (*d*). Unless the through bill of lading states the contrary (*e*), the contract is to be regarded as made solely with the shipowner or other person who issues it (*f*), and he alone exercises the rights and incurs the liabilities arising out of the various stages of the transit (*g*). If the contract of the shipowner provides that his liability as such is to cease at a particular place, it is, nevertheless, his duty to contract on behalf of the shipper for the forwarding of the goods to their destination (*h*).

Freight etc.

As a general rule, therefore, the whole of the inclusive freight is

(*s*) *Gullischen* v. *Stewart Brothers* (1884), 13 Q. B. D. 317, C. A. (cesser clause); *Bryden* v. *Niebuhr* (1884), Cab. & El. 241; *Davidson* v. *Bisset & Son* (1878), 5 R. (Ct. of Sess.) 709 (where it was suggested that the bill of lading might only vary the charterparty in matters of detail); see, *contra*, *Barwick* v. *Burnyeat, Brown & Co.* (1877), 36 L. T. 250.

(*t*) *Rodocanachi* v. *Milburn* (1886), 18 Q. B. D. 67, C. A. A charterer who is not the shipper, and to whom the bill of lading is indorsed, is, as regards the goods specified in the bill of lading, in the position of an indorsee, and cannot rely upon any other contract than that contained in the bill of lading (*Steamship Calcutta Co., Ltd.* v. *Weir* (*Andrew*) *& Co.*, [1910] 1 K. B. 759).

(*u*) For the statutory provisions relating to railway companies carrying goods partly by land and partly by sea, see title CARRIERS, Vol. IV., pp. 85, 86; *Dublin and Manchester Steamship Co.* v. *London and North-Western Rail. Co.* (1913), 108 L. T. 122.

(*a*) The same principles apply where goods have to be transhipped and carried to their destination in a ship belonging to a different shipowner; compare *Greeves* v. *West India and Pacific Steamship Co.* (1870), 22 L. T. 615, Ex. Ch., where the goods had to be carried by sea to Colon, taken across the Isthmus of Panama by rail, and thence by sea to San Francisco; *Wiener* v. *Wilsons and Furness-Leyland Line* (1910), 15 Com. Cas. 294, C. A., where the contract covered the conveyance by lighter from the wharf to the steamer. As to a usage requiring a seller to produce a through bill of lading, see *Landauer & Co.* v. *Craven and Speeding Brothers*, [1912] 2 K. B. 94.

(*b*) *E. Clemens Horst Co.* v. *Norfolk and North American Steam Shipping Co.* (1906), 11 Com. Cas. 141; *The Hibernian*, [1907] P. 277, C. A.

(*c*) *E. Clemens Horst Co.* v. *Norfolk and North American Steam Shipping Co.*, *supra*.

(*d*) *Moore* v. *Harris* (1876), 1 App. Cas. 318, 327, P. C.

(*e*) *Allan Brothers & Co.* v. *James Brothers & Co.* (1897), 3 Com. Cas. 10; *Crawford and Law* v. *Allan Line Steamship Co., Ltd.*, [1912] A. C. 130.

(*f*) *Greeves* v. *West India and Pacific Steamship Co.*, *supra*; compare *Leech* v. *Glynn & Son* (1890), 6 T. L. R. 306.

(*g*) Compare title CARRIERS, Vol. IV., pp. 12, 28, 44.

(*h*) *Moore* v. *Harris*, *supra*, at p. 327.

SECT. 2. Bills of Lading.

payable to the shipowner issuing the through bill of lading (*i*). If it is payable in advance, he may retain the whole, notwithstanding that some portion of it can never be earned by reason of the loss of the goods before some of the stages of the journey have been begun (*j*). Similarly, where the land transit precedes the sea voyage and the bill of lading gives the shipowner a lien for his charges of the land transit (*k*), the shipowner may, on a portion of the goods being lost during the voyage, exercise the lien for the full amount of such charges over the remainder of the goods, although he would not be entitled to do so in respect of the full amount of his own freight in the strict sense of the word (*l*). If an overcharge has been made in respect of the land transit, the shipowner is responsible for its repayment, and cannot require the shipper to recover it from the land carrier (*m*).

SUB-SECT. 2.—*The Form of a Bill of Lading.*

Usual contents.

234. A bill of lading is usually expressed in a printed document (*n*), containing blank spaces for the insertion of the necessary details (*o*). It states that certain goods, which are specified in the margin (*p*), have been shipped in good order and condition (*q*) by the shipper in and upon a certain ship (*r*) then lying in the port of loading and bound for a particular port, and are to be delivered in like good order and condition (*s*) at their destination to, or to the order of, a specified person or his assigns, or to bearer (*t*), upon payment of freight (*a*). Under the usual form the ship is given liberty

(*i*) *The Hibernian*, [1907] P. 277, C. A.; *Kitts* v. *Atlantic Transport Co.* (1902), 7 Com. Cas. 227.

(*j*) *Greeves* v. *West India and Pacific Steamship Co.* (1870), 22 L. T. 615, Ex. Ch.

(*k*) As to the construction of a provision giving a general lien for any moneys due from the owner of the goods, see *United States Steel Products Co.* v. *Great Western Rail. Co.*, [1913] 3 K. B. 357, where it was held that the general lien was available only against the consignee and the goods must be redelivered to the consignor who had stopped them in transit.

(*l*) *The Hibernian, supra.*

(*m*) *Kitts* v. *Atlantic Transport Co., supra.*

(*n*) For forms, see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 104, 110, 118. Most traders and regular lines of steamships have their own special forms of bills of lading.

(*o*) The rules governing the construction of a bill of lading are the same as those applicable to a charterparty; see pp. 138 *et seq.*, *ante*.

(*p*) In practice the left-hand margin. Sometimes the particulars may be indorsed on the bill of lading. The bill of lading is not invalidated as a negotiable instrument by the details as to the goods being filled in by the shipper after the master has signed (*Cowdenbeath Coal Co.* v. *Clydesdale Bank* (1895), 22 R. (Ct. of Sess.) 682). Any loss occasioned by a misdescription falls on the consignee (*Shirwell* v. *Shaplock* (1815) 2 Chit. 397).

(*q*) As to the effect of these words, see p. 156, *post*.

(*r*) The form usually provides for the insertion of the name of the master; in practice his name is frequently omitted.

(*s*) See p. 156, *post*.

(*t*) Abbott on Shipping, 5th ed., p. 383; 14th ed., p. 843. As to the transfer of a bill of lading, see pp. 157 *et seq.*, *post*.

(*a*) As to the payment of freight, see pp. 291 *et seq.*, *post*. The particular form of words used in the bill of lading is immaterial (*Weguelin* v. *Cellier* (1873), L. R. 6 H. L. 286). The master may deliver to his consignee without requiring payment of freight, in which case the shipper has no claim on this ground against the shipowner (*Shepard* v. *De Bernales* (1811), 13 East, 565).

to deviate (*b*), certain perils are excepted (*c*), and there is a negligence clause (*d*). The charterparty, if any, is usually incorporated to a greater or less extent (*e*), and provision is made for the payment of general average (*f*). In some cases the bill of lading contains a large number of stipulations, which deal fully with the respective rights and duties of the parties (*g*).

A bill of lading is usually drawn in a set of three numbered consecutively (*h*), and it is stipulated that, any one of the three being accomplished, the others are to be void (*i*). The bill of lading is dated and signed by the master or other agent of the shipowner (*k*). If the signature is unqualified, the bill of lading is known as a clean bill of lading (*l*); in practice, however, the signature is usually qualified by the insertion of a statement that the weight, quality, quantity, or contents are unknown (*m*).

Stamps.

235. A bill of lading of or for any goods, merchandise, or effects to be exported or carried coastwise requires a 6*d.* stamp (*n*). A bill of lading made abroad, though relating to goods to be imported into the United Kingdom, need not be stamped (*o*).

A bill of lading which requires to be stamped cannot be stamped after execution, and every person making or executing a bill of lading not duly stamped is liable to a fine of £50 (*p*).

SUB-SECT. 3.—*The Delivery of the Bill of Lading: the Mate's Receipt.*

Mate's receipt.

236. When the goods are delivered to the ship (*q*) the shipper is usually handed a written acknowledgment of their receipt on behalf of the ship (*r*). This acknowledgment is called the mate's receipt, and it is *primâ facie* evidence that the goods specified therein have been delivered to and received by the ship (*s*). It is not, however, conclusive evidence, though the burden of proving that

(*b*) As to deviation, see pp. 95 *et seq.*, *ante*.

(*c*) For the usual exceptions, see pp. 107 *et seq.*, *ante*.

(*d*) As to negligence clauses, see pp. 116, 117, *ante*.

(*e*) See p. 175, *post*.

(*f*) It is usually provided that the adjustment is to be made according to the York-Antwerp rules, with or without modifications; see note (*a*), p. 323, *post*.

(*g*) For an example, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 118.

(*h*) *Barber* v. *Meyerstein* (1870), L. R. 4 H. L. 317; and see p. 152, *post*. For a criticism of the practice, see *Glyn Mills & Co.* v. *East and West India Dock Co.* (1882), 7 App. Cas. 591, *per* Lord BLACKBURN, at p. 591.

(*i*) See, further, pp. 152, 157, 158, *post*.

(*k*) As to the authority of the master or agent to sign, see pp. 153 *et seq.*, *post*.

(*l*) *Restitution Steamship Co.* v. *Pirie* (*Sir J.*) *& Co.* (1889), 6 T. L. R. 50; *Arrospe* v. *Barr* (1881), 8 R. (Ct. of Sess.) 602.

(*m*) As to the effect of inserting a qualification, see p. 156, *post*.

(*n*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., title "Bill of Lading."

(*o*) This follows from the absence of any statutory provision relating to such bills of lading.

(*p*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 40. As to stamp duties generally, see title REVENUE, Vol. XXIV., pp. 700 *et seq.*

(*q*) As to what is meant by delivery to the ship, see p. 198, *post*.

(*r*) Abbott on Shipping, 5th ed., pp. 214, 223; 14th ed., pp. 468, 504.

(*s*) *Cobban* v. *Downe* (1803), 5 Esp. 41; *Biddulph* v. *Bingham* (1874), 30 L. T. 30; compare *British Columbia Saw-Mill Co.* v. *Nettleship* (1868), L. R. 3 C. P. 499; *De Clermont* v. *General Steam Navigation Co.* (1890), 7 T. L. R. 187. If, therefore, the goods are lost after the mate's receipt has been given, the owner of the goods may sue the shipowner, although

SECT. 2. **Bills of Lading.**

it is incorrect lies on the shipowner (*t*). Qualifying words may be inserted describing the condition of the goods at the time of shipment; in the absence of any qualification the receipt is known as a clean receipt (*a*).

Right to receive bill of lading.

237. The person who at the time of shipment is the owner of the goods is entitled to receive a bill of lading (*b*), and to have it made out in accordance with his legitimate instructions (*c*). If he is refused a bill of lading, or if the terms of the bill of lading offered differ from those which he is entitled to require (*d*), or if his instructions are not complied with (*e*), he may demand the redelivery of his goods (*f*), and a refusal to redeliver them, when so demanded (*g*), amounts to a conversion of them by the shipowner (*h*). The shipowner is not discharged from his responsibility to the owner of the goods merely on the ground that a bill of lading has already been signed and handed over to a third person who was *bonâ fide* believed to be the owner (*i*).

Bills in a set.

238. Where the bill of lading is issued in a set, as, for instance, where it is made out in triplicate, it is the practice for the master to retain one part for his own use and to deliver the remaining parts to the shipper (*k*).

Effect of mate's receipt.

239. Possession of the mate's receipt is *primâ facie* evidence of ownership (*l*), entitling the holder to receive a bill of lading (*m*). On its production, therefore, the master or other agent of the shipowner is, in the absence of notice that the holder is not the owner, justified in signing a bill of lading and delivering it to the holder in exchange for the mate's receipt (*n*). He is not, however, bound to insist on its production (*o*), and may sign the bill of lading without

no bill of lading is ever signed (*Fragano* v. *Long* (1825), 4 B. & C. 219, where the principal was held entitled to sue though the goods were shipped by an agent).

(*t*) *Biddulph* v. *Bingham* (1874), 30 L. T. 30.

(*a*) *Armstrong* v. *Allan Brothers & Co.* (1892), 8 T. L. R. 613.

(*b*) *Gabarron* v. *Kreeft*, *Kreeft* v. *Thompson* (1875), L. R. 10 Exch. 274.

(*c*) *Ibid.*

(*d*) See p. 168, *post.*

(*e*) *Armstrong* v. *Allan Brothers & Co.*, *supra.*

(*f*) See p. 172, *post.*

(*g*) There is no conversion where there is only a refusal to sign the bill of lading owing to a dispute as to the terms of the contract, and the owner of the goods does not object to the ship sailing with them, the shipowner intending to deliver them to the proper consignee (*Jones* v. *Hough* (1879), 5 Ex. D. 115, C. A.), though it might have been otherwise if the owner had demanded the redelivery of his goods (*ibid.*, *per* COCKBURN, C.J., at p. 120; compare *Ralli* v. *Paddington Steamship Co.* (1900), 5 Com. Cas. 124).

(*h*) *Falke* v. *Fletcher* (1865), 18 C. B. (N. S.) 403.

(*i*) *Craven* v. *Ryder* (1816), 6 Taunt. 433; *Thompson* v. *Trail* (1826), 6 B. & C. 36.

(*k*) Abbott on Shipping, 5th ed., p. 214; 14th ed., pp. 468, 469. As to bills in a set, see p. 151, *ante.*

(*l*) The name of the owner is not, as a rule, inserted in the receipt, but this is immaterial (Abbott on Shipping, 5th ed., p. 214; 14th ed., pp. 468, 469).

(*m*) *Schuster* v. *McKellar* (1857), 7 E. & B. 704; *Craven* v. *Ryder*, *supra.*

(*n*) *Craven* v. *Ryder*, *supra.* As to the duty of the shipper towards his own principal to exchange the mate's receipt for a bill of lading, see *Stearine etc. Co.* v. *Heintzmann* (1864), 17 C. B. (N. S.) 56.

(*o*) *Hathesing* v. *Laing*, *Laing* v. *Zeden* (1873), L. R. 17 Eq. 92, *per* BACON, V.-C., at p. 104.

requiring the mate's receipt to be returned or accounted for (*p*). In this case it is his duty to satisfy himself that the goods for which he signs are actually on board the ship, and that the person to whom he delivers the bill of lading is their owner or was their owner at the time of shipment (*q*). If, therefore, the bill of lading is delivered to the wrong person, and no mate's receipt is asked for, the shipowner remains responsible to the owner (*r*).

Transfer.

A transfer of the mate's receipt does not, of itself, pass the property in the goods specified therein (*s*), and the holder, therefore, cannot, as against the true owner, claim the bill of lading or the goods themselves (*t*). On the other hand, a transfer of the goods with the intention of passing the property in them to the transferee entitles the transferee, as against the transferor, to receive the bill of lading, notwithstanding that the mate's receipt is not transferred but is retained by the original owner (*a*).

Where there is no bill of lading.

Where there is no bill of lading, and the mate's receipt mentions a consignee to whom it is intended that the property shall pass, delivery of the goods on arrival at their destination must be made to such consignee, and not to the original shipper (*b*).

SUB-SECT. 4.—*The Signature of the Bill of Lading.*

By whom signed.

240. The bill of lading is usually signed, not by the shipowner personally, but by the master or other agent acting on the shipowner's behalf (*c*). The person who actually signs a bill of lading is always liable upon it (*d*); if, therefore, the shipowner signs it himself (*e*), no difficulty arises. Where, however, the signature is that of an agent, the shipowner's liability depends upon the extent of the agent's authority, and the general principles of agency apply (*f*).

Effect of master's signature.

241. The shipowner is bound by his master's signature to a bill of lading, provided that the master, in signing the bill of lading, did not exceed his authority (*g*). Where the bill of lading in question is one which the master was expressly authorised to sign, the

(*p*) *Craven* v. *Ryder* (1816), 6 Taunt. 433; *Hathesing* v. *Laing*, *Laing* v. *Zeden* (1873), L. R. 17 Eq. 92.

(*q*) *Schuster* v. *McKellar* (1857), 7 E. & B. 704; *Thompson* v. *Trail* (1826), 6 B. & C. 636.

(*r*) *Schuster* v. *McKellar*, *supra*; *Thompson* v. *Trail*, *supra*.

(*s*) *Hathesing* v. *Laing*, *Laing* v. *Zeden*, *supra*, where a custom to treat the transfer of the mate's receipt as passing the property in the goods was held bad.

(*t*) *Ibid.*

(*a*) *Cowas-jee* v. *Thompson* (1845), 5 Moo. P. C. C. 165; contrast *Craven* v. *Ryder* (1816), 6 Taunt. 433, where the unpaid seller had not intended to part with his lien.

(*b*) *Evans* v. *Nichol* (1841), 3 Man. & G. 614.

(*c*) It has been stated that in the case of steamships it is uniformly the custom for the broker of the ship, and not the master, to sign the bills of lading (*Hayn* v. *Culliford* (1879), 3 C. P. D. 410, *per* DENMAN, J., at p. 414; affirmed without reference to this point (1879), 4 C. P. D. 182, C. A.).

(*d*) See p. 155, *post*.

(*e*) The shipowner may sign by a clerk or servant (*Thorman* v. *Burt* (1886), 54 L. T. 349, C. A.).

(*f*) See title AGENCY, Vol. I., pp. 201 *et seq*. As to the question whether the master is agent for the shipowner or for the charterer, see p. 174, *post*.

(*g*) *Leduc* v. *Ward* (1888), 20 Q. B. D. 475, C. A., *per* Lord ESHER, M.R., at p. 479. The shipowner is not liable where the master expressly signs as agent for the charterers (*Harrison* v. *Huddersfield Steamship Co.* (1903), 19 T. L. R. 386, where the word "master" was struck out). Compare

SECT. 2. Bills of Lading.

Usual authority.

shipowner's liability is clear (*h*). His liability does not, however, depend upon the existence of an express authority; he is equally liable where the master is acting within the scope of his apparent authority as such (*i*). All persons taking a bill of lading are entitled to presume that the master who signed it possessed the authority usual in the line of business in which he was employed (*k*). Where, therefore, the bill of lading as signed falls within the usual authority of a master, the shipowner cannot repudiate liability merely on the ground that he had limited the authority of the particular master, and that the bill of lading in consequence did not fall within the master's express authority (*l*). No limitation in derogation of the usual authority is binding, except as against persons who are or ought to have been aware of it (*m*). To exempt the shipowner from liability he must show that the limitation of authority has been brought to the knowledge, or was within the means of knowledge, of the person claiming under the bill of lading (*n*). On the other hand, the nature and limitation of a master's authority are well known amongst mercantile persons (*o*). Where, therefore, the bill of lading falls outside the usual authority of a master, the master, in signing it, exceeds his apparent authority, and his signature imposes no liability on the shipowner (*p*), unless, in the particular circumstances, his express authority extends thus far (*q*).

Under his apparent authority the master may bind the shipowner by statements in the bill of lading relating to the amount of freight to be paid by the consignee (*r*), or to the condition of his goods (*s*), or to the time allowed for discharging the cargo (*t*).

Thorman v. *Burt* (1886), 54 L. T. 349, C. A., where the bill of lading was signed by an agent on behalf of the master.

(*h*) *Lishman* v. *Christie* (1887), 19 Q. B. D. 333, C. A.

(*i*) *The St. Cloud* (1863), 8 L. T. 54; *Sandeman* v. *Scurr* (1866), L. R. 2 Q. B. 86; *The Emilien Marie* (1875), 2 Asp. M. L. C. 514.

(*k*) *Mitchell* v. *Scaife* (1815), 4 Camp. 298; *Cox* v. *Bruce* (1886), 18 Q. B. D. 147, C. A., *per* Lord ESHER, M.R., at p. 151, explaining *Grant* v. *Norway* (1851), 10 C. B. 665.

(*l*) *The Patria* (1871), L. R. 3 A. & E. 436; *Serraino & Sons* v. *Campbell*, [1891] 1 Q. B. 283, C. A.; compare *Runquist* v. *Ditchell* (1799), 3 Esp. 64. But the form of the bill of lading may put the holder on inquiry (*Small* v. *Moates* (1833), 9 Bing. 574; but see *Foster* v. *Colby* (1858), 3 H. & N. 705; *Chappel* v. *Comfort* (1861), 10 C. B. (N. S.) 802, *per* WILLES, J., at p. 810).

(*m*) *Manchester Trust* v. *Furness*, [1895] 2 Q. B. 539, C. A.; *Turner* v. *Haji Goolam Mahomed Azam*, [1904] A. C. 826, P. C. As to the effect of a difference between the charterparty and the bill of lading, see pp. 168 *et seq.*, *post*.

(*n*) *The St. Cloud*, *supra*; *Pearson* v. *Göschen* (1864), 17 C. B. (N. S.) 352; *Turner* v. *Haji Goolam Mahomed Azam*, *supra*; *S.S. Draupner* (*Owners*) v. *S.S. Draupner* (*Owners of Cargo*), [1910] A. C. 450. As to when the holder of a bill of lading is bound by the limitations of the charterparty, see pp. 168 *et seq.*, *post*.

(*o*) *Cox* v. *Bruce*, *supra*, explaining *Grant* v. *Norway*, *supra*.

(*p*) *Grant* v. *Norway*, *supra*, followed in *Cox* v. *Bruce*, *supra*.

(*q*) *Mercantile Bank* v. *Gladstone* (1868), L. R. 3 Exch. 233; *Lishman* v. *Christie*, *supra*; *Fisher*, *Fenwick & Co.* v. *Calder & Co.* (1896), 1 Com. Cas. 456; *Mediterranean and New York Steamship Co.* v. *Mackay* (*A. F. & D.*), [1903] 1 K. B. 297, C. A.

(*r*) *Mitchell* v. *Scaife*, *supra*; *Gilkison* v. *Middleton* (1857), 2 C. B. (N. S.) 134; *Chappel* v. *Comfort*, *supra*; *Fry* v. *Chartered Mercantile Bank of India*

(*s*), (*t*) For notes (*s*), (*t*), see p. 155, *post*.

The master has no apparent authority to bind the shipowner by signing a bill of lading for goods which have never been shipped (*a*), or for which he has already given a different bill of lading (*b*); nor does he bind the shipowner by statements in the bill of lading that no freight is to be payable (*c*), or that the freight is to be paid to a third person (*d*), or by statements relating to the quantity (*e*) or quality (*f*) of the goods actually received.

Limits on authority.

242. Where the master has exceeded his authority in signing the bill of lading, and the shipowner in consequence successfully repudiates liability, the master, if he signed the bill of lading as agent only (*g*), will be liable for breach of warranty of authority (*h*), or, if he made himself a party to the contract, he will be liable upon the bill of lading (*i*). In particular, it is provided by statute that a bill of lading in the hands of a consignee or indorsee for valuable consideration, representing goods to have been shipped, is to be conclusive evidence of shipment as against the master or other person signing it (*k*), notwithstanding that such goods or some part thereof may not have been shipped (*l*), unless the holder of the bill of lading had, at the time when he became holder, actual notice that the goods had not in fact been put on board (*m*). The master

Excess of authority.

Statutory provision.

(1866), L. R. 1 C. P. 689; *Dillon* v. *Livingston, Briggs & Co.* (1895), 11 T. L. R. 312; compare *Pearson* v. *Göschen* (1864), 17 C. B. (N. S.) 352; as to where the bill of lading freight differs from the chartered freight, see p. 171, *post*.

(*s*) *Compania Naviera Vasconzada* v. *Churchill and Sim, Same* v. *Burton & Co.*, [1906] 1 K.B. 237, distinguishing *Cox* v. *Bruce* (1886), 18 Q. B. D. 147, C. A.; *Martineaus, Ltd.* v. *Royal Mail Steam Packet Co., Ltd.* (1912), 17 Com. Cas. 176.

(*t*) *Allan* v. *Johnstone, The "Archdruid"* (1892), 19 R. (Ct. of Sess.) 364.

(*a*) *Grant* v. *Norway* (1851), 10 C. B. 665; *McLean and Hope* v. *Fleming* (1871), L. R. 2 Sc. & Div. 128; *M'Lean and Hope* v. *Munck* (1867), 5 Macph. (Ct. of Sess.) 893; *Grieve, Son & Co.* v. *König & Co.* (1880), 7 R. (Ct. of Sess.) 521; *Brown* v. *Powell Coal Co.* (1875), L. R. 10 C. P. 562; *Hine Brothers* v. *Free, Rodwell & Co., Ltd.* (1897), 2 Com. Cas. 149; *Thin* v. *Liverpool, Brazil and River Plate Steam Navigation Co.* (1901), 18 T. L. R. 226.

(*b*) *Hubbersty* v. *Ward* (1853), 8 Exch. 330.

(*c*) *Grant* v. *Norway, supra*.

(*d*) *Reynolds* v. *Jex* (1865), 7 B. & S. 86; *The Canada* (1897), 13 T. L. R. 238; compare *The Sir Henry Webb* (1849), 13 Jur. 639, where it was held that the master had no authority to assign the freight to secure advances.

(*e*) See p. 145, *ante*.

(*f*) *Cox* v. *Bruce, supra*.

(*g*) *Repetto* v. *Millar's Karri and Jarrah Forests, Ltd.*, [1901] 2 K. B. 306.

(*h*) See title AGENCY, Vol. I., pp. 221 *et seq.*

(*i*) *Smith, Edwards & Co.* v. *Tregarthen* (1887), 6 Asp. M. L. C. 137.

(*k*) As to signature by an agent, see p. 153, *ante*. The master is not precluded, in an action for freight, from showing that the weight of the cargo which he received is different from that specified in the bill of lading (*Blanchet* v. *Powell's Llantivit Collieries Co.* (1874), L. R. 9 Exch. 74).

(*l*) The fact that the bill of lading specifies a particular identification mark does not preclude the defendant from showing that the identification mark was incorrect, and that the goods which he has tendered, though differently marked, were the goods shipped under the bill of lading (*Parsons* v. *New Zealand Shipping Co.*, [1901] 1 K. B. 548, C. A.).

(*m*) Bills of Lading Act, 1855 (18 & 19 Vict. c. 111), s. 3; *Bradley* v. *Dunipace* (1862), 1 H. & C. 521, Ex. Ch.

SECT. 2. **Bills of Lading.**

or other person signing the bill of lading may, however, exonerate himself in respect of any misrepresentation contained in the bill of lading by showing that it was caused without any default on his part (*n*), and wholly by the fraud of the shipper, or of the holder, or some person through whom the holder claims (*o*). It is, therefore, the practice of the master or person signing the bill of lading to qualify the statements as to the goods inserted in the bill of lading by adding some such phrase as "weight, quality, quantity and contents unknown" (*p*). Although by signing the bill of lading he admits that certain goods have been received by the ship, the effect of the qualification is that he declines to accept the particulars furnished him by the shipper as correct (*q*). He is not, therefore, bound by any statement in the bill of lading with reference to matters specifically excluded by the qualification (*r*). At the same time he must deliver the goods which he has actually received, whatever they may be (*s*). Unless, however, the qualification expressly refers to the condition of the goods, the statement that the goods have been shipped in good order and condition is binding as against both the master and the shipowner (*t*), as being an admission that the goods were externally to all appearance in good order and condition at the time of shipment (*a*). If, therefore, the goods on delivery appear to be damaged externally, the shipowner is liable on the admission (*b*), unless he can prove that the goods were in fact damaged by a cause for which he is not responsible (*c*). If, however, the damage is internal, the shipper must prove that

Qualification of statements as to goods.

(*n*) A mistake on the part of the master is not sufficient to make him liable (*Valieri* v. *Boyland* (1866), L. R. 1 C. P. 382, where sixty-five bales were shipped, though the shipper claimed to have put on board sixty-nine, and the bill of lading followed the mate's receipt, which stated the number as "69, four over in dispute" in mistake for "69, four less in dispute").

(*o*) Bills of Lading Act, 1855 (18 & 19 Vict. c. 111), s. 3; compare *Bates* v. *Todd* (1831), 1 Mood. & R. 106.

(*p*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 105, 111, 121.

(*q*) *Lebeau* v. *General Steam Navigation Co.* (1872), L. R. 8 C. P. 88, *per* BRETT, J., at p. 96, referring to *Jessel* v. *Bath* (1867), L. R. 2 Exch. 267. The master is not, however, precluded from claiming freight on the quantities expressed in the bill of lading (*Tully* v. *Terry* (1873), L. R. 8 C. P. 679).

(*r*) *Jessel* v. *Bath, supra;* compare *Haddow* v. *Parry* (1810), 3 Taunt. 303.

(*s*) *Lebeau* v. *General Steam Navigation Co., supra; The Emilien Marie* (1875), 2 Asp. M. L. C. 514. His liability is not affected by a misdescription of the goods, unless fraudulent (*Lebeau* v. *General Steam Navigation Co., supra*).

(*t*) *Compania Naviera Vasconzada* v. *Churchill and Sim, Same* v. *Burton & Co.*, [1906] 1 K. B. 237 (where the bill of lading stated "quality unknown," and it was held that this did not qualify the admission that the goods were shipped in good condition), followed in *Martineaus, Ltd.* v. *Royal Mail Steam Packet Co., Ltd.* (1912), 17 Com. Cas. 176; compare *Crawford and Law* v. *Allan Line Steamship Co., Ltd.* [1912] A. C. 130.

(*a*) *The Peter der Grosse* (1875), 1 P. D. 414; *Compania Naviera Vasconzada* v. *Churchill and Sim, Same* v. *Burton & Co., supra; Martineaus, Ltd.* v. *Royal Mail Steam Packet Co., Ltd., supra.*

(*b*) *Ibid.*

(*c*) *The Peter der Grosse, supra; Crawford and Law* v. *Allan Line Steamship Co., Ltd., supra.*

the goods were in fact in good order and condition internally when shipped, or (*d*) that the damage is attributable, not to an inherent defect in the goods themselves (*e*), but to some external cause (*f*); otherwise the shipowner is not responsible.

SUB-SECT. 5.—*The Transfer of the Bill of Lading.*

How far transferable.

243. A bill of lading, as being a document of title (*g*), has always, by the custom of merchants (*h*), been regarded as transferable (*i*), unless transfer is precluded by the form in which it is drawn (*k*). It does not appear to be transferable where it requires the goods specified therein to be delivered to a named person, omitting any reference to his order or assigns (*l*). The further transfer of a bill of lading transferable in origin may be restricted (*m*) or prohibited by the form in which it is indorsed (*n*).

Bills in a set.

244. Where a bill of lading is issued in a set, and the shipper is in possession of more than one part (*o*), the different parts cannot

(*d*) Where the damage may arise either from the bad condition of the goods when shipped, or from some cause existing in the ship, it may be essential to prove the state of the goods before shipment, as where a cargo of grain is found to be heated; but where noxious substances calculated to produce the peculiar damage actually present are found in close proximity to the goods, cause and effect are so closely brought together that a conclusion can be reached without proof of their condition at the time of shipment (*Moore* v. *Harris* (1876), 1 App. Cas. 318, 326, P. C., where tea in packages was tainted by a disinfectant, and such disinfectant had been used on board). Similarly the arrival of the ship without the goods is *primâ facie* evidence against the shipowner (*Wilson, Sons & Co.* v. *The "Xantho"* (*Owners of Cargo*) (1887), 12 App. Cas. 503), although there is no evidence to show how the goods were lost (*Baxter's Leather Co.* v. *Royal Mail Steam Packet Co.*, [1908] 2 K. B. 626, C. A.), but it is otherwise if the ship herself fails to arrive (*Boyson* v. *Wilson* (1816), 1 Stark. 236).

(*e*) *The Barcore*, [1896] P. 294; *Greenshields, Cowie & Co.* v. *Stephens & Sons, Ltd.*, [1908] A. C. 431, *per* Lord HALSBURY, at p. 436, approving *Johnson* v. *Chapman* (1865), 19 C. B. (N. S.) 563, *per* WILLES, J., at p. 581.

(*f*) *The Ida* (1875), 32 L. T. 541, P. C., disapproving *The Prosperino Palasso* (1873), 29 L. T. 622.

(*g*) See pp. 146, 147, *ante*; titles BANKERS AND BANKING, Vol. I., pp. 638, 639; SALE OF GOODS, Vol. XXV., pp. 119, 184.

(*h*) *Lickbarrow* v. *Mason* (1794), 5 Term Rep. 683; 1 Smith, L. C., 11th ed., p. 693; *Haille* v. *Smith* (1796), 1 Bos. & P. 563, Ex. Ch.

(*i*) *Evans* v. *Marlett* (1697), 1 Ld. Raym. 271; *Appleby* v. *Pollock* (1748), cited in Abbott on Shipping, 5th ed., p. 385; 14th ed., p. 844; *Wright* v. *Campbell* (1767), 4 Burr. 2046; *Caldwell* v. *Ball* (1786), 1 Term Rep. 205; *Hibbert* v. *Carter* (1787), 1 Term Rep. 745; *Salomons* v. *Nissen* (1788), 2 Term Rep. 674; *Lickbarrow* v. *Mason, supra*; *Sewell* v. *Burdick* (1884), 10 App. Cas. 74. For form of application for advance on security of bill of lading, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 69.

(*k*) *Henderson & Co.* v. *Comptoir d'Escompte de Paris* (1873), L. R. 5 P. C. 253.

(*l*) *Ibid.*

(*m*) *Lewis* v. *M'Kee* (1868), L. R. 4 Exch. 58, Ex. Ch. (where the indorsement was "without recourse"); compare *Barrow* v. *Coles* (1811), 3 Camp. 92. As to stoppage *in transitu* see, generally, title SALE OF GOODS, Vol. XXV., pp. 247 *et seq.*

(*n*) Abbott on Shipping, 5th ed., p. 383; 14th ed., p. 843.

(*o*) As to bills in a set, see pp. 151, 152, *ante*.

SECT. 2. Bills of Lading.

be transferred to different persons so as to constitute each of them a holder of the bill of lading (*p*). There is only one bill of lading, though represented by different parts; a transfer of any one part, if intended to operate as such (*q*), is a transfer of the bill of lading (*r*), and the subsequent transfer of any other part is inoperative (*s*).

Mode of transfer.

245. A bill of lading which contains the name of the consignee, and further provides for delivery to his order or to his assigns, is transferred by indorsement and delivery (*t*). Such indorsement may name the transferee to whom delivery is to be made, in which case it is called a special indorsement (*a*). If no transferee is named the indorsement is called an indorsement in blank (*b*), and the goods specified in the bill of lading are deliverable to bearer (*c*).

If the bill of lading does not name the consignee, but makes the goods deliverable to bearer, or to order or assigns, the space for the name of the consignee being left blank, it may be transferred by delivery without indorsement (*d*).

Under a special indorsement the indorsee may, if the form of the indorsement so permits, transfer the bill of lading by indorsement and delivery to a subsequent indorsee (*e*). If the bill of lading is indorsed in blank, it is transferable by mere delivery (*f*). The holder may, however, at any time convert the indorsement in blank into a special indorsement by inserting in the indorsement the name of the person to whom delivery is to be made (*g*); and he may also specially indorse a bill of lading to bearer (*h*), or insert the name of a consignee in the space on the face of the bill of lading, if left blank (*i*). In these cases the bill of lading ceases to be transferable by mere delivery, and requires indorsement by the consignee whose name is inserted or by the indorsee named in the

(*p*) *Glyn Mills & Co.* v. *East and West India Dock Co.* (1882), 7 App. Cas. 591; *Gilbert* v. *Guignon* (1872), 8 Ch. App. 16.

(*q*) *Moakes* v. *Nicolson* (1865), 19 C. B. (N. S.) 290; *The Tigress* (1863), Brown. & Lush. 38; *Barber* v. *Meyerstein* (1870), L. R. 4 H. L. 317.

(*r*) *Sanders* v. *Maclean* (1883), 11 Q. B. D. 327, C. A., where it was held that a tender of two out of three parts to a buyer of the goods was effectual, and the buyer was not entitled to refuse it on the ground that the third part was not forthcoming.

(*s*) *Caldwell* v. *Ball* (1786), 1 Term Rep. 205; *Barber* v. *Meyerstein, supra;* see note (*e*), p. 164, *post.*

(*t*) *Lickbarrow* v. *Mason* (1794), 5 Term Rep. 683; 1 Smith, L. C., 11th ed., p. 693. Until delivery either of the bill of lading or of the goods to the indorsee the indorsement may be revoked (*Mitchel* v. *Ede* (1840), 11 Ad. & El. 888).

(*a*) Abbott on Shipping, 5th ed., p. 383; 14th ed., p. 843. As to the difference between such an indorsement and an indorsement in blank, as regards the title passed to the transferee, see *Sewell* v. *Burdick* (1884), 10 App. Cas. 74, *per* Lord SELBORNE, L.C., at p. 83.

(*b*) *Gurney* v. *Behrend* (1854), 3 E. & B. 622.

(*c*) *Sewell* v. *Burdick, supra, per* Lord SELBORNE, L.C., at p. 83.

(*d*) *Sewell* v. *Burdick, supra.*

(*e*) *Ibid., per* Lord SELBORNE, L.C., at p. 83. As to the effect of reindorsement to the shipper, see *Short* v. *Simpson* (1866), L. R. 1 C. P. 248.

(*f*) *Sewell* v. *Burdick, supra.*

(*g*) *Lickbarrow* v. *Mason, supra.*

(*h*) *Ibid.*

(*i*) Abbott on Shipping, 5th ed., p. 383; 14th ed., p. 843.

special indorsement, as the case may be, before it is capable of being further transferred (*k*).

Transfer to agent.

246. A bill of lading may be transferred to an agent merely for purposes of convenience, to enable him to deal with the goods specified therein on behalf of the owner, as, for instance, where he is authorised to take delivery of them (*l*), or to stop them in transit (*m*). In this case no property in the goods passes to the agent, as holder of the bill of lading, by reason of the transfer of the bill of lading, since the transfer is not intended to have that effect (*n*). The agent cannot, therefore, as a general rule, by a further transfer of the bill of lading, divest his principal of his property in the goods (*o*). Where, however, the agent has authority, express (*p*) or implied (*q*), to deal with the bill of lading so as to pass the property in the goods, a transfer of the bill of lading by him in accordance with his authority will be equivalent to a transfer by the principal himself, and will pass the property to the transferee (*r*).

When equivalent to transfer of goods.

247. A transfer of the bill of lading may, however, be intended to operate as a transfer of the goods specified therein (*s*). In this case such property passes to the transferee as is intended by the parties to pass (*t*). Whether the transfer is intended to pass the whole property or only a qualified property is a question of fact depending upon the circumstances of each particular case (*a*).

The whole property in the goods does not pass unless the transfer of the bill of lading was intended to have that effect (*b*).

Where the intention to pass the whole property is clear, as where the goods are sold while at sea, the transfer of the bill of lading to the buyer divests the seller of all property in the goods and constitutes the buyer owner (*c*). The seller, if unpaid, will, however,

(*k*) *Sewell* v. *Burdick* (1884), 10 App. Cas. 74, *per* Lord SELBORNE, at p. 83; *Pease* v. *Gloahec, The "Marie Joseph"* (1866), 3 Moo. P. C. C. (N. S.) 556.

(*l*) *Patten* v. *Thompson* (1816), 5 M. & S. 350; *Burgos* v. *Nascimento*, [1908] W. N. 237.

(*m*) *Morison* v. *Gray* (1834), 2 Bing. 260.

(*n*) *Waring* v. *Cox* (1808), 1 Camp. 369; compare *Lauritzen* v. *Carr* (1894), 72 L. T. 56; *Burgos* v. *Nascimento, supra*; see title SALE OF GOODS, Vol. XXV., pp. 184, 185.

(*o*) Compare *Blake* v. *Belfast Discount Co.* (1880), 5 L. R. Ir. 410, C. A.; *Newsom* v. *Thornton* (1805), 6 East, 17.

(*p*) *The Argentina* (1867), L. R. 1 A. & E. 370.

(*q*) See Factors Act, 1889 (52 & 53 Vict. c. 45), s. 1; Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 25.

(*r*) *The Argentina, supra.*

(*s*) *Barber* v. *Meyerstein* (1870), L. R. 4 H. L. 317; *E. Clemens Horst Co.* v. *Biddell Brothers*, [1912] A. C. 18, *per* Lord LOREBURN, L.C., at p. 22; compare *The Tigress* (1863), Brown. & Lush. 38; see titles PERSONAL PROPERTY, Vol. XXII., p. 405; SALE OF GOODS, Vol. XXV., pp. 184, 185.

(*t*) *Sewell* v. *Burdick, supra*, discussing *Barber* v. *Meyerstein, supra*; *Newsom* v. *Thornton, supra*, at p. 40.

(*a*) *Sewell* v. *Burdick, supra.*

(*b*) *Newsom* v. *Thornton, supra*; *Sewell* v. *Burdick, supra.* As to c.i.f. and f.o.b. contracts, see title SALE OF GOODS, Vol. XXV., pp. 188 *et seq.*, 227; as to the effect of delivery to a ship chartered by the buyer, see *ibid.*, pp. 222 *et seq.*

(*c*) *Wright* v. *Campbell* (1767), 4 Burr. 2046; *Barber* v. *Meyerstein, supra.* The property in the goods may, however, pass without any

SECT. 2. **Bills of Lading.**

retain his right to stop the goods in transit (*d*); but this right will be defeated by a resale of the goods by the buyer (*e*), accompanied by a transfer of the bill of lading to the new buyer (*f*), or by the buyer taking delivery of the goods under the bill of lading (*g*).

Protection of seller:

248. For his better protection the seller may adopt one or other of the following courses, namely:—

(1) By reserving right of disposal;

(1) The seller may reserve the right of disposal (*h*) by taking a bill of lading under which the goods are deliverable to himself or to his agent (*i*). This bill of lading is not transferred to the buyer, but retained until the price is paid, and therefore the property in the goods remains in the seller (*k*). If, however, the agent to whom the bill of lading has been forwarded, with instructions not to hand it over to the buyer without first receiving payment, in fact hands it over without receiving payment, the transfer passes the property to the buyer; and a further transfer, therefore, from the buyer to a person who takes the bill of lading *bonâ fide* without notice and for value defeats the seller's rights and passes the property to the second transferee, notwithstanding that the bill of lading was obtained from the seller's agent by the buyer's fraud (*l*).

(2) by drawing for the price;

(2) The seller may tender (*m*) to the buyer a bill of lading duly

transfer of the bill of lading, if such is the intention of the parties (*Meyer* v. *Sharpe* (1813), 5 Taunt. 74; *Nathan* v. *Giles* (1814), 5 Taunt. 558; *Joyce* v. *Swann* (1864), 17 C. B. (N. S.) 84; compare *Dick* v. *Lumsden* (1793), Peake, 250 [189]).

(*d*) *Walley* v. *Montgomery* (1803), 3 East, 585; *Tucker* v. *Humphrey* (1828), 4 Bing. 516; *Pease* v. *Gloahec, The "Marie Joseph"* (1866), L. R. 1 P. C. 219; *Bethell* v. *Clark* (1888), 20 Q. B. D. 615, C. A.; *Kemp* v. *Ismay, Imrie & Co.* (1909), 14 Com. Cas. 202; but see *Wilmshurst* v. *Bowker* (1844), 7 Man. & G. 882, Ex. Ch. As to stoppage *in transitu*, see, generally, title SALE OF GOODS, Vol. XXV., pp. 247 *et seq.*

(*e*) *Jenkyns* v. *Usborne* (1844), 7 Man. & G. 678; *Pease* v. *Gloahec, The "Marie Joseph," supra.* But the original buyer in his turn may stop the goods as against the new buyer (*Patten* v. *Thompson* (1816), 5 M. & S. 350).

(*f*) *The Argentina* (1867), L. R. 1 A. & E. 370; *Kemp* v. *Canavan* (1864), 15 I. C. L. R. 216. But if the bill of lading has never been transferred to the original buyer, a resale does not affect the original seller's right (*Kemp* v. *Falk* (1882), 7 App. Cas. 573).

(*g*) *Coxe* v. *Harden* (1803), 4 East, 211. A stoppage *in transitu* after a portion of the goods has been delivered is effectual as regards the balance (*Re McLaren, Ex parte Cooper* (1879), 11 Ch. D. 68, C. A.).

(*h*) *Shepherd* v. *Harrison* (1871), L. R. 5 H. L. 116. As to the seller reserving the right of disposal, see, further, title SALE OF GOODS, Vol. XXV., p. 181.

(*i*) *Craven* v. *Ryder* (1816), 6 Taunt. 433; *Key* v. *Cotesworth* (1852), 7 Exch. 595; *Gabarron* v. *Kreeft, Kreeft* v. *Thompson* (1875), L. R. 10 Exch. 274, where the bill of lading was made out to a fictitious person; compare *Wait* v. *Baker* (1848), 2 Exch. 1; *Ruck* v. *Hatfield* (1822), 5 B. & Ald. 632. But the seller may be precluded by the terms of his contract from doing so (*Cowas-jee* v. *Thompson* (1845), 5 Moo. P. C. C. 165).

(*k*) *Ellershaw* v. *Magniac* (1843), 6 Exch. 570; *Ogg* v. *Shuter* (1875), 1 C. P. D. 47, C. A.; *Mirabita* v. *Imperial Ottoman Bank* (1878), 3 Ex. D. 164, C. A. (where the property was held to pass on a tender of the price). But if the intention to pass the property at the time of shipment is otherwise clear, the fact that the bill of lading is taken in the seller's name may be disregarded (*Joyce* v. *Swann, supra*).

(*l*) *The Argentina, supra;* compare *Gurney* v. *Behrend* (1854), 3 E. & B. 622.

(*m*) All the parts of a set need not be tendered (*Sanders* v. *Maclean*

indorsed (*n*), accompanied by a bill of exchange for the price drawn upon the buyer (*o*). In this case the indorsement of the bill of lading to the buyer is to be regarded as conditional only (*p*), and the property in the goods does not pass to the buyer unless he accepts the bill of exchange (*q*). He cannot, therefore, keep the bill of lading (*r*), or claim delivery of the goods as against the seller (*s*), without accepting the bill of exchange (*t*). If, however, he retains possession of the bill of lading, its transfer to a person who takes it *bonâ fide* and for value gives the transferee a good title to the goods as against the true owner, notwithstanding the buyer's failure to accept the bill of exchange (*a*).

(1883), 11 Q. B .D. 327, C. A.). The tender must be made with due diligence, but need not be in time to enable it to be forwarded to the destination of the goods before the arrival of the ship (*ibid., per* BRETT, M.R., at p. 336). Nor must the tender be delayed till the ship has arrived (*E. Clemens Horst & Co.* v. *Biddell Brothers*, [1912] A. C. 18).

(*n*) As to what documents are to be tendered, see *Landauer & Co.* v. *Craven and Speeding Brothers*, [1912] 2 K. B. 94. The acceptance of the bill of exchange on the faith of a letter advising the consignee of a consignment of goods is not equivalent to the indorsement of the bill of lading (*Nichols* v. *Clent* (1817), 3 Price, 547).

(*o*) When the bill of lading includes other goods, the buyer may by his conduct estop himself from refusing to accept the bill of exchange on the ground that the other goods have been included (*Imperial Ottoman Bank* v. *Cowan* (1874), 31 L. T. 336, Ex. Ch.).

(*p*) It is not necessary for the seller to give express notice that the indorsement is conditional (*Shepherd* v. *Harrison* (1871), L. R. 5 H. L. 116). But the indorsement is not to be regarded as conditional if the consignee is, as between the consignor and himself, under no duty to accept the bill of exchange (*Ogle* v. *Atkinson* (1814), 5 Taunt. 759 ; *Depperman* v. *Hubbersty* (1852), 17 Q. B. 766 ; *Key* v. *Cotesworth* (1852), 7 Exch. 595).

(*q*) *Brandt* v. *Bowlby* (1831), 2 B. & Ad. 932 ; *Shepherd* v. *Harrison, supra ;* compare *Walley* v. *Montgomery* (1803), 3 East, 585. Until acceptance the property remains in the seller, even though the buyer has promised to accept the bill of exchange and his promise has been acted upon (*Hoare* v. *Dresser* (1859), 7 H. L. Cas. 290). The property passes on the acceptance, notwithstanding that the bill of exchange is never honoured (*Re Tappenbeck, Ex parte Banner* (1876), 2 Ch. D. 278, C. A.), unless there is a special stipulation that the bill of exchange is to be paid (*Barrow* v. *Coles* (1811), 3 Camp. 92). If the bill of lading is not handed over to the buyer after acceptance of the bill of exchange he may bring an action for its wrongful detention (*Hoare* v. *Dresser, supra ; Lutscher* v. *Comptoir d'Escompte de Paris* (1876), 1 Q. B. D. 709).

(*r*) *Rew* v. *Payne, Douthwaite & Co.* (1885), 53 L. T. 982.

(*s*) *Ogg* v. *Shuter* (1875), 1 C. P. D. 47, C. A. ; *Rew* v. *Payne, Douthwaite & Co., supra ; Sheridan* v. *New Quay Co.* (1858), 4 C. B. (N. S.) 618 ; but see *Anderson* v. *Clark* (1824), 2 Bing. 20 (where on the facts it was held that the shipment was for the buyer's account).

(*t*) Notwithstanding a refusal to accept the bill of exchange, he becomes entitled to the goods if he afterwards tenders the price (*Mirabita* v. *Imperial Ottoman Bank* (1878), 3 Ex. D. 164, C. A.).

(*a*) *Gurney* v. *Behrend* (1854), 3 E. & B. 622 ; *Cahn* v. *Pockett's Bristol Channel Steam Packet Co.*, [1899] 1 Q. B. 643, C. A., distinguishing *Shepherd* v. *Harrison, supra ;* compare *Pease* v. *Gloahec, The "Marie Joseph"* (1866), L. R. 1 P. C. 219, where after acceptance of the bill of exchange the buyer returned the bill of lading to the seller to hold as security, and afterwards obtained it from the seller by fraud. But a sale of the goods without a transfer of the bill of lading is not sufficient (*Sheridan* v. *New Quay Co., supra*). The holder of the bill of exchange has no lien over the cargo in the absence of a specific appropriation of the cargo to meet the bill; a direction in the bill of exchange

SECT. 2. Bills of Lading.

(3) by indorsing to bank.

(3) The seller may draw a bill of exchange for the price upon the buyer and discount it with a banker, at the same time indorsing the bill of lading to the banker as security (*b*). In this case the buyer is not entitled to the bill of lading, and the property in the goods does not pass to him, until he has repaid (*c*) or tendered (*d*) to the banker the amount due under the bill of exchange (*e*).

Mortgage and pledge.

249. Where the transfer of the bill of lading is intended to pass only a qualified property in the goods specified in the bill of lading, it may operate either by way of mortgage or by way of pledge (*f*). The question whether the transaction is to be regarded as a mortgage or as a pledge depends upon whether the parties intended to transfer to the transferee the legal interest or only the equitable interest in the goods (*g*). Where the bill of lading is indorsed in blank and deposited as security for an advance, the transaction is a pledge (*h*). The pledgor is not divested of all his interest in the goods (*i*); but the pledgee is entitled to claim delivery of them (*k*), and, if necessary, to sell them in order to realise his security (*l*).

to charge it to the account of the cargo as advised, accompanied by a letter of advice, is not sufficient to create a lien (*Brown, Shipley & Co.* v. *Kough* (1885), 29 Ch. D. 848, C. A., criticising *Firth* v. *Forbes* (1862), 4 De G. F. & J. 409, C. A.); see also *Robey & Co.'s Perseverance Ironworks* v. *Ollier* (1872), 7 Ch. App. 695, 699; *Phelps, Stokes & Co.* v. *Comber* (1885), 29 Ch. D. 813, C. A.; *Re Suse, Ex parte Dever* (1884), 13 Q. B. D. 766, C. A.

(*b*) *Turner* v. *Liverpool Docks Trustees* (1851), 6 Exch. 543, Ex. Ch.; *Re Howe, Ex parte Brett* (1871), 6 Ch. App. 838. As to the rights of the banker on a loss when the goods are insured and the policy is also handed over to him, see *Latham* v. *Chartered Bank of India* (1874), L. R. 17 Eq. 205. If the bill of lading is in the buyer's name the property has passed to the buyer, but the seller, by retaining physical possession of the bill of lading, retains his lien, and may transfer the lien to the bank (*London Joint Stock Bank* v. *British Amsterdam Maritime Agency* (1910), 16 Com. Cas. 102).

(*c*) *Bristol and West of England Bank* v. *Midland Rail. Co.*, [1891] 2 Q. B. 653, C. A.

(*d*) *Mirabita* v. *Imperial Ottoman Bank* (1878), 3 Ex. D. 164, C. A., distinguishing *Wait* v. *Baker* (1848), 2 Exch. 1. But a tender on the day when the bill of exchange falls due is not sufficient if the buyer is subsequently unable to pay (*Jenkyns* v. *Brown* (1849), 14 Q. B. 496). As to tender, generally, see title CONTRACT, Vol. VII., pp. 417 *et seq.*

(*e*) The banker does not, by presenting the bill of exchange for acceptance, warrant that the bill of lading is genuine (*Leather* v. *Simpson* (1871), L. R. 11 Eq. 398 (where the forgery was not discovered till after payment); *Baxter* v. *Chapman* (1873), 29 L. T. 642 (where the forgery was discovered before payment and it was held that the acceptor was bound to pay)).

(*f*) *Sewell* v. *Burdick* (1884), 10 App. Cas. 74. Where the shipowner is part owner of the goods specified in the bill of lading, a pledge of the bill of lading with his consent operates also as a pledge of the freight due upon such goods, unless expressly excluded (*Grote* v. *Milne* (1811), 4 Taunt. 133). As to mortgage and pledge, generally, see titles BILLS OF SALE, Vol. III., pp. 1 *et seq.*; MORTGAGE, Vol. XXI., pp. 65 *et seq.*; PAWNS AND PLEDGES, Vol. XXII., pp. 233 *et seq.*

(*g*) *Sewell* v. *Burdick, supra, per* Lord BLACKBURN, at pp. 95, 96, citing *Howes* v. *Ball* (1827), 7 B. & C. 481, and *Flory* v. *Denny* (1852), 7 Exch. 581.

(*h*) *Sewell* v. *Burdick, supra.*

(*i*) *The "Glamorganshire"* (1888), 13 App. Cas. 454, P. C.; *Re Westzinthus* (1833), 5 B. & Ad. 817.

(*k*) *Bristol and West of England Bank* v. *Midland Rail. Co., supra.*

(*l*) Compare *Depperman* v. *Hubbersty* (1852), 17 Q. B. 766; *Edwards* v. *Southgate* (1862), 10 W. R. 528.

The right of an unpaid seller to stop the goods in transit is not defeated by a transfer of the bill of lading by way of mortgage or pledge, but it can only be exercised subject to the rights of the mortgagee or pledgee (*m*).

Transfers passing no property.

250. A transfer of the bill of lading, though purporting to pass the property in the goods, in fact passes no property in them to the transferee in the following cases, namely:—

(1) Where the transfer is made without consideration (*n*). To be valid, the transfer must be made for valuable consideration (*o*). A past consideration is, however, sufficient (*p*).

(2) Where the transfer is made to a transferee who, being aware of circumstances making the transfer inoperative, such as, for instance, the insolvency of the buyer through whom he claims (*q*), or a breach of faith on the part of the transferor (*r*), cannot, therefore, be regarded as a *bonâ fide* holder (*s*). It is not sufficient to show that the transferee knows that the goods specified in the bill of lading have not been paid for (*t*). Moreover, a transfer of the bill of lading to a transferee who takes it *bonâ fide* without notice and for value is valid, even though the transferor obtained it by fraud (*a*).

(3) Where the transferor has himself no property in the goods (*b*), and has no authority to deal with the property in them (*c*). A person who has already sold the goods apart from the bill of lading cannot afterwards, by dealing with the bill of lading, transfer any

(*m*) *Kemp* v. *Falk* (1882), 7 App. Cas. 573, applying *Re Westzinthus* (1883), 5 B. & Ad. 817, and *Spalding* v. *Ruding* (1843), 6 Beav. 376.

(*n*) *Sewell* v. *Burdick* (1884), 10 App. Cas. 74, *per* Lord SELBORNE, L.C., at p. 80.

(*o*) *Chartered Bank of India, Australia and China* v. *Henderson* (1874), L. R. 5 P. C. 501 (where a forbearance to take proceedings and a release from an existing obligation to deposit shipping documents was held to be sufficient); *Cuming* v. *Brown* (1808), 9 East, 506; compare *Glegg* v. *Bromley*, [1912] 3 K. B. 474, C. A.; and, as to consideration generally, see title CONTRACT, Vol. VII., pp. 383 *et seq.*

(*p*) *Leask* v. *Scott* (1877), 2 Q. B. D. 376, C. A., not following *Rodger* v. *Comptoir d'Escompte de Paris* (1869), L. R. 2 P. C. 393 (where a forbearance to insist on an existing right was held insufficient); *The Emilien Marie* (1875), 2 Asp. M. L. C. 514; *Pease* v. *Gloahec, The "Marie Joseph"* (1866), L. R. 1 P. C. 219.

(*q*) *Cuming* v. *Brown, supra*; *Vertue* v. *Jewell* (1814), 4 Camp. 31; compare *Salomons* v. *Nissen* (1788), 2 Term Rep. 674 (where the transferee by a subsequent agreement became a partner with the transferor in the particular shipment).

(*r*) *Pease* v. *Gloahec, The "Marie Joseph," supra*, at p. 228.

(*s*) *Wright* v. *Campbell* (1767), 4 Burr. 2046; *Dick* v. *Lumsden* (1793), Peake, 250 [189].

(*t*) *Cuming* v. *Brown, supra.* Where, however, the bill of lading bears a special indorsement to the transferor conditional on his accepting and paying a bill of exchange, and, if he fails to do so, to the holder of the bill of exchange, the transferee is put upon inquiry and must ascertain that the condition has been fulfilled (*Barrow* v. *Coles* (1811), 3 Camp. 92).

(*a*) *The Argentina* (1867), L. R. 1 A. & E. 370; *Pease* v. *Gloahec, The "Marie Joseph," supra*; *Jenkyns* v. *Usborne* (1844), 7 Man. & G. 678.

(*b*) *Gurney* v. *Behrend* (1854), 3 E. & B. 622, *per* Lord Campbell, C.J., at p. 634; *Finlay* v. *Liverpool and Great Western Steamship Co.* (1870), 23 L. T. 251; compare *Gilbert* v. *Guignon* (1872), 8 Ch. App. 16.

(*c*) *Gurney* v. *Behrend, supra.*

SECT. 2. Bills of Lading.

property in them to the transferee (*d*). Similarly, where one part of a bill of lading drawn in a set has already been transferred with the intention of passing the property in the goods, the transferor has divested himself of all property in them, and the subsequent transfer of another part to another person does not pass any property to him (*e*).

SUB-SECT. 6.—*The Effect of the Transfer of a Bill of Lading.*

Bills of Lading Act, 1855.

251. Where the bill of lading is delivered to the consignee named therein, or is transferred by indorsement to an indorsee, with the intention of passing the property in the goods specified therein (*f*), the rights and liabilities under the contract contained in the bill of lading are, by statute, transferred to the consignee or indorsee as if such contract had been made with himself (*g*). He is therefore entitled, on presenting the bill of lading, to claim delivery of the goods (*h*), and the shipowner cannot escape liability for their non-delivery (*i*) unless he succeeds in proving either that the goods were never in fact shipped (*k*), or that the non-delivery was occasioned by some excepted peril (*l*). The consignee or indorsee must in his turn take delivery of the goods (*m*) and pay the freight reserved by the bill of lading (*n*), the shipowner being entitled to withhold delivery until such freight (*o*) has been paid or tendered, or until any other lien existing at common law or created by the bill of lading has been discharged (*p*). Any demurrage due under a stipulation in the bill of lading must be paid by the consignee or indorsee (*q*); and, in the absence of any

(*d*) *London Joint Stock Bank* v. *British Amsterdam Maritime Agency* (1910), 16 Com. Cas. 102, *per* CHANNELL, J., at p. 105; compare *Dick* v. *Lumsden* (1793), Peake, 250 [189].

(*e*) *Barber* v. *Meyerstein* (1870), L. R. 4 H. L. 317; and see pp. 157, 158, *ante*.

(*f*) *The "Freedom"* (1871), L. R. 3 P. C. 594; *Fox* v. *Nott* (1861), 6 H. & N. 630, 637; *The St. Cloud* (1863), 8 L. T. 54; see also title SALE OF GOODS, Vol. XXV., p. 184. As to the rights of suit under the Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 6, see *The Nepoter* (1869), L. R. 2 A. & E. 375. As to what is sufficient evidence of the intention to pass the property, see *Dracachi* v. *Anglo-Egyptian Navigation Co.* (1868), L. R. 3 C. P. 190.

(*g*) Bills of Lading Act, 1855 (18 & 19 Vict. c. 111), s. 1. He may therefore apply for an injunction to restrain the shipowner from breaking the contract (*Wood & Co.* v. *Atlantic Transport Co.* (1900), 5 Com. Cas. 121).

(*h*) *Short* v. *Simpson* (1866), L. R. 1 C. P. 248.

(*i*) *Tronson* v. *Dent* (1853), 8 Moo. P. C. C. 419. As to the effect of an indorsement under a special contract which is to be void as regards goods which do not arrive, see *S.S. Den of Airlie Co.* v. *Mitsui & Co.* (1912), 17 Com. Cas. 116, C. A.

(*k*) *Grant* v. *Norway* (1851), 10 C. B. 665; *McLean and Hope* v. *Fleming* (1871), L. R. 2 Sc. & Div. 128.

(*l*) *Serraino & Sons* v. *Campbell*, [1891] 1 Q. B. 283, C. A.; *Steamship Calcutta Co., Ltd.* v. *Weir* (*Andrew*) *& Co.*, [1910] 1 K. B. 759 (where the charterer was indorsee of the bill of lading).

(*m*) *Fowler* v. *Knoop* (1878), 4 Q. B. D. 299, C. A.

(*n*) Bills of Lading Act, 1855 (18 & 19 Vict. c. 111), s. 1; *Wastwater Steamship Co.* v. *Neale* (*T. B.*) *& Co.* (1902), 86 L. T. 266.

(*o*) *Fry* v. *Chartered Mercantile Bank of India* (1866), L. R. 1 C. P. 689.

(*p*) See p. 283, *post*.

(*q*) *Jesson* v. *Solly* (1811), 4 Taunt. 52; *Wastwater Steamship Co.* v. *Neale* (*T. B.*) *& Co.*, *supra*.

such stipulation, he will be liable to pay damages for detention if the ship is detained beyond a reasonable time by reason of his failure to take delivery of the goods (*r*).

If the goods are delivered in a damaged condition, the shipowner is liable to the consignee or indorsee for all damage sustained by the goods while in his custody (*s*), unless such damage is occasioned by some inherent defect in the goods themselves or by some excepted peril (*t*). He may also be liable for damage sustained by the goods before shipment, if the bill of lading states, without any qualification, that they were shipped in good order and condition, and the damage was at the time of shipment apparent (*a*).

Excess of authority.

252. A bill of lading which, as issued, falls outside the usual authority of the agent who signed it cannot be enforced against the shipowner by the consignee or indorsee (*b*), and recourse must be had to the agent (*c*). If, however, the bill of lading is covered by the authority which it is usual for such an agent to have, his signature binds his principal, and it is immaterial that he in fact exceeded his actual authority in signing the bill of lading (*d*), provided that the assignee or indorsee had no notice that the agent's authority had been limited (*e*).

Liability of indorsee.

253. An indorsee to whom a bill of lading has been indorsed by way of pledge has the right to claim delivery of the goods (*f*), but, until he exercises this right and takes delivery, he is not liable to the shipowner under the contract contained in the bill of lading (*g*). An indorsee of the bill of lading by way of mortgage is probably in the same position as a pledgee, and, in spite of his legal ownership, is not liable until he claims to take delivery of the goods (*h*).

Effect of indorsement.

254. The indorsement of the bill of lading does not deprive the shipowner of his right to claim the freight from the original shipper or owner of the goods (*i*). On the other hand, a consignee or

(*r*) *Fowler* v. *Knoop* (1878), 4 Q. B. D. 299, C. A. But he will not be liable for damages for detention at the port of loading (*Gray* v. *Carr* (1871), L. R. 6 Q. B. 522, Ex. Ch., where the liability to pay demurrage at the port of loading was transferred with the bill of lading).

(*s*) *Diederichsen* v. *Farquharson Brothers*, [1898] 1 Q. B. 150, C. A.

(*t*) *Steamship Calcutta Co., Ltd.* v. *Weir* (*Andrew*) *& Co.*, [1910] 1 K. B. 759.

(*a*) *Compania Naviera Vasconzada* v. *Churchill and Sim*, *Same* v. *Burton & Co.*, [1906] 1 K. B. 237; followed in *Martineaus, Ltd.* v. *Royal Mail Steam Packet Co., Ltd.* (1912), 17 Com. Cas. 176.

(*b*) *Grant* v. *Norway* (1851), 10 C. B. 665; followed in *Cox* v. *Bruce* (1886), 18 Q. B. D. 147, C. A.

(*c*) See p. 155, *ante*.

(*d*) As to the extent of his authority, see p. 154, *ante*.

(*e*) See *ibid.*

(*f*) *Bristol and West of England Bank* v. *Midland Rail. Co.*, [1891] 2 Q. B. 653, C. A. (where it was held to be immaterial that the plaintiffs had not acquired their title until after the wrongful delivery). As to the rights of pledgees generally, see title PAWNS AND PLEDGES, Vol. XXII., pp. 243 *et seq.*

(*g*) *Allen* v. *Coltart* (1883), 11 Q. B. D. 782; *Sewell* v. *Burdick* (1884), 10 App. Cas. 74; *Steamship Calcutta Co., Ltd.* v. *Weir* (*Andrew*) *& Co.*, *supra*, *per* HAMILTON, J., at p. 771.

(*h*) *Sewell* v. *Burdick*, *supra*, *per* Lord BLACKBURN, at p. 96.

(*i*) Bills of Lading Act, 1855 (18 & 19 Vict. c. 111), s. 2; *Fox* v. *Nott* (1861), 6 H. & N. 630.

SECT. 2. Bills of Lading.

indorsee who indorses the bill of lading to a third person with the intention of passing the property in the goods to him (*k*) ceases to be liable on the contract contained in the bill of lading (*l*). A sale of the goods, however, unaccompanied by an indorsement of the bill of lading, does not affect the position of the assignee or indorsee, and in spite of the passing of the property in the goods he remains the proper person to sue (*m*) and to be sued (*n*) upon the bill of lading.

Liability apart from statute.

255. Any liability of the consignee or indorsee which arises by reason or in consequence of his being the consignee or indorsee, or of his receipt of the goods by reason or in consequence of the consignment or indorsement to himself, is not prejudiced or affected by the provisions of the statute (*o*). If, therefore, the receipt of the goods would otherwise amount to a conversion, he is not exempt from liability on the ground that he received them under the bill of lading without knowledge of the circumstances (*p*). Apart from this exception, liabilities not arising out of the contract as contained in the bill of lading do not pass to him merely by virtue of the consignment or indorsement (*q*). He is not, therefore, bound by any terms of the original contract of carriage between the shipper and the shipowner, except in so far as they are incorporated in the bill of lading (*r*), and it is not sufficient to show that he was acquainted with such terms (*s*). On the other hand, the right of the buyer of goods to enforce the contract contained in the bill of lading against the shipowner, where it differs from the original contract of carriage, may be modified by the buyer's knowledge of such contract and he may therefore be precluded from enforcing any terms in the bill of lading which are to his knowledge repugnant to the terms of his own contract (*t*).

How far a negotiable instrument.

256. Though a bill of lading has frequently been described as a negotiable instrument (*u*), it is not in the strict sense of the words

(*k*) An indorsement which does not pass the property is not sufficient (*Lewis* v. *M'Kee* (1868), L. R. 4 Exch. 58, Ex. Ch.).

(*l*) *Smurthwaite* v. *Wilkins* (1862), 11 C. B. (N. S.) 842. But the indorsee cannot, by indorsing away the bill of lading, divest himself of liability to a prior holder arising out of his receipt of the bill of lading (*Corlett* v. *Gordon* (1813), 3 Camp. 472).

(*m*) *The Felix* (1868), L. R. 2 A. & E. 273.

(*n*) *Fowler* v. *Knoop* (1878), 4 Q. B. D. 499, C. A.

(*o*) Bills of Lading Act, 1855 (18 & 19 Vict. c. 111), s. 2.

(*p*) *Walley* v. *Montgomery* (1803), 3 East, 585 ; compare *Bristol and West of England Bank* v. *Midland Rail. Co.*, [1891] 2 Q. B. 653, C. A.

(*q*) *Ohrloff* v. *Briscall, "The Helene"* (1866), L. R. 1 P. C. 231 ; *Leduc* v. *Ward* (1888), 20 Q. B. D. 475, C. A., *per* FRY, L.J., at p. 484.

(*r*) See pp. 175 *et seq.*, *post.* Nor is he bound by private arrangements as to priority of delivery made between the shipper who has indorsed the bill of lading to him and other shippers (*The Emilien Marie* (1875), 2 Asp. M. L. C. 514).

(*s*) See p. 172, *post.*

(*t*) *The S.S. Draupner* (*Owners*) v. *S.S. Draupner* (*Owners of Cargo*), [1910] A. C. 450 (where the bill of lading omitted the negligence clause prescribed by the charterparty).

(*u*) *Barber* v. *Meyerstein* (1870), L. R. 4 H. L. 317, *per* Lord WESTBURY, at p. 337 ; *Pease* v. *Gloachec, The "Marie Joseph"* (1866), L. R. 1 P. C. 219, 228.

a negotiable instrument (*x*). In some respects it resembles a negotiable instrument, the principal points of resemblance being the following, namely :—

(1) The contract contained in the instrument is transferred by the delivery, with or without indorsement, as the case may be, of the instrument, no distinct contract of assignment being necessary (*a*).

(2) No notice of the transfer need be given to the person liable under the instrument (*b*).

(3) The transferee may, in some cases, acquire by virtue of the transfer greater rights than those of the transferor (*c*).

(4) The transferee may sue and be sued in his own name (*d*).

(5) The transferee, even though his title is defective, may give a good discharge to the person liable under the instrument (*e*).

(6) The consideration may be a past consideration (*f*).

The shipowner is discharged from his liability under the contract of carriage by delivering the goods to the first person who presents a bill of lading to him, even though such person is not in fact entitled to them, provided that the shipowner at the time of the delivery has no notice of any conflicting claims and no reason to suspect the truth (*g*).

(*x*) *Gurney* v. *Behrend* (1854), 3 E. & B. 622. It may be noted that the special verdict in *Lickbarrow* v. *Mason* (1793), 5 Term Rep. 683; 1 Smith, L. C., 11th ed., p. 693, describes bills of lading to order or assigns as negotiable and transferable by indorsement and delivery, but does not call them negotiable instruments. Moreover, Lord TENTERDEN, in discussing the transfer of bills of lading (Abbott on Shipping, 5th ed., pp. 383 *et seq.*; 14th ed., p. 843), uses the words " assignment " and " assignable."

(*a*) See p. 158, *ante*; compare title BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., pp. 459, 461, 565.

(*b*) *Barber* v. *Meyerstein* (1870), L. R. 4 H. L. 317; compare title BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., p. 513.

(*c*) *Dracachi* v. *Anglo-Egyptian Navigation Co.* (1868), L. R. 3 C. P. 190; *The Argentina* (1866), L. R. 1 A. & E. 370; *The Emilien Marie* (1866), 2 Asp. M. L. C. 514; compare title BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., p. 461.

(*d*) Bills of Lading Act, 1855 (18 & 19 Vict. c. 111), s. 1; *Sewell* v. *Burdick* (1884), 10 App. Cas. 74, *per* Lord BLACKBURN, at p. 91. Prior to the Bills of Lading Act, 1855 (18 & 19 Vict. c. 111), the action had to be brought in the name of the original contractor (*Thompson* v. *Dominy* (1845), 14 M. & W. 403; *Sargent* v. *Morris* (1820), 3 B. & Ald. 277; *Cox* v. *Bruce* (1886), 18 Q. B. D. 147, C. A., *per* Lord ESHER, M.R., at p. 150), but the consignee might sue, if the property in the goods had passed to him (*Tronson* v. *Dent* (1853), 8 Moo. P. C. C. 419); compare title BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., p. 461. A holder to whom the property has not passed is not entitled to sue in his own name (*Sargent* v. *Morris*, *supra*; *The St. Cloud* (1865), 8 L. T. 54; *Sewell* v. *Burdick*, *supra*).

(*e*) *Glyn Mills & Co.* v. *East and West India Dock Co.* (1882), 7 App. Cas. 591; compare title BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., p. 461.

(*f*) See p. 163, *ante*; compare title BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., p. 497.

(*g*) *Schuster* v. *McKellar* (1857), 7 E. & B. 704; *The Tigress* (1863), Brown. & Lush. 38; *Barber* v. *Meyerstein*, *supra*; *Glyn Mills & Co.* v. *East and West India Dock Co.*, *supra*, commenting on *Fearon* v. *Bowers* (1753), 1 Hy. Bl. 364, n.; *Gabarron* v. *Kreeft*, *Kreeft* v. *Thompson* (1875), L. R. 10 Exch. 274. The shipowner may interplead if he has notice of conflicting claims (*Lowe* v. —— (1818), 3 Madd. 277). As to interpleader, generally, see title INTERPLEADER, Vol. XVII., pp. 577 *et seq.*

SECT. 2. **Bills of Lading.**

Nevertheless, the effect of the transfer of a bill of lading depends upon the title of the person who makes the transfer (*h*), and consequently a bill of lading is not, in the full sense of the words, a negotiable instrument (*i*).

Limit to operation of transfer.

Its transfer, being only the transfer of a symbol, has no greater operation than the transfer of the goods which it represents (*k*). If, therefore, the transferor has no title to the goods, and no authority to deal with them on behalf of the true owner (*l*), the transferee, even though taking the bill of lading *bonâ fide* and for valuable consideration, acquires no rights against the true owner (*m*). Even if the bill of lading has been indorsed in blank by the shipper, its appropriation without his authority does not affect his rights (*n*); and if it is stolen from him or transferred without his authority, a subsequent *bonâ fide* transferee for value cannot make title under it as against him (*o*).

SUB-SECT. 7.—*The Bill of Lading where the Ship is Chartered.*

(i.) *In General.*

Bill of lading in general ship.

257. If the ship on which the goods specified in the bill of lading are carried is not working under a charterparty, but is employed solely for the benefit of the shipowner himself, the position of the shipowner is clear. His rights and liabilities depend, as regards the shipper, on the original contract of carriage (*p*), the best evidence of which is to be found in the bill of lading (*q*), and, as regards the consignee or indorsee of the bill of lading, on the contract contained in the bill of lading (*r*). He is not, however, bound as regards either the shipper or the consignee or indorsee, where the agent who signed the bill of lading exceeded his apparent authority in so doing (*s*). The existence of a charterparty may, however, materially affect the position of the shipowner. It is necessary, therefore, to consider the following points, namely:—(1) The inconsistency, if any, between the charterparty and the bill of lading; (2) the authority of the master; (3) the incorporation of the charterparty in the bill of lading.

(ii.) *The Inconsistency, if any, between the Charterparty and the Bill of Lading.*

Where shipper charterer.

258. Where the goods are shipped by the charterer himself, and the bill of lading is taken by him in his own name, the bill of

(*h*) *Gilbert* v. *Guignon* (1872), 8 Ch. App. 16; *Gurney* v. *Behrend* (1854), 3 E. & B. 622.

(*i*) Compare title BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS, Vol. II., p. 461.

(*k*) *Gurney* v. *Behrend, supra, per* Lord CAMPBELL, C.J., at p. 634; *Cole* v. *North Western Bank* (1875), L. R. 10 C. P. 354, Ex. Ch., *per* BLACKBURN, J., at pp. 360—362.

(*l*) *Gurney* v. *Behrend, supra; Gilbert* v. *Guignon, supra.*

(*m*) *Gurney* v. *Behrend, supra; Barber* v. *Meyerstein* (1870), L. R. 4 H. L. 317; *Gilbert* v. *Guignon, supra.*

(*n*) *Gurney* v. *Behrend, supra.*

(*o*) *Ibid.*; compare *Gilbert* v. *Guignon, supra,* where the subsequent transfer was made by mistake.

(*p*) See pp. 147, 148, *ante.*

(*q*) See p. 148, *ante.*

(*r*) See *ibid.*

(*s*) See p. 153, *ante.*

lading is, in the absence of anything to show the contrary, an acknowledgment only of the receipt of the goods (*t*), and the contract of carriage is to be found in the charterparty alone (*a*). A bill of lading, therefore, which differs in its terms from the charterparty does not override the charterparty (*b*), whether the difference arises from the addition of fresh terms, such as, for instance, a negligence clause (*c*), or from the omission (*d*) or alteration (*e*) of some of the terms of the charterparty. Since, however, the parties may vary their contract by agreement, the bill of lading will prevail over the charterparty, even as between the shipowner and the charterer, where they have expressly agreed to vary the contract as contained in the charterparty, and have inserted in the bill of lading a statement to that effect (*f*), or where it is otherwise clear from the circumstances that the contract is intended to be varied (*g*).

It is immaterial that the charterer was merely an agent acting on behalf of the real owner of the goods; as regards the principal, the charterparty is equally the contract (*h*).

259. Where the goods are shipped by a person other than the charterer, the position of the parties depends upon the circumstances of the particular case. The following cases may be distinguished (*i*), namely:— Where shipper not charterer.

(1) Where the charterparty amounts to a demise of the ship (*k*), it is reasonably clear that the contract under the bill of lading is between the shipper and the charterer, and not between the shipper and the shipowner (*l*). The shipowner has divested himself of his Charterparty by demise.

(*t*) *Rodocanachi* v. *Milburn* (1886), 18 Q. B. D. 67, C. A., *per* Lord ESHER, M.R., at p. 75. But a charterer who becomes indorsee of a bill of lading issued to a shipper other than himself, and differing in its terms from the charterparty, is bound, in his capacity as indorsee, by the bill of lading (*Steamship Calcutta Co., Ltd.* v. *Weir* (*Andrew*) *& Co.*, [1910] 1 K. B. 759; compare *Gullischen* v. *Stewart Brothers* (1884), 13 Q. B. D. 317, C. A.; *Bryden* v. *Niebuhr* (1884), Cab. & El. 241).

(*a*) *Sewell* v. *Burdick* (1884), 10 App. Cas. 74, *per* Lord BRAMWELL, at p. 105, citing *Gledstanes* v. *Allen* (1852), 12 C. B. 202. As to when the charterer may sue for short delivery under the charterparty, though he has indorsed away the bill of lading, see *S.S. Den of Airlee Co.* v. *Mitsui & Co.* (1912), 17 Com. Cas. 116, C. A.

(*b*) *Houston & Co.* v. *Sansinena & Co.* (1893), 7 Asp. M. L. C. 311, H. L.; *Temperley Steam Shipping Co.* v. *Smyth & Co.*, [1905] 2 K. B. 791, C. A., overruling *Runciman & Co.* v. *Smyth & Co.* (1904), 20 T. L. R. 625.

(*c*) *Rodocanachi* v. *Milburn*, *supra*.

(*d*) *The San Roman* (1872), L. R. 3 A. & E. 583.

(*e*) *Pickernell* v. *Jauberry* (1862), 3 F. & F. 217 (where the rate of freight was varied); *Caughey* v. *Gordon & Co.* (1878), 3 C. P. D. 419; *Pearson* v. *Göschen* (1864), 17 C. B. (N. S.) 352.

(*f*) *Rodocanachi* v. *Milburn*, *supra*, *per* Lord ESHER, M.R., at p. 75.

(*g*) Parol evidence of the agreement to vary is admissible (*Davidson* v. *Bisset & Son* (1878), 5 R. (Ct. of Sess.) 706).

(*h*) *Delaurier* v. *Wyllie* (1889), 17 R. (Ct. of Sess.) 167.

(*i*) *Samuel, Samuel & Co.* v. *West Hartlepool Steam Navigation Co.* (1906), 11 Com. Cas. 115, *per* WALTON, J., at p. 125; *Steamship Calcutta Co., Ltd.* v. *Weir* (*Andrew*) *& Co.*, *supra*, *per* HAMILTON, J., at p. 768.

(*k*) See pp. 85, 86, *ante*.

(*l*) *Samuel, Samuel & Co.* v. *West Hartlepool Steam Navigation Co.*, *supra*, *per* WALTON, J., at p. 125; *Colvin* v. *Newberry and Benson* (1832),

SECT. 2. Bills of Lading.

possession and control of the ship, and is therefore under no liability to the shipper (*m*), nor has he any rights against him (*n*).

Charterparty not amounting to demise.

(2) Where the charterparty does not amount to a demise, the contract under the bill of lading is, in the absence of circumstances pointing to a contrary conclusion, between the shipper and the shipowner, and not between the shipper and the charterer (*o*).

Usually the charterparty is nothing more than an undertaking by the charterer that a full cargo shall be shipped, accompanied by a guarantee that a certain freight shall be paid (*p*), and there is therefore no difficulty in holding that the shipowner is, as regards the bill of lading, a contracting party (*q*). This is clearly the case where the charterparty contains a cesser clause, which has come into operation and discharged the charterer from his liability to the shipowner (*r*). It is unnecessary, however, to consider the cesser clause or any of the clauses of a particular charterparty which does not amount to a demise, since the shipper's right to treat his contract as having been made with the shipowner is not excluded by reason of the existence of such a charterparty (*s*). The charterparty must be disregarded where the shipper never knew of its existence (*t*), or where, though he knew of its existence, he had no knowledge of its terms (*a*). Even the fact that the shipper knew its terms is not sufficient to exonerate the shipowner (*b*), though it may modify his liability (*c*). To exonerate the shipowner it is necessary to show that the contract was made with the charterer alone (*d*).

1 Cl. & Fin. 283, H. L.; compare *Wagstaff* v. *Anderson* (1880), 5 C. P. D. 171, C. A. This is so whether the shipper had notice of the charterparty or not (*Baumwoll Manufactur von Carl Scheibler* v. *Furness*, [1893] A. C. 8).

(*m*) *Baumwoll Manufactur von Carl Scheibler* v. *Furness*, *supra*, following *Frazer* v. *Marsh* (1811), 13 East, 238.

(*n*) *Marquand* v. *Banner* (1856), 6 E. & B. 232, as explained in *Gilkison* v. *Middleton* (1857), 2 C. B. (N. S.) 134, and in *Wehner* v. *Dene Steam Shipping Co.*, [1905] 2 K. B. 92.

(*o*) *The Figlia Maggiore* (1868), L. R. 2 A. & E. 106; compare *Thin* v. *Liverpool, Brazil and River Plate Steam Navigation Co.* (1901), 18 T. L. R. 226. As to the effect of a foreign bill of lading, see *The Patria* (1871), L. R. 3 A. & E. 436. As to the right of the owner of the goods to sue the shipowner in tort, see *Hayn* v. *Culliford* (1879), 4 C. P. D. 182, C. A.

(*p*) *Samuel, Samuel & Co.* v. *West Hartlepool Steam Navigation Co.* (1906), 11 Com. Cas. 115, *per* WALTON, J., at p. 126.

(*q*) *Wagstaff* v. *Anderson*, *supra*. For a case where an entirely new contract was entered into between the shipper and the shipowner to the exclusion of the charterer, see *Hoyland & Co.* v. *Graham & Co.* (1896), 1 Com. Cas. 274.

(*r*) *Samuel, Samuel & Co.* v. *West Hartlepool Steam Navigation Co.*, *supra*, *per* WALTON, J., at p. 126.

(*s*) *Manchester Trust* v. *Furness*, [1895] 2 Q. B. 539, C. A.; compare *Steamship Calcutta Co., Ltd.* v. *Weir (Andrew) & Co.*, [1910] 1 K. B. 759.

(*t*) *Sandemann* v. *Scurr* (1866), L. R. 2 Q. B. 86; *The Figlia Maggiore*, *supra*.

(*a*) *Manchester Trust* v. *Furness*, *supra*.

(*b*) *Shand* v. *Sanderson* (1859), 4 H. & N. 381; *Turner* v. *Haji Goolam Mahomed Azam*, [1904] A. C. 826, P. C.

(*c*) See p. 173, *post*.

(*d*) *Marquand* v. *Banner*, *supra*. As to the shipowner's liability in tort, see p. 173, *post*.

Sometimes an express contract to this effect may be proved (*e*); more usually it is to be inferred from the fact that the person who signed the bill of lading had no authority, express or implied, to sign it on behalf of the shipowner (*f*).

Rights of shipper.

The shipper, therefore, as a general rule is entitled to hold the shipowner responsible for his goods, and to claim delivery of them on the terms of the bill of lading (*g*). The shipowner cannot rely upon any terms in the charterparty which are not incorporated in the bill of lading (*h*). The shipper cannot, therefore, be required to pay freight at a rate greater than that fixed by the bill of lading, even though such greater rate is expressly stipulated for in the charterparty (*i*). The shipowner is entitled to a lien for the bill of lading freight (*k*); but he cannot claim to exercise any further lien given by the charterparty, whether for the difference between the chartered freight and the bill of lading freight (*l*), or for advance freight (*m*), dead freight, or demurrage at the port of loading (*n*). On the other hand, he is not excused for a failure to deliver the goods by an exception which appears only in the charterparty (*o*), nor can he rely upon the fact that the charterparty contained terms limiting the master's authority to sign bills of lading (*p*), or providing for the master to sign them as agent of the charterer (*q*), unless he can prove that the shipper was not merely aware that there was a charterparty (*r*), but actually knew that it contained

(*e*) *Samuel, Samuel & Co.* v. *West Hartlepool Steam Navigation Co.* (1906), 11 Com. Cas. 115. This was unsuccessfully attempted in *Steamship Calcutta Co., Ltd.* v. *Weir* (*Andrew*) *& Co.*, [1910] 1 K. B. 759.

(*f*) *Marquand* v. *Banner* (1856), 6 E. & B. 232; compare *Smidt* v. *Tiden* (1874), L. R. 9 Q. B. 446; *Michenson* v. *Begbie* (1829), 6 Bing. 190.

(*g*) *Manchester Trust* v. *Furness*, [1895] 2 Q. B. 539, C. A., where the charterparty provided that the master was to sign bills of lading as agent for the charterer.

(*h*) As to the incorporation of the charterparty in the bill of lading, see pp. 175 *et seq.*, *post*.

(*i*) *Paul* v. *Birch* (1743), 2 Atk. 621; *Faith* v. *East India Co.* (1821), 4 B. & Ald. 630; *Shand* v. *Sanderson* (1859), 4 H. & N. 381; compare *Ralli Brothers* v. *Paddington Steamship Co.* (1900), 5 Com. Cas. 124, cited in note (*b*), p. 172, *post*.

(*k*) *Wehner* v. *Dene Steam Shipping Co.*, [1905] 2 K. B. 92. The lien cannot be exercised after payment of the freight to the person entitled (*Tagart, Beaton & Co.* v. *Fisher* (*James*) *& Sons*, [1903] 1 K. B. 391, C. A.).

(*l*) *Turner* v. *Haji Goolam Mahomed Azam*, [1904] A. C. 826, P. C.; *Gardner* v. *Trechmann* (1884), 15 Q. B. D. 154, C. A.

(*m*) *Tamvaco* v. *Simpson* (1866), L. R. 1 C. P. 363, Ex. Ch.; compare *The Stornoway* (1882), 4 Asp. M. L. C. 529.

(*n*) *Birley* v. *Gladstone* (1814), 3 M. & S. 205; *Gladstone* v. *Birley* (1817), 2 Mer. 401.

(*o*) *The Patria* (1871), L. R. 3 A. & E. 436; compare *Sandemann* v. *Scurr* (1866), L. R. 2 Q. B. 86; and contrast *Steamship Calcutta Co., Ltd.* v. *Weir* (*Andrew*) *& Co.*, *supra*, where the shipowner was protected by an exception in the bill of lading, which did not appear in the charterparty, as against the charterer who was also indorsee of the bill of lading.

(*p*) See p. 174, *post*.

(*q*) *Manchester Trust* v. *Furness*, *supra*; compare *Wehner* v. *Dene Steam Shipping Co.*, *supra*.

(*r*) See p. 174, *post*.

SECT. 2. Bills of Lading.

such terms (*s*). The bill of lading signed must, however, if it is to bind the shipowner, be covered by the usual authority of the master or other agent who signed it (*t*).

A shipper who has shipped goods in ignorance of the terms of the charterparty cannot be called upon to accept a bill of lading drawn up in accordance with such terms, if they are unusual or if they impose undue liabilities upon him, as, for instance, where the shipowner is given a lien for chartered freight and demurrage (*a*). In this case the shipper is entitled to demand the redelivery of his goods free of all charges (*b*).

Position of consignee etc.

260. The transfer of the bill of lading to the consignee named therein, or to a *bonâ fide* holder for value, operates as a transfer of the contract contained in the bill of lading (*c*). The original contract between the shipowner and the shipper, whether expressed in a charterparty (*d*) or otherwise (*e*), is not transferred with the bill of lading, except in so far as it is incorporated therein (*f*). The shipowner cannot, as against the holder, rely upon any terms of the original contract which are not incorporated in the bill of lading (*g*), since the holder is not an assignee of the original contract, and is, therefore, not bound by its terms (*h*). The shipowner must perform the contract contained in the bill of lading, and is not excused for non-performance by any exception not contained in the bill of lading (*i*), or by any agreement between himself and the shipper inconsistent therewith (*k*). The holder is entitled to claim delivery on the terms of the bill of lading, if they differ from those of the charterparty (*l*). Thus, the shipowner cannot, as against the

(*s*) *The S.S. Draupner* (*Owners*) v. *S.S. Draupner* (*Owners of Cargo*), [1910] A. C. 450. The burden of proof lies on the shipowner (*The St. Cloud* (1863), 8 L. T. 54).

(*t*) See p. 174, *post*.

(*a*) *Peek* v. *Larsen* (1871), L. R. 12 Eq. 378; compare *Tharsis Sulphur and Copper Mining Co.* v. *Culliford* (1873), 22 W. R. 46.

(*b*) *Peek* v. *Larsen, supra*, followed in *The Stornoway* (1882), 4 Asp. M. L. C. 529; *Gabarron* v. *Kreeft*, *Kreeft* v. *Thompson* (1875), L. R. 10 Exch. 274. A refusal by the master to sign bills of lading at a lower rate of freight unless the difference between the chartered freight and the bill of lading freight is paid to him does not entitle the shipper to demand redelivery of his goods (*Ralli Brothers* v. *Paddington Steampship Co.* (1900), 5 Com. Cas. 124).

(*c*) See p. 164, *ante*.

(*d*) *Oliver* v. *Muggeridge* (1859), 7 W. R. 164. The same principle applies though the bill of lading is indorsed by the shipper to the charterer himself (*Steamship Calcutta Co., Ltd.* v. *Weir* (*Andrew*) *& Co.*, [1910] 1 K. B. 759).

(*e*) *Ohrloff* v. *Briscall, The "Helene"* (1866), L. R. 1 P. C. 231; *Leduc* v. *Ward* (1888), 20 Q. B. D. 475, C. A.; compare *The Emilien Marie* (1875), 2 Asp. M. L. C. 514 (where arrangements had been made with various shippers as to priorities in the case of short delivery).

(*f*) See pp. 175 *et seq.*, *post*.

(*g*) See p. 175, *post*.

(*h*) See p. 166, *ante*.

(*i*) *The Patria* (1871), L. R. 3 A. & E. 436; contrast *The Northumbria*, [1906] P. 292 (where the exceptions in the charterparty were incorporated).

(*k*) *Leduc* v. *Ward, supra*.

(*l*) *Chappel* v. *Comfort* (1861), 10 C. B. (N. S.) 802; *Gardner* v. *Trechmann* (1884), 15 Q. B. D. 154, C. A.; *Red "R." Steamship Co.* v. *Allatini Brothers* (1910), 15 Com. Cas. 290, H. L.

holder, claim freight at any other rate than that specified in the bill of lading (*m*), or assert a lien conferred by the charterparty but not incorporated in the bill of lading (*n*). Where the liability of the shipowner depends upon the authority of the person who signs it to bind the shipowner, the fact that the holder knows of the charterparty must be taken into consideration, since he cannot, as against the shipowner, rely upon a bill of lading which he knows to be in excess of the authority possessed by the shipowner's agent (*o*); but, if he does not know the terms of the charterparty, the mere knowledge of its existence does not prevent him from enforcing the bill of lading against the shipowner, even though the agent, in signing it, exceeded his actual authority (*p*). The bill of lading, however, in this case must be covered by the agent's usual authority (*q*), and the holder must, at the time when it was transferred to him, have had no reason to suspect that such authority had not been properly exercised (*r*).

Excess of authority.

261. A bill of lading which is in excess of the agent's usual authority, and which is not in fact authorised by the shipowner, does not bind the shipowner even in the hands of a *bonâ fide* holder for value (*s*).

Shipper's agent.

262. A holder of the bill of lading who is merely an agent of the shipper is in the position of the shipper (*a*).

(iii.) *The Authority of the Master.*

Extent of authority.

263. If the bill of lading is signed by an agent other than the master, such as, for instance, a broker (*b*), the existence of his authority to sign it is a question of fact, and the principal from whom his authority was derived, whether such principal is the shipowner or the charterer (*c*), is liable on his signature, provided

(*m*) *Paul* v. *Birch* (1743), 2 Atk. 621; *Mitchell* v. *Scaife* (1815), 4 Camp. 298; *Foster* v. *Colby* (1858), 3 H. & N. 705. Nor can the shipowner exercise his lien for more than the freight actually due in respect of the goods, even though the freight is payable as per charterparty (*Fry* v. *Chartered Mercantile Bank of India* (1866), L. R. 1 C. P. 689, Ex. Ch.).

(*n*) *Gilkison* v. *Middleton* (1857), 2 C. B. (N. S.) 134; *Chappel* v. *Comfort* (1861), 10 C. B. (N. S.) 802; *Tamvaco* v. *Simpson* (1866), L. R. 1 C. P. 363, Ex. Ch.

(*o*) *The Emilien Marie* (1875), 2 Asp. M. L. C. 514; *The S.S. Draupner* (*Owners*) v. *S.S. Draupner* (*Owners of Cargo*), [1910] A. C. 450. The burden of proving knowledge of the charterparty rests on the shipowner (*The S.S. Draupner* (*Owners*) v. *S.S. Draupner* (*Owners of Cargo*), *supra*).

(*p*) *Gardner* v. *Trechmann* (1884), 15 Q. B. D. 154, C. A.; compare *Stumore, Weston & Co.* v. *Breen* (1886), 12 App. Cas. 698.

(*q*) As to the agent's usual authority, see p. 154, *ante*.

(*r*) *Small* v. *Moates* (1833), 9 Bing. 574; *Mitchell* v. *Scaife* (1815), 4 Camp. 298; compare *Foster* v. *Colby* (1858), 3 H. & N. 705.

(*s*) *Reynolds* v. *Jex* (1865), 7 B. & S. 86.

(*a*) *Gledstanes* v. *Allen* (1852), 12 C. B. 202; *Kern* v. *Deslandes* (1861), 10 C. B. (N. S.) 205, followed in *West Hartlepool Steam Navigation Co.* v. *Tagart, Beaton & Co.* (1903), 19 T. L. R. 251, C. A.; compare *Small* v. *Moates* (1833), 9 Bing. 574; *Pearson* v. *Göschen* (1864), 17 C. B. (N. S.) 352.

(*b*) See note (*c*), p. 153, *ante*.

(*c*) *Hayn* v. *Culliford* (1878), 3 C. P. D. 410 (affirmed without deciding this point (1879), 4 C. P. D. 182, C. A.); *Wagstaff* v. *Anderson* (1880), 5 C. P. D. 171, C. A.

SECT. 2. Bills of Lading.

that the agent has not exceeded his authority (*d*). If, however, the bill of lading is signed by the master, the position is complicated by the existence of his implied authority to bind the shipowner (*e*). It is, therefore, necessary to distinguish the following cases, namely:—

(1) Where the charterparty operates as a demise (*f*), the implied authority of the master to bind the shipowner is excluded, and his signature binds the charterer only (*g*);

(2) Where the charterparty does not operate as a demise, the master's implied authority to bind the shipowner by signing a bill of lading continues notwithstanding the charterparty (*h*).

As regards persons unacquainted with the terms of the charterparty, whether shippers, consignees, or indorsees of the bill of lading, the shipowner is bound by any bill of lading signed by the master within the usual authority of a master (*i*), even if the master's authority is in fact limited by the charterparty (*k*); he is only exempt from liability where the master has exceeded his usual authority (*l*). A limitation of the master's authority contained in the charterparty is effective as regards all persons acquainted with it (*m*).

Variation of charterparty.

As between the charterer and the shipowner, the master has no implied (*n*) authority to vary the terms of the contract contained in the charterparty, and he cannot, therefore, bind either of them by a variation in favour of the other (*o*). The charterparty may, however, stipulate that the master is to sign bills of lading as presented by the charterer without prejudice to the charterparty (*p*), and may further stipulate that the charterer is to indemnify the shipowner from all the consequences or liabilities which may arise from the master signing bills of lading (*q*). In

(*d*) *Steamship Calcutta Co., Ltd.* v. *Weir* (*Andrew & Co.*), [1910] 1 K. B. 759.

(*e*) See p. 154, *ante*.

(*f*) See pp. 85 *et seq.*, *ante*.

(*g*) *Colvin* v. *Newberry and Benson* (1832), 1 Cl. & Fin. 283, H. L.; *Baumwoll Manufactur von Carl Scheibler* v. *Furness*, [1893] A. C. 8; compare *James* v. *Jones* (1799), 3 Esp. 27.

(*h*) *The Emilien Marie* (1875), 2 Asp. M. L. C. 514.

(*i*) *Ibid.*; *Compania Naviera Vasconzada* v. *Churchill and Sim*, *Same* v. *Burton & Co.*, [1906] 1 K. B. 237, distinguishing *Cox* v. *Bruce* (1886), 18 Q. B. D. 147, C. A.

(*k*) *Mitchell* v. *Scaife* (1815), 4 Camp. 298.

(*l*) *Reynolds* v. *Jex* (1865), 7 B. & S. 86; *Grant* v. *Norway* (1851), 10 C. B. 665, as explained in *Cox* v. *Bruce*, *supra*.

(*m*) *The S.S. Draupner* (*Owners*) v. *S.S. Draupner* (*Owners of Cargo*), [1910] A. C. 450.

(*n*) *Burgon* v. *Sharpe* (1810), 2 Camp. 529.

(*o*) *Meyer* v. *Dresser* (1864), 16 C. B. (N. S.) 646; *Pickernell* v. *Jauberry* (1862), 3 F. & F. 217; *Pearson* v. *Göschen* (1864), 17 C. B. (N. S.) 352; *The Canada* (1897), 13 T. L. R. 238.

(*p*) *Jones* v. *Hough* (1875), 5 Ex. D. 115, C. A.; *Meyer* v. *Dresser*, *supra*; *Reynolds* v. *Jex*, *supra*; *Turner* v. *Haji Goolam Mahomed Azam*, [1904] A. C. 826, P. C., following *Hansen* v. *Harrold Brothers*, [1894] 1 Q. B. 612, C. A.; *Krüger & Co., Ltd.* v. *Moel Tryvan Ship Co., Ltd.*, [1907] A. C. 272.

(*q*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 99. Such a stipulation is not, however, necessary, since it is to be implied from

this case it is the charterer's duty to tender a bill of lading which is not inconsistent with and not to the prejudice of the charterparty (*r*); and if he fails to discharge this duty and presents a bill of lading, the signing of which involves the shipowner in liabilities to third persons, he must indemnify the shipowner (*s*). He cannot, where the charterparty is varied, treat the master's signature as falling within his implied authority (*t*), and if the bill of lading is manifestly inconsistent with the charterparty it is the master's duty to refuse to sign it (*a*).

(3) Where the master expressly signs the bill of lading as agent of the charterer and not as master, the shipowner is not liable (*b*).

(iv.) *The Incorporation of the Bill of Lading.*

Where contract to be found.

264. As between the shipowner and the charterer, the contract of carriage is contained in the charterparty (*c*); as regards other persons, it is to be found in the bill of lading (*d*). The terms of the charterparty are not as such binding either on the shipper, where he is not the charterer, or on the consignee or indorsee of the bill of lading, whether he knows of them (*e*) or not (*f*), though his knowledge of them precludes him from relying, as against the shipowner, on a bill of lading which is outside the master's actual authority (*g*).

The terms of the charterparty may, however, be incorporated in the bill of lading by express reference (*h*), and in this case they become terms of the contract contained in the bill of lading (*i*), capable of being enforced by (*k*) or against (*l*) the shipper, consignee, or indorsee, as the case may be.

the charterer's request to the master to sign the particular bill of lading (*Elder, Dempster & Co.* v. *Dunn & Co.* (1909), 15 Com. Cas. 49, H. L., where the cargo was incorrectly described through the charterer's default).

(*r*) *Krüger & Co., Ltd.* v. *Moel Tryvan Steamship Co., Ltd.*, [1907] A. C. 272, *per* Lord HALSBURY, at p. 279.

(*s*) *The Arroyo* (1900), 16 T. L. R. 255; *Milburn & Co.* v. *Jamaica Fruit Importing and Trading Co. of London*, [1900] 2 Q. B. 540, C. A.

(*t*) *Meyer* v. *Dresser* (1864), 16 C. B. (N. S.) 646.

(*a*) *Krüger & Co., Ltd.* v. *Moel Tryvan Steamship Co., Ltd.*, *supra*, *per* Lord HALSBURY, at pp. 278, 279, and *per* Lord ATKINSON, at p. 282. The master is not entitled to refuse to sign a bill of lading which the charterer has a right under the charterparty to present (*Jones* v. *Hough* (1879), 5 Ex. D. 115, C. A.; compare *The Shillito* (1897), 3 Com. Cas. 44).

(*b*) *Harrison* v. *Huddersfield Steamship Co.* (1903), 19 T. L. R. 386; compare *The Emilien Marie* (1875), 2 Asp. M. L. C. 514.

(*c*) See p. 169, *ante*.

(*d*) Even though the bill of lading was originally issued to the charterer (*Fry* v. *Chartered Mercantile Bank of India* (1866), L. R. 1 C. P. 689; but see *Small* v. *Moates* (1833), 9 Bing. 574, *per* TINDAL, C.J., at p. 591).

(*e*) *Manchester Trust* v. *Furness*, [1895] 2 Q. B. 539, C. A.; and see pp. 171, 172, *ante*.

(*f*) *Sandemann* v. *Scurr* (1866), L. R. 2 Q. B. 86.

(*g*) *The S.S. Draupner* (*Owners*) v. *S.S. Draupner* (*Owners of Cargo*), [1910] A. C. 450.

(*h*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 105, 110.

(*i*) *Porteus* v. *Watney* (1878), 3 Q. B. D. 534, C. A., *per* BRETT, L.J., at p. 541, explaining *Gray* v. *Carr* (1871), L. R. 6 Q. B. 522, Ex. Ch.

(*k*) *Red "R." Steamship Co.* v. *Allatini Brothers* (1910), 15 Com. Cas. 290, H. L.

(*l*) *Porteus* v. *Watney, supra*; *The Northumbria*, [1906] P. 292.

SECT. 2. Bills of Lading.

Construction of reference to charterparty.

265. Any reference in the bill of lading to the charterparty is strictly construed (*m*). Thus, a stipulation that freight is to be paid as per the charterparty does not incorporate the lien for chartered freight given by the charterparty (*n*), or the stipulations as to demurrage contained therein (*o*); nor does a reference to the conditions of the charterparty incorporate its exceptions (*p*). Where the conditions of the charterparty are incorporated by reference, it does not necessarily follow that effect is to be given to every condition in the charterparty; conditions which are wholly insensible and inapplicable must be disregarded as being impossible of application (*q*). The conditions which are to be treated as incorporated are those which are to be performed by the person who has received the bill of lading and is taking delivery of his goods (*r*), such as, for instance, those relating to the payment of demurrage, whether at the port of loading (*s*) or at the port of discharge (*t*), or to the payment of freight (*a*), or to the manner of payment (*b*). On the other hand, conditions such as, for instance, arbitration clauses (*c*), or cesser clauses (*d*), which are not applicable to a bill of lading at all, are inoperative (*e*).

Terms of the charterparty which are not conditions.

266. Terms of the charterparty which are not conditions in the

(*m*) *Chiesman & Co.* v. *Steamship Modena (Owners), The Modena* (1911), 16 Com. Cas. 292 (where the words "at charterer's risk" were held not to be incorporated).

(*n*) *Fry* v. *Chartered Mercantile Bank of India* (1866), L. R. 1 C. P. 689; *Faith* v. *East India Co.* (1821), 4 B. & Ald. 630.

(*o*) *Chappel* v. *Comfort* (1861), 10 C. B. (N. S.) 802; *Smith* v. *Sieveking* (1855), 4 E. & B. 945; *Young* v. *Moeller* (1855), 5 E. & B. 755, Ex. Ch.

(*p*) *Russell* v. *Niemann* (1864), 17 C. B. (N. S.) 163, approved in *Taylor* v. *Perrin* (1883), not reported, H. L., but cited in *Serraino & Sons* v. *Campbell*, [1891] 1 Q. B. 283, C. A.; *Diederichsen* v. *Farquharson Brothers*, [1898] 1 Q. B. 150, C. A.

(*q*) *Porteus* v. *Watney* (1878), 3 Q. B. D. 534, C. A., *per* BRETT, L.J., at p. 541, explaining *Gray* v. *Carr* (1871), L. R. 6 Q. B. 522, Ex. Ch.

(*r*) *Taylor* v. *Perrin*, *supra*, *per* Lord BLACKBURN, at p. 295; *Serraino & Sons* v. *Campbell*, *supra*, *per* Lord ESHER, M.R., at p. 289.

(*s*) *Gray* v. *Carr*, *supra* (where it was held, however, that a further liability for damages for detention did not pass); *Harris* v. *Jacobs* (1885), 15 Q. B. D. 247, C. A. (where the liability for damages for detention was held to pass, the clause being sufficiently wide). Demurrage at the port of loading may be excluded by express agreement, notwithstanding the bill of lading (*Steamship "County of Lancaster"* v. *Sharp & Co.* (1889), 24 Q. B. D. 158).

(*t*) *Wegener* v. *Smith* (1854), 15 C. B. 285; *Porteus* v. *Watney*, *supra*; *Gullischen* v. *Stewart Brothers* (1884), 13 Q. B. D. 317, C. A.

(*a*) *Red "R." Steamship Co.* v. *Allatini Brothers* (1910), 15 Com. Cas. 290, H. L.

(*b*) *Taylor* v. *Perrin*, *supra*.

(*c*) *Hamilton & Co.* v. *Mackie & Sons* (1889), 5 T. L. R. 677, C. A.; approved in *Thomas (T. W.) & Co., Ltd.* v. *Portsea Steamship Co., Ltd.*, [1912] A. C. 1. But if the charterer is the holder of the bill of lading, an arbitration clause in the charterparty will be incorporated (*Temperley Steam Shipping Co.* v. *Smyth & Co.*, [1905] 2 K. B. 791, C. A., overruling *Runciman & Co.* v. *Smyth & Co.* (1904), 20 T. L. R. 625); see also *S.S. Den of Airlie Co.* v. *Mitsui & Co.* (1912), 17 Com. Cas. 116, C. A.

(*d*) *Gullischen* v. *Stewart Brothers*, *supra*.

(*e*) See also *Serraino & Sons* v. *Campbell*, *supra*; *Manchester Trust* v. *Furness*, [1895] 2 Q. B. 539, C. A.

strict sense of the word are incorporated in the bill of lading where the intention to incorporate them is clear (*f*). Thus, the exceptions of the charterparty may be expressly made part of the bill of lading (*g*), or the bill of lading may provide for the incorporation of the terms, conditions, and clauses of the charterparty, in which case an indorsee is entitled to exercise rights conferred by the charterparty upon the charterer, such as, for instance, the right of ordering the ship to discharge in a particular dock (*h*).

Inconsistent terms.

267. A term of the charterparty which is, on the face of it, capable of being incorporated in the bill of lading must nevertheless be disregarded if it is inconsistent with an express term of the bill of lading (*i*). Thus, a provision in the charterparty providing for payment of a lump freight in the events that have happened cannot prevail against an express stipulation in the bill of lading that freight is to paid at a specified rate per ton, although the bill of lading also provides for payment of freight as per charterparty (*k*); nor can the shipowner claim to exercise his lien for the full chartered freight (*l*).

Lien.

SECT. 3.—*The Loading.*

SUB-SECT. 1.—*The Readiness of the Ship.*

When charterer's obligation arises.

268. Where the ship in which the goods are to be carried is employed under a charterparty (*m*), certain conditions must be fulfilled by the shipowner before he is entitled to call upon the charterer to ship his goods. The ship must be at the place of loading contemplated by the charterparty (*n*); she must be ready to receive the goods on board (*o*), and notice of readiness must have been given to the charterer (*p*).

Proceeding to port of loading.

269. If the ship is not already lying in the port of loading at the time when the charterparty is made, she must proceed thither so as to arrive in time to load for the contemplated voyage (*q*). Where the port of loading is not specified in the charterparty, but is left to be named by the charterer (*r*), the shipowner's duty does

(*f*) Compare note (*s*), p. 176, *ante*.

(*g*) *The Northumbria*, [1906] P. 292.

(*h*) *East Yorkshire Steamship Co.* v. *Hancock* (1900), 5 Com. Cas. 266.

(*i*) *Gardner* v. *Trechmann* (1884), 15 Q. B. D. 154, C. A., *per* BRETT, M.R., at p. 157.

(*k*) *Red "R." Steamship Co.* v. *Allatini Brothers* (1909), 14 Com. Cas. 82; *Brightman* v. *Miller* (1908), *Shipping Gazette*, 9th June; compare *Gardner* v. *Trechmann*, *supra*.

(*l*) *Fry* v. *Chartered Mercantile Bank of India* (1866), L. R. 1 C. P. 689; see also pp. 617 *et seq.*, *post*.

(*m*) Where goods are shipped under a bill of lading the conditions specified will, as a general rule, have already been performed before the contract of carriage is made.

(*n*) See pp. 181 *et seq.*, *post*.

(*o*) See pp. 184 *et seq.*, *post*.

(*p*) See p. 186, *post*.

(*q*) *Jackson* v. *Union Marine Insurance Co.* (1874), L. R. 10 C. P. 125, Ex. Ch., disapproving *Hurst* v. *Usborne* (1856), 18 C. B. 144; *M'Andrew* v. *Adams* (1834), 1 Bing. (N. C.) 29. As to the effect of a statement of the position at the date of the contract, see p. 91, *ante*.

(*r*) See pp. 92, 93, *ante*.

SECT. 3. The Loading.

not arise until the charterer has named it (*s*). The charterer must name (*t*) the port at which he desires the ship to load (*a*) within the time specified in the charterparty, or, if no time is specified, within a reasonable time (*b*).

Effect of delay.

270. Though it is the shipowner's duty to proceed to the port of loading with due diligence (*c*), mere delay in starting (*d*), or deviation on the way to the port of loading (*e*), is not in itself a breach of duty entitling the charterer to refuse to supply a cargo (*f*), though he will be entitled to recover such damages as he may have sustained by reason of the shipowner's lack of diligence (*g*). The position is not altered where the charterparty, as is usually the case, contains an express stipulation requiring the ship to proceed to the port of loading with all possible dispatch (*h*), since this stipulation is not to be regarded as a condition precedent (*i*), and the breach of it therefore gives a right to the charterer to recover damages only (*k*). Where, however, the delay or deviation is so great as in the mercantile sense to frustrate the mercantile adventure contemplated by the charterparty, there is a breach of a condition which goes to the root of the contract (*l*). The charterer is, therefore, in that case discharged from his obligation to supply a cargo (*m*), and may, in addition, unless the shipowner is protected by an exception (*n*), recover damages (*o*). The fact that the delay

(*s*) *Rae* v. *Hackett* (1844), 12 M. & W. 724.

(*t*) As to what constitutes "naming," see *Brown* v. *Johnson* (1842), 10 M. & W. 331, where the question was left to the jury.

(*a*) Compare the cases relating to the ordering of a port of discharge, p. 255, *post*.

(*b*) *Woolley* v. *Reddelieu* (1843), 5 Man. & G. 316; *Whitwill* v. *Scheer* (1838), 8 Ad. & El. 301; *Matthews* v. *Lowther* (1850), 5 Exch. 574; *Stewart* v. *Rogerson* (1871), L. R. 6 C. P. 424; compare *Sieveking* v. *Maass* (1856), 6 E. & B. 670, C. A.

(*c*) *Jackson* v. *Union Marine Insurance Co.* (1874), L. R. 10 C. P. 125, Ex. Ch.; *M'Andrew* v. *Adams* (1834), 1 Bing. (N. C.) 29 (where the condition was held to be broken though the ship arrived before the day fixed for cancelling); see p. 94, *ante*.

(*d*) *Dimech* v. *Corlett* (1858), 12 Moo. P. C. C. 199.

(*e*) *Forest Oak Steam Shipping Co.* v. *Richard* (1901), 5 Com. Cas. 100.

(*f*) *MacAndrew* v. *Chapple* (1866), L. R. 1 C. P. 643; *Hudson* v. *Hill* (1874), 2 Asp. M. L. C. 278.

(*g*) *Clipsham* v. *Vertue* (1843), 5 Q. B. 265.

(*h*) *Tarrabochia* v. *Hickie* (1856), 1 H. & N. 183.

(*i*) *Dimech* v. *Corlett*, *supra*.

(*k*) *MacAndrew* v. *Chapple*, *supra*; *Jackson* v. *Union Marine Insurance Co.*, *supra*; *Hudson* v. *Hill*, *supra*.

(*l*) *Freeman* v. *Taylor* (1831), 8 Bing. 124; *Jackson* v. *Union Marine Insurance Co.*, *supra*, disapproving *Hurst* v. *Usborne* (1856), 18 C. B. 144; compare *Clipsham* v. *Vertue*, *supra*; *Rankin* v. *Potter* (1873), L. R. 6 H. L. 83, *per* BLACKBURN, J., at p. 117; see p. 93, *ante*.

(*m*) *Tarrabochia* v. *Hickie*, *supra*; *Tully* v. *Howling* (1877), 2 Q. B. D. 182, C. A.

(*n*) *Geipel* v. *Smith* (1872), L. R. 7 Q. B. 404; *Jackson* v. *Union Marine Insurance Co.*, *supra*. The exceptions in the charterparty apply to the voyage to the port of loading (*Hudson* v. *Hill*, *supra*; *Barker* v. *M'Andrew* (1865), 18 C. B. (N. S.) 759; *Bruce* v. *Nicolopulo* (1855), 11 Exch. 129; *Harrison* v. *Garthorne* (1872), 26 L. T. 508); but the voyage must have begun (*Crow* v. *Falk* (1846), 8 Q. B. 467; *Valente* v. *Gibbs* (1859), 6 C. B. (N. S.) 270).

(*o*) *Jackson* v. *Union Marine Insurance Co.*, *supra*; compare p. 93, *ante*.

or deviation is occasioned by an excepted peril does not prevent the contract from being discharged, though the shipowner is, by reason of the exception, exempted from any liability arising in consequence of the failure to perform his duty (*p*).

Stipulations as to time.

271. The duty of the shipowner may be extended by the express stipulations of the charterparty, provided that it is clear from the language used that such is the intention of the parties (*q*). Thus, it may be stipulated that the ship is to sail for the port of loading on or before a named date (*r*). It is then made a condition of the contract that the ship shall sail (*s*) from the port in which she is lying by the given date. If she fails to do so, the charterer is entitled to refuse to supply a cargo (*t*), and may, in addition, unless the shipowner is excused by an exception, recover damages for the breach of the condition (*a*). It is immaterial that the ship has been prevented from sailing by an excepted peril (*b*); though in this case the exception operates to exonerate the shipowner from an action for damage, it does not affect the condition precedent upon which the charterer has contracted to take and load the ship (*c*). Similarly, a stipulation which specifies the date by which the ship is to arrive at the port of loading (*d*), or is to be ready to load (*e*), is to be construed as a condition the breach of which discharges the charterer from his obligation to supply a cargo (*f*), and may further entitle him to damages (*g*). In this case, too, it is equally immaterial that the shipowner's failure to fulfil the condition is attributable to an excepted peril (*h*), though in this case he is not liable in damages (*i*). The stipulation may, however, be so worded as to extend the operation of the exception to the voyage to the port of loading, and the charterer must then accept the ship,

(*p*) *Jackson* v. *Union Marine Insurance Co.* (1874), L. R. 10 C. P. 125, Ex. Ch.; *Smith* v. *Dart & Son* (1884), 14 Q. B. D. 105.

(*q*) *Bornmann* v. *Tooke* (1808), 1 Camp. 377; *Forest Oak Steam Shipping Co.* v. *Richard* (1901), 5 Com. Cas. 100.

(*r*) *Glaholm* v. *Hays* (1841), 2 Man. & G. 257; *Sharp* v. *Gibbs* (1857), 1 H. & N. 801; compare *Ollive* v. *Booker* (1847), 1 Exch. 416; *Behn* v. *Burness* (1863), 3 B. & S. 751, Ex. Ch.

(*s*) As to what is meant by "sailing," see *Van Baggen* v. *Baines* (1854), 9 Exch. 523.

(*t*) *Shower* v. *Cudmore* (1682), T. Jo. 216; *Glaholm* v. *Hays*, *supra*.

(*a*) *Valente* v. *Gibbs* (1859), 6 C. B. (N. S.) 270, *per* BYLES, J., at p. 287.

(*b*) *Croockewit* v. *Fletcher* (1857), 1 H. & N. 893; see p. 94, *ante*.

(*c*) *Croockewit* v. *Fletcher*, *supra*.

(*d*) *Corkling* v. *Massey* (1873), L. R. 8 C. P. 395.

(*e*) *Oliver* v. *Fielden* (1849), 4 Exch. 135; *Seeger* v. *Duthie* (1860), 8 C. B. (N. S.) 45; *Groves, Maclean & Co.* v. *Volkart Brothers* (1884), Cab. & El. 309; *Smith* v. *Dart & Son*, *supra*; *Hick* v. *Tweedy & Co.* (1890), 63 L. T. 765.

(*f*) *Shadforth* v. *Higgin* (1813), 3 Camp. 385; but see *Deffell* v. *Brocklebank* (1821), 3 Bli. 561, H. L. (where the stipulation was not treated as a condition). This condition does not excuse the shipowner from his obligation to proceed to the port of loading with reasonable dispatch, and he may be liable in damages for a breach of this obligation even though he arrives before the named date (*M'Andrew* v. *Adams* (1834), 1 Bing. (N. C.) 29).

(*g*) *Corkling* v. *Massey*, *supra*.

(*h*) *Smith* v. *Dart & Son*, *supra*.

(*i*) *Harrison* v. *Garthorne* (1872), 26 L. T. 508; *Donaldson Brothers* v. *Little & Co.* (1882), 10 R. (Ct. of Sess.) 413.

SECT. 3. The Loading.

notwithstanding her failure to arrive by the specified date (*k*). The shipowner is not discharged from his duty to proceed to the port of loading by reason of the fact that it has already become impossible for the ship to arrive there by the due date (*l*); nor can he call upon the charterer to extend the time or otherwise to indicate his intention of accepting or refusing the ship (*m*). If, however, the charterer by his conduct leads the shipowner to believe that the ship will be loaded, and thus induces him to send the ship to the port of loading, the charterer cannot afterwards repudiate the contract on the ground that the condition has been broken (*n*).

Reaching the port of loading.

"So near thereto as she can safely get."

272. The ship must reach the port of loading specified in the charterparty, or, if the charterparty contains the usual protective alternative, "so near thereto as she can safely get" (*o*). The effect of the alternative is to excuse the shipowner from his duty to reach the port of loading, if he is prevented from doing so by some obstruction which is not merely of a temporary nature or such as must necessarily be incident to every contract for a voyage to the port in question (*p*). Since, however, the ship, after loading, has to leave the port with her cargo on board, the extent of the shipowner's duty is to be measured, when the obstruction is physical, by the capacity of the ship when loaded, and not merely by her ability to enter the port when empty (*q*). Thus, where there is a bar obstructing access to the port of loading, the shipowner cannot be required to send his ship across the bar if, whatever the state of the water, she will be unable to recross it when loaded (*r*); and if she does in fact enter and load as much cargo as can safely be carried across the bar (*s*), he is entitled to call upon the charterer

(*k*) *Granger* v. *Dent* (1829), Mood. & M. 475; compare *Potter* (*John*) *& Co.* v. *Burrell & Son*, [1897] 1 Q. B. 97, C. A. (where the exact date of arrival was fixed in a subsequent letter).

(*l*) *Shubrick* v. *Salmond* (1765), 3 Burr. 1637; compare *Wheeler* v. *Bavidge* (1854), 9 Exch. 668.

(*m*) *Bucknall Brothers* v. *Tatem & Co.* (1900), 83 L. T. 121 (where, however, the court refused an injunction restraining the shipowner from accepting other employment); *Moel Tryvan* (*Owners*) v. *Weir* (*Andrew*) *& Co.* (1910), 15 Com. Cas. 30, C. A. (where there was a cancelling clause, and it was held that the charterer was not bound to exercise his option under it before the ship arrived); see p. 98, *ante*.

(*n*) *Bentsen* v. *Taylor, Sons & Co.* (No. 2), [1893] 2 Q. B. 274, C. A.

(*o*) Compare throughout the cases cited as to arrival at the port of discharge, pp. 254 *et seq.*, *post*. The parties may substitute another port by agreement (*Jackson* v. *Galloway* (1838), 5 Bing. (N. C.) 71); compare I. S. F. Strike Expenses Clauses, clause 1, which empowers the ship to proceed, in the event of a strike, to another port. As to the I. S. F. Strike Expenses Clauses, see note (*d*), p. 131, *ante*.

(*p*) *Parker* v. *Winlow* (1857), 7 E. & B. 942; *Schilizzi* v. *Derry* (1855), 4 E. & B. 873; *Geipel* v. *Smith* (1872), L. R. 7 Q. B. 404; *Castel and Latta* v. *Trechman* (1884), Cab. & El. 276; *Nelson* v. *Dahl* (1879), 12 Ch. D. 560, C. A., *per* BRETT, L.J., at pp. 592, 593 (affirmed, *sub nom. Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38).

(*q*) *Shield* v. *Wilkins* (1850), 5 Exch. 304.

(*r*) *General Steam Navigation Co.* v. *Slipper* (1862), 11 C. B. (N. S.) 493; *Shield* v. *Wilkins*, *supra*. In this case the expenses of lightering the goods to the ship must be borne by the charterer (*Trinidade* v. *Levy* (1860), 2 F. & F. 441). There may, however, be a custom to load part of the cargo inside the bar, and to complete the loading outside; see *Herring* v. *Ward* (1839), 8 L. J. (Q. B.) 218.

(*s*) *General Steam Navigation Co.* v. *Slipper*, *supra*.

to complete the loading at his own expense outside (*t*). Where, however, the depth of water in the bar will, in the ordinary course of events, become sufficient within a reasonable time to enable the ship to cross and to recross it in safety as a laden ship, it is the shipowner's duty to wait for a reasonable time and to proceed to the actual port of loading when the water permits; and if he fails to do so he is liable in damages to the charterer for his breach of duty (*a*). Similarly, where the port is tidal, the ship is bound to wait till the tide serves, including, if requisite, a spring tide (*b*); it is immaterial that the stipulation contains the qualification "always afloat," if the port is accessible at certain states of the tide (*c*). If, however, the stipulation is further qualified by the words "at all times of the tide," the shipowner cannot be compelled to send his ship into a port where she must necessarily take the ground when the tide is low (*d*).

"Always afloat."

"At all times of the tide."

If the port of loading is not specified in the charterparty, but is left to be named by the charterer (*e*), the effect of naming it is the same as if it had been specified in the charterparty (*f*). The shipowner, therefore, cannot be required to proceed to a port which the ship would not be able to leave when loaded (*g*). In practice it is usually stipulated that the charterer must name a "safe port" (*h*).

Port to be named.

"Safe port."

273. Since, for the purpose of demurrage and damages for

When ship "arrived."

(*t*) *Shield* v. *Wilkins* (1850), 5 Exch. 304. If, however, the ship receives a full cargo inside, the expenses of unloading for the purpose of recrossing the bar, and of reloading outside, fall upon the shipowner and not upon the charterer (*General Steam Navigation Co.* v. *Slipper* (1862), 11 C. B. (N. S.) 493, where it was held that the goods, if received, must be carried to their destination).

(*a*) *Schilizzi* v. *Derry* (1855), 4 E. & B. 873 (where it was also held that the shipowner was not excused under an exception against "dangers and accidents of the seas, rivers and navigation of what nature and kind soever during the voyage"); *Gifford & Co.* v. *Dishington & Co.* (1871), 9 Macph. (Ct. of Sess.) 1045 (where the ship had crossed the bar for the purpose of loading, but refused to take on board the whole of the cargo); compare *The Curfew*, [1891] P. 131.

(*b*) *Parker* v. *Winlow* (1857), 7 E. & B. 942. If she has already entered she cannot refuse to complete her loading on the ground that, the tides being neap, she will be detained, provided that she will be able to get out on a spring tide (*The Curfew, supra*; *Gifford & Co.* v. *Dishington & Co., supra*). It may be the custom of the port to load a part of the cargo at a particular place and to complete the loading afloat (*Aktieselskabet Inglewood* v. *Millar's Karri and Jarrah Forests, Ltd.* (1903), 8 Com. Cas. 196).

(*c*) *Carlton Steamship Co.* v. *Castle Mail Packets Co.*, [1898] A. C. 486; compare *The Curfew, supra*; *Aktieselskabet Inglewood* v. *Millar's Karri and Jarrah Forests, Ltd., supra*.

(*d*) *Horsley* v. *Price* (1883), 11 Q. B. D. 244; compare *Allen* v. *Coltart* (1883), 11 Q. B. D. 782 (where the stipulation was qualified by the words "a dock, as ordered on arrival, if sufficient water").

(*e*) See pp. 92, 93, *ante*.

(*f*) *Aktieselskabet Inglewood* v. *Millar's Karri and Jarrah Forests, Ltd., supra*.

(*g*) *The Alhambra* (1881), 6 P. D. 68, C. A.

(*h*) *Smith* v. *Dart & Son* (1884), 14 Q. B. D. 105. As to what is meant by a "safe port," see p. 255, *post*. As to the master's duty when the port is not named within a reasonable time, see *Sieveking* v. *Maass* (1856), 6 E. & B. 670; *Woolley* v. *Reddelieu* (1843), 5 Man. & G. 316; *Rae* v. *Hackett* (1844), 12 M. & W. 724.

SECT. 3. The Loading.

detention (*i*), time begins to run against the charterer from the arrival of the ship at her port of loading (*k*), it is necessary to consider the question whether the shipowner's duty requires him to reach the particular berth at which the ship is to lie during the loading before the ship can be said to have arrived, or whether he sufficiently satisfies it by reaching the port, so that any delay incurred afterwards in getting to the berth falls to be borne by the charterer (*l*). The answer to this question depends upon the language of the particular charterparty (*m*), and also upon the usage of trade as applied to the port of loading (*n*). Three cases must be distinguished (*o*), namely:—

Arrival at port.

(1) The charterparty may stipulate simply that the ship is to arrive at the specified port, without any further particularity or qualification (*p*). In this case the word "port" must not be applied in its geographical, fiscal, or pilotage sense (*q*); the ship has not necessarily arrived within the meaning of the charterparty because she is within the geographical or legal limits of the port (*r*). The word must be construed in a commercial sense as meaning the commercial area known and treated as the port by all persons engaged in the shipping of merchandise, whether as shippers, charterers, or shipowners (*s*). The ship is not, therefore, to be considered as having arrived until she has reached the usual place in the port at which loading vessels lie (*t*). When she has reached this place the shipowner's duty has been fulfilled; it is not necessary that the ship should actually be in the particular part of the port in which the particular cargo is to be loaded (*a*). Since,

(*i*) See pp. 126, 127, *ante*.

(*k*) *Tapscott* v. *Balfour* (1872), L. R. 8 C. P. 46; *Nelson* v. *Dahl* (1879), 12 Ch. D. 560, C. A., *per* BRETT, L.J., at p. 593 (affirmed, *sub nom. Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38); *Pyman Brothers* v. *Dreyfus Brothers & Co.* (1889), 24 Q. B. D. 152; *Monsen* v. *Macfarlane & Co.*, [1895] 2 Q. B. 562, C. A.; *Leonis Steamship Co., Ltd.* v. *Rank, Ltd.*, [1908] 1 K. B. 499, C. A. The charterparty may provide that time is to be counted from some other event, such as, for instance, when the ship is reported at the custom house (*Horsley Line, Ltd.* v. *Roechling Brothers*, [1908] S. C. 866 (where she was reported before actually entering the harbour); *Macbeth* v. *Wild & Co.* (1900), 16 T. L. R. 497 (where the ship was subsequently delayed by the tides for a week)), or when twenty-four hours have expired after the receipt of notice and no orders have been given (*Bryden* v. *Niebuhr* (1884), Cab. & El. 241; *Hough* v. *Athya & Son* (1879), 6 R. (Ct. of Sess.) 961).

(*l*) *Nelson* v. *Dahl, supra, per* BRETT, L.J., at p. 581.

(*m*) *Leonis Steamship Co., Ltd.* v. *Rank, Ltd., supra.*

(*n*) *Modesto, Pineiro & Co.* v. *Dupre & Co.* (1902), 7 Com. Cas. 105. The usage of the port does not apply where inconsistent with the charterparty (*Hick* v. *Tweedy & Co.* (1890), 63 L. T. 765).

(*o*) *Leonis Steamship Co., Ltd.* v. *Rank, Ltd., supra, per* KENNEDY, L.J., at p. 518.

(*p*) *Ibid., per* KENNEDY, L.J., at p. 520.

(*q*) *Ibid., per* KENNEDY, L.J., at p. 519, citing *Sailing-ship Garston Co.* v. *Hickie* (1885), 15 Q. B. D. 580, C. A., *per* Lord ESHER, M.R., at p. 587; *Brown* v. *Johnson* (1842), 10 M. & W. 331; *Kell* v. *Anderson* (1842), 10 M. & W. 498.

(*r*) *Sailing-ship Garston Co.* v. *Hickie, supra; Brown* v. *Johnson, supra; Kell* v. *Anderson, supra.*

(*s*) *Sailing-ship Garston Co.* v. *Hickie, supra.*

(*t*) *Tapscott* v. *Balfour* (1872), L. R. 8 C. P. 46.

(*a*) *Pyman Brothers* v. *Dreyfus Brothers & Co., supra; Leonis Steamship Co., Ltd.* v. *Rank, Ltd., supra.*

however, evidence of usage is admissible to interpret the charterparty (*b*), the charterer may succeed in proving that by the custom of the port the ship is not considered to have arrived until she has reached some particular place within the commercial port, such as, for instance, a dock (*c*) or quay (*d*); and in such a case, until she has done so time does not begin to run against him.

The charterer is entitled to name the actual loading berth, and the ship must proceed to it before he can be called upon to supply a cargo (*e*); but, as the ship is already an arrived ship within the meaning of the charterparty, time runs against him notwithstanding that the ship is delayed in reaching it (*f*).

Arrival in specified area.

(2) The charterparty may specify an area within a port, such as, for example, a basin, a dock, or a certain distance or reach of shore on the sea coast or in a river (*g*). In this case the ship is not an arrived ship within the meaning of the charterparty until she is within the specified area (*h*); but when once she is there the shipowner's duty is fulfilled, and it is not necessary that she should actually reach her loading berth before time begins to run against the charterer (*i*). Thus, where the specified place of loading is a dock, the ship's arrival at the dock gate is not a sufficient discharge of the shipowner's duty (*k*), except when the ship is prevented from entering the dock by some obstruction which entitles the shipowner to claim that she has arrived as near to the dock as she can safely get (*l*), or when, by reason of the charterer's prior engagements, she is not permitted to enter by the dock authorities (*m*). Except in these cases, she must enter the dock before the charterer's obligation to provide a cargo attaches (*n*); but unless there is a custom to the contrary, time begins to run against the charterer as soon as she has entered it (*o*). If, therefore, she is for some time unable to reach her actual loading berth, the delay falls

(*b*) See p. 140, *ante*.

(*c*) *Leonis Steamship Co., Ltd.* v. *Rank, Ltd.*, [1908] 1 K. B. 499, C. A., *per* KENNEDY, L.J., at p. 520, citing *Norden Steam Co.* v. *Dempsey* (1876), 1 C. P. D. 654; *Brereton* v. *Chapman* (1831), 7 Bing. 559.

(*d*) *Hick* v. *Tweedy & Co.* (1890), 63 L. T. 765 (where the usage was rejected as inconsistent with the charterparty); *Anglo-Hellenic Steamship Co.* v. *Dreyfus (Louis) & Co.* (1913), 108 L. T. 36 (where the usage was not proved).

(*e*) *The Felix* (1868), L. R. 2 A. & E. 273, as explained in *Leonis Steamship Co., Ltd.* v. *Rank, Ltd.*, *supra*. The berth named must be a proper loading berth for the cargo stipulated for (*Jennett* v. *Meek* (1861), 3 L. T. 817).

(*f*) Compare p. 263, *post*.

(*g*) *Leonis Steamship Co., Ltd.* v. *Rank, Ltd.*, *supra*, *per* KENNEDY, L.J., at p. 518.

(*h*) *Little* v. *Stevenson & Co.*, [1896] A. C. 108; *Leonis Steamship Co., Ltd.* v. *Rank, Ltd.*, *supra*.

(*i*) *Tapscott* v. *Balfour* (1872), L. R. 8 C. P. 46. The same principle applies where she is admitted into the dock by favour, even though she is not able to load at once (*Davies* v. *McVeagh* (1879), 4 Ex. D. 265, C. A.).

(*k*) *Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38.

(*l*) *Ibid.*; see p. 180, *ante*.

(*m*) *Ashcroft* v. *Crow Orchard Colliery Co.* (1874), L. R. 9 Q. B. 540; but see *Wright* v. *New Zealand Shipping Co.* (1878), 4 Ex. D. 165, C. A.

(*n*) *Little* v. *Stevenson & Co.*, *supra*; *Brown* v. *Johnson* (1842), 10 M. & W. 331.

(*o*) *Tapscott* v. *Balfour*, *supra*; *Davies* v. *McVeagh*, *supra*. See also *Anglo-Hellenic Steamship Co., Ltd.* v. *Dreyfus (Louis) & Co.*, *supra*.

SECT. 3. The Loading.

upon the charterer (*p*). The same principle applies when the charterparty does not specify any particular dock, but provides merely that the loading is to take place in a dock to be named by the charterer (*q*).

Arrival at berth.

(3) The charterparty may specify the precise spot at which the physical act of loading is to take place, such as, for instance, a particular quay, pier, wharf, or spot, or, where the loading is to be performed by means of lighters and the ship is not to be in a shore berth, a particular mooring (*r*). In this case the ship is not an arrived ship, and the charterer's obligation to provide a cargo does not arise, until she has actually reached the precise spot specified in the charterparty (*s*). The same principle applies when the actual loading berth is to be named by the charterer (*t*). In this case the charterer must name the berth within a reasonable time, otherwise he is liable for the consequences of his neglect or refusal to do so (*a*). The berth named must, however, be one to which, by the terms of the charterparty, the charterer is entitled to direct the ship to proceed; if it is not such a berth, the charterer is responsible for any delay arising from the fact that he has named an improper berth (*b*). The charterer is not bound to name a berth which is immediately available; a berth is not an improper berth because the ship will have to wait until the spring tide (*c*), or because it is already engaged for other ships which will take precedence (*d*). It must, however, be a berth which will be available within a reasonable time (*e*).

Readiness to load.

274. The ship must be ready to load, that is to say, the ship-

(*p*) *Monsen* v. *Macfarlane & Co.*, [1895] 2 Q. B. 562, C. A.

(*q*) *Tapscott* v. *Balfour* (1872), L. R. 8 C. P. 46.

(*r*) *Leonis Steamship Co., Ltd.* v. *Rank, Ltd.*, [1908] 1 K. B. 499, C. A., *per* KENNEDY, L.J., at p. 518.

(*s*) *Little* v. *Stevenson & Co.*, [1896] A. C. 108; *Leonis Steamship Co., Ltd.* v. *Rank, Ltd.*, *supra*.

(*t*) *Tharsis Sulphur and Copper Co.* v. *Morel Brothers & Co.*, [1891] 2 Q. B. 647, C. A., approved in *Leonis Steamship Co., Ltd.* v. *Rank, Ltd.*, *supra* (where it was held that where the charterparty provided for the naming of the port only, the charterer could not insist on the ship reaching the berth designated before she could be deemed an arrived ship); *Modesto, Pineiro & Co.* v. *Dupre & Co.* (1902), 7 Com. Cas. 105; see, *contra*, *Dall, Orso* v. *Mason & Co.* (1876), 3 R. (Ct. of Sess.) 419.

(*a*) *Stewart* v. *Rogerson* (1871), L. R. 6 C. P. 424. If the ship has already proceeded to another berth the expenses of moving to the berth named by the charterer must be borne by the shipowner, provided that the charterer is not in default (*The Felix* (1868), L. R. 2 A. & E. 273).

(*b*) *Harris* v. *Jacobs* (1885), 15 Q. B. D. 247, C. A.; *Jaques & Co.* v. *Wilson* (1890), 7 T. L. R. 119; compare *Jennett* v. *Meek* (1861), 3 L. T. 817.

(*c*) *Carlton Steamship Co.* v. *Castle Mail Packets Co.*, [1898] A. C. 486. But the charterparty may provide for a ready berth to be named (*Harris* v. *Jacobs*, *supra*).

(*d*) *Tapscott* v. *Balfour*, *supra*; see, *contra*, *Stevens, Mawson and Goss* v. *Macleod & Co.* (1891), 19 R. (Ct. of Sess.) 38. But the charterer is responsible for any obstacles caused by him or in consequence of his engagements (*Aktieselskabet Inglewood* v. *Millar's Karri and Jarrah Forests* (1903), 8 Com. Cas. 196, *per* KENNEDY, J., at p. 201).

(*e*) *Bulman and Dickson* v. *Fenwick & Co.*, [1894] 1 Q. B. 174, C. A.; compare *Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38.

owner must be in a position to place the whole of the chartered space (*f*) at the charterer's disposal (*g*). The duty must be performed within the time fixed by the charterparty, or within a reasonable time, as the case may be (*h*); otherwise the charterer is entitled to recover damages, and may, in addition, refuse to load (*i*). Frequently the charterparty contains an express stipulation entitling the charterer to cancel the contract if the ship is not ready to load within a specified time; but this stipulation is unnecessary (*k*). If, therefore, the ship has arrived at the port of loading with a cargo on board, the whole of the cargo must have been discharged before she can be said to be ready to load; it is not sufficient that part of the cargo has been discharged and that some of the holds are available for the receipt of the new cargo (*l*). It is not, however, necessary, when she is otherwise ready to load, that she should be actually lying at her loading berth, provided that she is an arrived ship within the meaning of the charterparty (*m*). Where the charterparty stipulates for ballast being supplied by the charterer before loading (*n*), upon the master giving notice of readiness to receive it, the ship is not ready to load until the ballast has been supplied; it is immaterial that she is ready to receive it, and that the charterer, though he has been given notice of readiness, has failed to supply it (*o*).

Pratique etc.

275. The shipowner does not perform his duty merely by providing a ship which is physically ready to load; he must also have obtained pratique (*p*) and have complied with any other

(*f*) See p. 102, *ante*. As to the position when the ship is unable to carry the quantity of cargo specified, see p. 210, *post*. The ship must not load more bunker coals than are reasonably necessary for the seaworthiness of the ship on the chartered voyage (*Darling* v. *Raeburn*, [1907] 1 K. B. 846, C. A.; *London Traders Shipping Co., Ltd.* v. *General Mercantile Shipping Co., Ltd.* (1913), 29 T. L. R. 504); compare *Carlton Steamship Co.* v. *Castle Mail Packets Co.*, [1898] A. C. 486 (where the ship could not remain at her berth owing to her bunker coal disturbing her trim).

(*g*) *Groves, Maclean & Co.* v. *Volkart Brothers* (1884), Cab. & El. 309. The ship need not be prepared to receive the particular cargo (*Vaughan* v. *Campbell, Heatley & Co.* (1885), 2 T. L. R. 33; *Grampian Steamship Co.* v. *Carver & Co.* (1893), 9 T. L. R. 210).

(*h*) *Oliver* v. *Fielden* (1849), 4 Exch. 135.

(*i*) *Smith* v. *Dart & Son* (1884), 14 Q. B. D. 105; Abbott on Shipping, 5th ed., p. 179; 14th ed., p. 370.

(*k*) See p. 178, *ante*.

(*l*) *Groves, Maclean & Co.* v. *Volkart Brothers*, *supra*.

(*m*) *Hick* v. *Tweedy & Co.* (1890), 63 L. T. 765.

(*n*) In the absence of any such stipulation, it is the duty of the shipowner to provide ballast (*Weir* v. *Union Steamship Co.*, [1900] A. C. 525; compare *Vaughan* v. *Campbell, Heatley & Co.*, *supra*), for which purpose he may carry merchandise for his own profit, provided it does not encroach on the space engaged by the charterer, and is not deleterious to the cargo shipped by him (*Towse* v. *Henderson* (1850), 4 Exch. 890).

(*o*) *Sailing Ship "Lyderhorn" Co., Ltd.* v. *Duncan, Fox & Co.*, [1909] 2 K. B. 929; compare *Sanguinetti* v. *Pacific Steam Navigation Co.* (1877), 2 Q. B. D. 238, C. A.

(*p*) *Smith* v. *Dart & Son*, *supra*; *The Austin Friars* (1894), 71 L. T. 27; *Whites, etc.* v. *Steamship Winchester Co.* (1886), 13 R. (Ct. of Sess.) 524; compare *Balley* v. *De Arroyave* (1838), 7 Ad. & El. 919 (where the ship had not formally received pratique, but had received it in the only way in which she could have it at the particular port).

SECT. 3. The Loading.

requirements which may be imposed upon him (*q*) by the law of the port of loading (*r*).

Notice of readiness.

276. The shipowner must give the charterer notice that the ship has arrived and that she is ready to load (*s*). Until such notice has been received by the charterer, his obligation to provide a cargo does not arise (*t*). If, therefore, he receives no notice until after the time fixed by the charterparty for the loading (*a*) or after a reasonable time (*b*), as the case may be, he is wholly discharged from the contract. On the other hand, since it is his duty to have the cargo ready for loading (*c*), time begins to run against him as soon as he has received notice (*d*). It is not necessary that the charterparty should contain any express stipulation as to notice (*e*); in practice, however, a stipulation as to notice is usually inserted (*f*). Under such a stipulation the charterer's obligation to provide a cargo may be postponed until the expiration of a specified period after notice (*g*).

Position of shipper other than charterer.

277. Where goods are to be shipped by a shipper other than the charterer, the shipowner, except in so far as he may be bound to accept the goods if delivered to him for carriage (*h*), owes no duties to the shipper until the contract under which the goods are to be carried is made. Unless, therefore, the contract has been made in advance, the duties of the shipowner as regards arrival at the port of loading, readiness to load, and notice of readiness will hardly be applicable. He is, however, bound to carry the goods in accordance with the contract, when made; if, therefore, he is unable to take them on board through want of room, he is guilty of a breach of contract, the measure of damages being, presumably, any extra freight that may have to be paid (*i*), and any expenses incurred in warehousing the goods until they can be sent on by another ship (*k*).

Implied condition of seaworthiness during loading.

278. There is one condition, however, which is to be implied in the contract of carriage, whether contained in a charterparty, bill of lading, or otherwise (*l*), namely, that the ship on which goods are

(*q*) If the obligation is imposed upon the charterer, the shipowner is not responsible (*Kirk* v. *Gibbs* (1857), 1 H. & N. 810).

(*r*) *The Austin Friars* (1894), 71 L. T. 27; compare Abbott on Shipping, 5th ed., p. 225; 14th ed., pp. 510, 511.

(*s*) *Stanton* v. *Austin* (1872), L. R. 7 C. P. 651, *per* BOVILL, C.J., at p. 655; *Nelson* v. *Dahl* (1879), 12 Ch. D. 560, C. A., *per* BRETT, L.J., at p. 581 (affirmed, *sub nom. Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38).

(*t*) *Fairbridge* v. *Pace* (1844), 1 Car. & Kir. 317 (where the ship had first to unload her outward cargo); *Stanton* v. *Austin*, *supra* (where the ship was chartered whilst lying at the port of loading).

(*a*) *Stanton* v. *Austin*, *supra*.

(*b*) *Fairbridge* v. *Pace*, *supra*.

(*c*) See p. 190, *post*.

(*d*) See *ibid*.

(*e*) *Fairbridge* v. *Pace*, *supra*; *Stanton* v. *Austin*, *supra*.

(*f*) See p. 119, *ante*.

(*g*) *Gordon* v. *Powis* (1892), 8 T. L. R. 397.

(*h*) See pp. 195, 196, *post*.

(*i*) Compare *Featherston* v. *Wilkinson* (1878), L. R. 8 Exch. 122.

(*k*) Compare *Welch, Perrin & Co.* v. *Anderson, Anderson & Co.* (1891), 7 Asp. M. L. C. 171, C. A.; and p. 209, *post*.

(*l*) *Steel* v. *State Line Steamship Co.* (1877), 3 App. Cas. 72, *per* Lord BLACKBURN, at p. 86.

to be loaded must be seaworthy at the time when the loading begins (*m*). If, therefore, she is not seaworthy, she cannot be considered ready to load; the owner of the goods is justified in refusing to put them on board (*n*), and may further maintain an action against the shipowner for breach of the condition (*o*). If the breach of condition is not discovered till after the goods have been loaded, their owner may demand their redelivery, and the shipowner will not only be bound to redeliver them, but must also pay damages, the measure of damages being the expenses incurred in landing and warehousing the goods, and the amount of any damage actually sustained by the goods (*p*). Usually the breach of condition does not become apparent until after the ship has sailed, and redelivery has therefore become impossible. In this case the shipowner is liable for all loss or damage sustained by the goods (*q*); he must discharge any liabilities to third persons to which the goods may become subject in consequence of his breach of condition, such as, for instance, liens for salvage (*r*), or general average contributions (*s*), though he is at the same time precluded from asserting against the owner of the goods any claim for general average contributions in his own right (*t*). Where the ship is employed under a charter-party the shipowner must indemnify the charterer against the claims of third persons whose goods have been carried upon the ship, and who, under the particular contract of carriage, have the right to hold the charterer responsible for the breach of condition (*a*).

279. This condition, which must be distinguished from the wider condition which comes into operation at the time of sailing (*b*), comprises the following undertakings, namely:— Scope of condition:

(1) The ship must be seaworthy in the strict sense of the word, that is to say, she must be reasonably fit to encounter the ordinary perils that are likely to arise during the loading (*c*). Unless, therefore, she is in a condition in all respects to render her reasonably safe during her stay in port and whilst loading, the (1) fitness to encounter perils;

(*m*) *Kopitoff* v. *Wilson* (1876), 1 Q. B. D. 377, 380; *Cohn* v. *Davidson* (1877), 2 Q. B. D. 455; *Gibson* v. *Small* (1853), 4 H. L. Cas. 353, 395. As to the meaning of "efficient" in a time charter, see *Hogarth* v. *Miller*, [1891] A. C. 48; as to seaworthiness at the commencement of the voyage, see p. 211, *post*.

(*n*) *Stanton* v. *Richardson* (1875), 3 Asp. M. L. C. 23, H. L.; *Steel* v. *State Line Steamship Co.* (1877), 3 App. Cas. 72, *per* Lord CAIRNS, L.C., at p. 77.

(*o*) *Steel* v. *State Line Steamship Co.*, *supra*, *per* Lord CAIRNS, L.C., at p. 77.

(*p*) *Stanton* v. *Richardson*, *supra*.

(*q*) *Kopitoff* v. *Wilson*, *supra*; *Cohn* v. *Davidson*, *supra*; *Steel* v. *State Line Steamship Co.* (1877), 3 App. Cas. 72.

(*r*) *The Glenfruin* (1885), 10 P. D. 103.

(*s*) Compare *Robinson* v. *Price* (1877), 2 Q. B. D. 295, C. A.

(*t*) *Schloss* v. *Heriot* (1863), 14 C. B. (N. S.) 59; *Strang, Steel & Co.* v. *Scott (A.) & Co.* (1889), 14 App. Cas. 601, P. C.; see, further, p. 316, *post*.

(*a*) Compare *Scott* v. *Foley, Aikman & Co.* (1899), 5 Com. Cas. 53.

(*b*) *Cohn* v. *Davidson*, *supra*; *McFadden* v. *Blue Star Line*, [1905] 1 K. B. 697, *per* CHANNELL, J., at p. 704; see p. 211, *post*. As to the effect of the ship being unseaworthy on starting her voyage to the port of loading, see *Porter* v. *Izat* (1836), 1 M. & W. 381.

(*c*) *McFadden* v. *Blue Star Line*, *supra*, *per* CHANNELL, J., at p. 704.

SECT. 3. The Loading.

owner of the goods may refuse to put them on board (*d*). It is not, however, necessary that she should be seaworthy in the sense that she is fit to begin her voyage (*e*), provided that she is capable of being made seaworthy in that sense within a reasonable time (*f*).

(2) fitness to receive goods.

(2) The ship must be seaworthy in the sense that she is reasonably fit for the reception of the goods contracted to be carried, and for carrying them upon the voyage (*g*); in other words, she must be cargo-worthy, or the owner of the goods may refuse to load her (*h*). The fitness of the ship is to be measured by the particular cargo which she is under contract to carry; if she is not fit to carry that cargo, there is a breach of the condition, notwithstanding that she may be fit to carry any other cargo that might have been put forward (*i*). Similarly, where the cargo is composed of different kinds of goods, she must be fit to carry them all; it is not sufficient that she is fit to carry some of them, if she is unfit to carry others (*k*). The owner of the goods is not, however, entitled to refuse to load them merely because he believes that the ship is unfit to carry them; to justify his refusal he must prove that she is in fact unfit to do so (*l*).

What constitutes breach of condition.

280. The duty imposed upon the shipowner by this condition is absolute; if the ship is in fact unfit at the time when the undertaking comes into operation, it does not matter that her unfitness is due to some latent defect of which he did not know, and it is no excuse for the existence of such a defect that he has used his best endeavour to make the ship as good as she can be made (*m*). The place provided by the shipowner for the storage of the cargo during the voyage must be free from defects rendering it an unsafe place of storage (*n*). It is immaterial whether the defect is one of construction, as, for instance, where bullion is placed in a bullion room which is not reasonably fit to resist thieves (*o*), or

(*d*) *Cohn* v. *Davidson* (1877), 2 Q. B. D. 455; *Gibson* v. *Small* (1853), 4 H. L. Cas. 353; *Steel* v. *State Line Steamship Co.* (1877), 3 App. Cas. 72, *per* Lord CAIRNS, L.C., at p. 77.

(*e*) *Annen* v. *Woodman* (1810), 3 Taunt. 299.

(*f*) *Tully* v. *Howling* (1877), 2 Q. B. D. 182, C. A.

(*g*) *McFadden* v. *Blue Star Line*, [1905] 1 K. B. 697; *Steel* v. *State Line Steamship Co.*, *supra*.

(*h*) As a general rule, this kind of unfitness is not likely to be discovered until after the ship has put to sea, and the remedy of the owner of the goods will therefore be damages; see p. 217, *post*.

(*i*) *Stanton* v. *Richardson* (1875), 3 Asp. M. L. C. 23, H. L.

(*k*) *Ibid.*

(*l*) *Towse* v. *Henderson* (1850), 4 Exch. 890.

(*m*) *The Glenfruin* (1885), 10 P. D. 103. After the goods have been shipped, they are in the custody of the shipowner as carrier, and his liability is according (*McFadden* v. *Blue Star Line*, *supra*, *per* CHANNELL, J., at p. 703); see p. 202, *post*.

(*n*) *Steel* v. *State Line Steamship Co.*, *supra*, *per* Lord BLACKBURN, at p. 86; *The Europa* (1907), 24 T. L. R 151. A ship is not, however, unseaworthy merely because the cargo is stowed in a portion of a compartment less suitable for its carriage than another portion of the same compartment, this being a case of bad stowage (*Steamship Calcutta Co., Ltd.* v. *Weir* (*Andrew*) *& Co.*, [1910] 1 K. B. 759).

(*o*) *Queensland National Bank* v. *Peninsular and Oriental Steam Navigation Co.*, [1898] 1 Q. B. 567, C. A.; compare *Lund* v. *Thames and Mersey*

whether it is one of a temporary nature, as, for instance, where the cargo is placed in a hold which has not been properly cleansed (*p*), or which already contains goods which, from their nature, are likely to have a deleterious effect upon the cargo in question (*q*). The defect may be outside the place of storage altogether (*r*): thus, where, from the nature of the cargo, special machinery or plant (*s*) is required for the purpose of keeping it in a merchantable state throughout the voyage, such as, for instance, pumps for drawing off the drainings from a cargo of wet sugar (*t*), or refrigerating plant for preserving a cargo of frozen meat (*a*), or fans for ventilating a cargo of live cattle (*b*), the machinery or plant supplied by the shipowner must be reasonably fit for the purpose. There is a breach of the condition if they prove inadequate (*c*), or if, during the voyage, they break down or fail to act owing to some initial defect (*d*).

Effect of exceptions.

281. The shipowner is not protected against the consequences of a breach of this condition by the ordinary exceptions contained in the charterparty or bill of lading (*e*). These exceptions relate only to his liability as carrier (*f*), and presuppose a due performance of the conditions precedent to the loading (*g*). An intention to exclude any such condition precedent, and to protect the shipowner against his failure to perform it, must be indicated

Marine Insurance Co., Ltd. (1901), 17 T. L. R. 566 (where the vessel was so constructed as to render the refrigerating apparatus unsafe), and *Gilroy, Sons & Co.* v. *Price & Co.*, [1893] A. C. 56 (where a pipe was so placed as to be broken by the pressure of the cargo).

(*p*) *Tattersall* v. *National Steamship Co.* (1884), 12 Q. B. D. 297; *Elderslie Steamship Co.* v. *Borthwick*, [1905] A. C. 93; compare *Ismay, Imrie & Co.* v. *Blake* (1892), 66 L. T. 530.

(*q*) *Towse* v. *Henderson* (1850), 4 Exch. 890 (where, however, the goods already on board were not in fact deleterious); compare *The "Freedom"* (1871), L. R. 3 P. C. 594. But the shipowner may claim the protection of an appropriate exception where the loss or damage is caused by the subsequent shipment of other goods (*Norman* v. *Binnington* (1890), 25 Q. B. D. 475).

(*r*) *McFadden* v. *Blue Star Line*, [1905] 1 K. B. 697; *Rathbone Brothers & Co.* v. *McIver (D.), Sons & Co.*, [1908] 2 K. B. 378, C. A.; *The Schwann*, [1909] A. C. 450; *The Europa*, [1908] P. 84.

(*s*) It is the duty of the shipowner to supply such machinery or plant; see the cases cited *infra*, and p. 225, *post*. There is no breach of this duty where the shipowner omits to provide plant which he is, by statute, required to provide for some purpose not relating to the safe carriage of the goods (*Gorris* v. *Scott* (1874), L. R. 9 Exch. 125, where the shipowner was under a statutory obligation to provide pens for sheep as a precaution against disease, and it was held that he was not liable for the loss of sheep which had been washed overboard owing to the absence of the pens).

(*t*) *Stanton* v. *Richardson* (1875), 3 Asp. M. L. C. 23, H. L.

(*a*) *Ship "Maori King"* (*Owners of Cargo*) v. *Hughes*, [1895] 2 Q. B. 550, C. A.; *Lund* v. *Thames and Mersey Marine Insurance Co., Ltd.* (1901), 17 T. L. R. 566; *Nelson Line* (*Liverpool*), *Ltd.* v. *Nelson* (*James*) *& Sons, Ltd.*, [1908] A. C. 16; compare *The Marathon* (1879), 40 L. T. 163.

(*b*) Compare *Sleigh* v. *Tyser*, [1900] 2 Q. B. 333.

(*c*) *Stanton* v. *Richardson*, *supra*.

(*d*) *Ship "Maori King"* (*Owners of Cargo*) v. *Hughes*, *supra*.

(*e*) *The Europa* (1907), 24 T. L. R. 151.

(*f*) *Lyon* v. *Mells* (1804), 5 East, 428.

(*g*) *The Glenfruin* (1885), 10 P. D. 103; *Gilroy, Sons & Co.* v. *Price & Co.*, *supra*, following *Steel* v. *State Line Steamship Co.* (1877), 3 App. Cas.

SECT. 3. The Loading.

by an express stipulation (*h*), framed in clear and unambiguous language (*i*). Under the ordinary forms of stipulation in use the shipowner is not relieved entirely from his duty to make the ship seaworthy (*k*); it is usually stipulated either that he is not to be liable for unseaworthiness provided that all reasonable means have been taken to provide against it (*l*), or, in more stringent terms, that any latent defects in hull or machinery are not to be considered unseaworthiness, provided that they do not result from want of due diligence on the part of the shipowner or his servant (*m*).

Unseaworthiness subsequently arising.

282. The shipowner has sufficiently performed his duty if the ship which he provides is seaworthy at the commencement of the loading; it is not an implied condition that she shall continue to be seaworthy during the loading (*n*). If, therefore, she is subsequently rendered unseaworthy by some excepted cause, the shipowner is not precluded from relying upon the exception (*o*), since the voyage to which the exceptions in the charterparty apply must, for this purpose (*p*), be regarded as having commenced (*q*).

SUB-SECT. 2.—*The Provision of a Cargo.*

When cargo must be ready.

283. When the ship is ready to load and the charterer is duly notified, it becomes his duty to provide the stipulated cargo (*r*) within the time specified in the charterparty or within a reasonable time, as the case may be (*s*). Where this cargo is to be procured and how it is to be conveyed to the place of loading are

72; *Tattersall* v. *National Steamship Co.* (1884), 12 Q. B. D. 297; compare *Christie* v. *Trott* (1853), 2 W. R. 15.

(*h*) *Cargo ex Laertes* (1887), 12 P. D. 187; *McFadden* v. *Blue Star Line Co.*, [1905] 1 K. B. 697.

(*i*) *Rathbone Brothers & Co.* v. *McIver* (*D.*), *Sons & Co.*, [1903] 2 K. B. 378, C. A.; *Elderslie Steamship Co.* v. *Borthwick*, [1905] A. C. 93; *Nelson Line* (*Liverpool*), *Ltd.* v. *Nelson* (*James*) *& Sons*, [1908] A. C. 16.

(*k*) Compare *Steel* v. *State Line Steamship Co.* (1877), 3 App. Cas. 72, *per* Lord BLACKBURN, at p. 89.

(*l*) As to the scope of such an exception, see *Nelson Line* (*Liverpool*), *Ltd.* v. *Nelson* (*James*) *& Sons, Ltd.*, *supra*; *Rathbone Brothers & Co.* v. *McIver* (*D.*), *Sons & Co.*, *supra*.

(*m*) *Cargo ex Laertes*, *supra*; see Encyclopædia of Forms and Precedents, Vol. XIV., p. 117; compare *Elderslie Steamship Co.* v. *Borthwick*, *supra*.

(*n*) *McFadden* v. *Blue Star Line*, *supra*, *per* CHANNELL, J., at p. 703.

(*o*) *The Southgate*, [1893] P. 329.

(*p*) As to the necessity for the ship being seaworthy when she sets sail, see p. 211, *post*.

(*q*) *Norman* v. *Binnington* (1890), 25 Q. B. D. 475.

(*r*) *Postlethwaite* v. *Freeland* (1880), 5 App. Cas 599, *per* Lord BLACKBURN, at p. 619; *Grant & Co.* v. *Coverdale, Todd & Co.* (1884), 9 App. Cas. 470, *per* Lord SELBORNE, L.C., at pp. 475, 476; *Ardan Steamship Co.* v. *Weir* (*Andrew*) *& Co.*, [1905] A. C. 501; and see the cases cited pp. 190—195, *post*.

(*s*) *Dimech* v. *Corlett* (1858), 12 Moo. P. C. C. 199; *Wilson and Coventry* v. *Thoresen's Linie* (1910), 15 Com. Cas. 262. The charterer must also procure any permit that may be necessary for the shipment of the cargo (*Kirk* v. *Gibbs* (1857), 1 H. & N. 810). As to what is a sufficient compliance with this requirement, see *Johnson* v. *Greaves* (1810), 2 Taunt. 344; *Haines* v. *Busk* (1814), 5 Taunt. 521.

matters which precede the whole operation of loading and form no part of it, but belong to that which, in the absence of express stipulation, is exclusively the charterer's business (*t*). They fall wholly outside the charterparty, and do not in any way concern the shipowner, since the charterparty contemplates that the charterer will have his cargo ready at the place of loading at the time when the ship is ready to receive it (*a*). If, therefore, the cargo is not ready at the place of loading, so that the loading of the ship is in consequence delayed or rendered impossible, the charterer is, generally speaking, guilty of a breach of condition, which may discharge the shipowner from his obligation to receive the cargo (*b*), and in any case entitles him to damages (*c*), whatever may be the cause to which the delay or impossibility is attributable (*d*).

Duty to procure cargo.

284. In performing his duty the first step which the charterer must take is to procure a cargo (*e*). The cargo must correspond with the description of the cargo in the charterparty (*f*), and must be of the stipulated quantity (*g*). The charterer is, as a general rule, responsible for a failure to procure a cargo in due time, or at all (*h*). Even the impossibility of procuring a cargo does not excuse him (*i*). The stipulated cargo may not exist (*k*); it may be impossible in the existing state of things to obtain it (*l*); its exportation may be restricted (*m*) or prohibited (*n*) by the Government of the place whence it is to be procured. Nevertheless, in

(*t*) *Grant & Co.* v. *Coverdale, Todd & Co.* (1884), 9 App. Cas. 470, *per* Lord SELBORNE, L.C., at p. 475; see p. 192, *post*. The preparation of the cargo for shipment, as, for instance, by pressing bales of wool, is equally outside the charterparty (*Cockburn* v. *Alexander* (1848), 6 C. B. 791).

(*a*) *Kay* v. *Field* (1882), 10 Q. B. D. 241, C. A., *per* LINDLEY, L.J., at p. 249.

(*b*) *Danube and Black Sea Rail. Co.* v. *Xenos* (1863), 13 C. B. (N. S.) 825.

(*c*) *Grant & Co.* v. *Coverdale, Todd & Co., supra*; *Fenwick* v. *Schmalz* (1868), L. R. 3 C. P. 313.

(*d*) *Postlethwaite* v. *Freeland* (1880), 5 App. Cas. 599. As to when the charterer is excused, see pp. 192 *et seq.*, *post*.

(*e*) *Adams* v. *Royal Mail Steam Packet Co.* (1858), 5 C. B. (N. S.) 492; *Elliott* v. *Lord* (1883), 5 Asp. M. L. C. 63, P. C.; *Barker* v. *Hodgson* (1814), 3 M. & S. 267, *per* Lord ELLENBOROUGH, C.J., at p. 270.

(*f*) *Lewis* v. *Marshall* (1844), 7 Man. & G. 729; *Warren* v. *Peabody* (1849), 8 C. B. 800; *Shaw, Savill & Co.* v. *Aitken, Lilburn & Co.* (1883), Cab. & El. 195; see p. 99, *ante*.

(*g*) *Hunter* v. *Fry* (1819), 2 B. & Ald. 421; *Morris* v. *Levison* (1876), 1 C. P. D. 155; compare *Gibbs* v. *Grey*, *Grey* v. *Gibbs* (1857), 2 H. & N. 22; and see p. 101, *ante*.

(*h*) *Elliott* v. *Lord, supra*; *Re Richardsons and Samuel* (*M.*) *& Co.*, [1898] 1 Q. B. 261, C. A.

(*i*) See the cases cited in notes (*k*)—(*n*), *infra*; and compare *Braemount Steamship Co.* v. *Weir* (*Andrew*) *& Co.* (1910), 15 Com. Cas. 101, *per* BRAY, J., at p. 110.

(*k*) *Hills* v. *Sughrue* (1846), 15 M. & W. 253, where the contract placed the duty on the shipowner.

(*l*) *Elliott* v. *Lord, supra*; *Adams* v. *Royal Mail Steam Packet Co., supra*; *Gardiner* v. *Macfarlane, M'Crindell & Co.* (1889), 16 R. (Ct. of Sess.) 658; "*Arden*" *Steamship Co., Ltd.* v. *Mathwin & Son*, [1912] S. C. 211.

(*m*) *Kirk* v. *Gibbs* (1857), 1 H. & N. 810.

(*n*) *Blight* v. *Page* (1801), 3 Bos. & P. 295, n.; *Sjoerds* v. *Luscombe* (1812), 16 East, 201; *Barker* v. *Hodgson, supra*.

SECT. 3. **The Loading.**

all these cases the charterer is responsible for his failure, whether total (*o*) or partial (*p*), to procure it, unless the whole transaction is vitiated by illegality.

Conveyance to place of loading.

285. After procuring the cargo, the charterer must have it conveyed to the place of loading, so that it may be ready for shipment (*q*). This conveyance of the cargo is no part of the loading (*r*); and the charterer is, as a general rule, responsible for all delays or accidents, however caused, arising during such conveyance (*s*). Where, however, it is the practice not to store the cargo at the place of loading, but to store it at a distance till required (*t*), or to bring it direct from the place where it is procured to the ship (*a*), the conveyance from the place where the cargo actually is to the ship is to be considered as part of the act of loading (*b*), and the responsibility of the charterer as regards the conveyance is then the same as in the case of the loading (*c*).

Excuses:

286. The charterer is, however, excused for a breach of this duty to provide cargo:—

(1) breach of condition precedent;

(1) Where the shipowner has already failed to perform a condition precedent to the loading (*d*) the contract is discharged (*e*), and the charterer, therefore, may refuse to provide a cargo (*f*). He

(*o*) *Blight* v. *Page* (1801), 3 Bos. & P. 295, n.

(*p*) *Elliott* v. *Lord* (1883), 5 Asp. M. L. C. 63, P. C.; *Kirk* v. *Gibbs* (1857), 1 H. & N. 810.

(*q*) *Little* v. *Stevenson & Co.*, [1896] A. C. 108; see pp. 190, 191, *ante*.

(*r*) *Kay* v. *Field* (1882), 10 Q. B. D. 241, C. A.; *Grant & Co.* v. *Coverdale, Todd & Co.* (1884), 9 App. Cas. 470. Hence the charterer may choose his own mode of conveyance; if, therefore, he is put to extra expense, *e.g.*, for detention of railway trucks, by reason of the shipowner's failure to be ready, the shipowner must pay it, notwithstanding that it might have been avoided if the charterer had followed the ordinary course of business at the particular dock (*Welch, Perrin & Co.* v. *Anderson, Anderson & Co.* (1891), 7 Asp. M. L. C. 177, C. A.).

(*s*) *Kearon* v. *Pearson* (1861), 7 H. & N. 386; *Kay* v. *Field, supra*; *Grant & Co.* v. *Coverdale, Todd & Co., supra*; see p. 194, *post*.

(*t*) *Hudson* v. *Ede* (1868), L. R. 3 Q. B. 412, Ex. Ch., distinguished in *Grant & Co.* v. *Coverdale, Todd & Co., supra*.

(*a*) *Smith and Service* v. *Rosario Nitrate Co.*, [1894] 1 Q. B. 174, C. A., following *Hudson* v. *Ede, supra*; *Furness* v. *Forwood Brothers & Co.* (1897), 2 Com. Cas. 223.

(*b*) *Hudson* v. *Ede, supra*.

(*c*) *Sailing Ship Allerton Co.* v. *Falk* (1888), 6 Asp. M. L. C. 287, distinguishing *Grant & Co.* v. *Coverdale, Todd & Co., supra*.

(*d*) The failure to perform a stipulation which is a condition precedent to some other obligation, and not to the loading, is not sufficient (*Storer* v. *Gordon* (1814), 3 M. & S. 308).

(*e*) If the shipowner is guilty of a breach of a stipulation which is not a condition, the charterer is not excused (*Ohlsen* v. *Drummond* (1785), 2 Chit. 705; *Barker* v. *Windle* (1854), 6 E. & B. 675, Ex. Ch.; *Clipsham* v. *Vertue* (1843), 5 Q. B. 265; *Fothergill* v. *Walton* (1818), 8 Taunt. 576; *MacAndrew* v. *Chapple* (1866), L. R. 1 C. P. 643).

(*f*) *Shubrick* v. *Salmond* (1765), 3 Burr. 1637; *Shadforth* v. *Higgin* (1813), 3 Camp. 385; *Behn* v. *Burness* (1863), 3 B. & S. 751, Ex. Ch.; *Glaholm* v. *Hays* (1841), 2 Man. & G. 257; *Ollive* v. *Booker* (1847), 1 Exch. 416; *Oliver* v. *Fielden* (1849), 4 Exch. 135; *Elliott* v. *Von Glehn* (1849), 13 Q. B. 632; *Croockewit* v. *Fletcher* (1857), 1 H. & N. 893; *Smith* v. *Dart & Son* (1884), 14 Q. B. D. 105; *Groves, Maclean & Co.* v. *Volkart Brothers* (1884), Cab. & El. 309; *Bentsen* v. *Taylor, Sons & Co.* (2), [1893] 2 Q. B.

cannot, however, refuse to do so if he has waived the breach of condition (*g*).

(2) premature readiness of ship;

(2) Where the ship is ready to load before she could reasonably be anticipated to be ready, the charterer's duty to provide a cargo does not arise until the date at which in the ordinary course of events the ship would have been placed at his disposal, and he is not responsible for any delay occasioned by his failure to have his cargo ready sooner (*h*). Thus, where the ship is to be loaded in turn, and an unexpected opportunity to load her arises, owing to the fact that other ships having priority to her are not ready to load when their turn arrives, and consequently lose it, the charterer is not guilty of a breach of duty because he has failed to foresee what has happened and has no cargo in readiness (*i*). On the other hand, if there are facilities at the place of loading for storing cargo, and the contingency that the ship might be able to load at an earlier date is one that might reasonably have been foreseen, considering the course of business at the place of loading, it is the charterer's duty to be prepared for such a contingency, and if he has no cargo ready he is responsible for the delay that ensues (*k*).

(3) outbreak of war;

(3) Where the charterer is a British subject, and the cargo is to be procured and loaded in a foreign country, the outbreak of war between the United Kingdom and such foreign country discharges the charterer from the contract, and, consequently, from his obligation to procure the cargo (*l*).

(4) circumstances contemplated;

(4) Where the cargo is to be procured from a particular source of supply defined by the charterparty, such as, for instance, a named colliery (*m*), and both parties at the time of making the charterparty are aware of circumstances peculiar to the source of supply which may lead to delay in procuring a cargo or in conveying it to the place of loading, they must be taken to have assumed as the basis of their contract the possibility of more or less delay (*n*). The charterer, therefore, is not responsible for any delay the cause of which was within the contemplation of the parties (*o*). This is clearly the case where the cause of delay, such as, for instance, the breakdown of machinery at the colliery, actually exists, to the

274, C. A.; compare *Soames* v. *Lonergan* (1824), 2 B. & C. 564; and p. 178, *ante*.

(*g*) *Bentsen* v. *Taylor, Sons & Co.* (2), [1893] 2 Q. B. 274, C. A.; compare *Dimech* v. *Corlett* (1858), 12 Moo. P. C. C. 199; *Ohlsen* v. *Drummond* (1785), 2 Chit. 705.

(*h*) *Little* v. *Stevenson & Co.*, [1896] A. C. 108.

(*i*) *Ibid.*

(*k*) *Ibid.*; *Krog & Co.* v. *Burns and Lindemann* (1903), 5 F. (Ct. of Sess.) 1189.

(*l*) *Reid* v. *Hoskins* (1856), 6 E. & B. 953, Ex. Ch.; *Esposito* v. *Bowden* (1857), 7 E. & B. 763, Ex. Ch. A stipulation substituting a different port of loading in the event of war refers to a war between the United Kingdom and a foreign country, and not to a war between two foreign countries (*Avery* v. *Bowden* (1856), 6 E. & B. 953, 962, Ex. Ch.).

(*m*) *Jones, Ltd.* v. *Green & Co.*, [1904] 2 K. B. 275, C. A.; *Harris* v. *Dreesman* (1854), 9 Exch. 485; compare *Hudson* v. *Clementson* (1856), 18 C. B. 213.

(*n*) *Jones, Ltd.* v. *Green & Co.*, *supra*, *per* VAUGHAN WILLIAMS, L.J., at p. 280; *Little* v. *Stevenson & Co.*, *supra*; *Harris* v. *Dreesman*, *supra*.

(*o*) *Harris* v. *Dreesman*, *supra*; compare *Hudson* v. *Ede* (1868), L. R. 3 Q. B. 412, Ex. Ch.

SECT. 3. The Loading.

knowledge of both parties, at the time when the charterparty is made (*p*). The principle equally applies where the cause of delay, though not in fact operative at the date of the contract, was, according to the knowledge and experience of the parties, likely to operate at any time (*q*). Thus, where the colliery designated is one of limited output, and by the custom of the port the ship cannot be loaded without a loading order from the colliery, the charterer is not responsible for any delay occasioned by the necessity of waiting for a loading order to be issued according to the colliery turn (*r*). The same principle may be applicable to the case where the contemplated cause wholly prevents the charterers from procuring a cargo (*s*). It may, perhaps, also apply to the case where the contract is not in general terms to provide a cargo, but to load a specific cargo, if such cargo is destroyed without the fault of the charterer before the time of loading arrives (*t*).

(5) exceptions.

(5) Where the charterparty contains an exception which covers the cause of delay or failure, as the case may be, the charterer is excused (*a*). The exceptions usually contained in a charterparty are, unless the contrary intention is clearly expressed, to be understood as applying only to the actual loading (*b*); they do not, therefore, protect the charterer against the consequences of delay (*c*) or failure (*d*) in matters which precede the loading and form no part of it (*e*). Thus, an express exception against frost does not cover delay in the conveyance of the cargo to the place of loading, although such delay is in fact caused by frost (*f*). Where, however, it is clear that the conveyance to the place of loading forms part of the act of loading (*g*), an exception covering delay in loading will equally cover delay in the conveyance (*h*).

Scope of exceptions.

The exception may be so framed as to apply to matters preceding the loading and to include delay or failure in the procuring of the cargo (*i*) or in its conveyance to the place of loading (*k*). Unless,

(*p*) *Harris* v. *Dreesman* (1854), 9 Exch. 485.

(*q*) *Jones, Ltd.* v. *Green & Co.*, [1904] 2 K. B. 275, C. A.

(*r*) *Ibid.*; compare *King* v. *Hinde* (1883), 12 L. R. Ir. 113.

(*s*) *Harris* v. *Dreesman, supra*, as reported 23 L. J. (EX.) 210, *per* PARKE, B., at pp. 212, 213.

(*t*) Compare *Smith* v. *Myers* (1871), L. R. 7 Q. B. 139, Ex. Ch.

(*a*) *Avery* v. *Bowden* (1856), 6 E. & B. 953, 962, Ex. Ch. For the list of the usual exceptions, see pp. 131 *et seq.*, *ante*.

(*b*) *Kay* v. *Field* (1882), 10 Q. B. D. 241, C. A.

(*c*) *Ibid.*; *Grant & Co.* v. *Coverdale, Todd & Co.* (1884), 9 App. Cas. 470; *Re Richardsons and Samuel* (*M.*) *& Co.*, [1898] 1 Q. B. 261, C. A.

(*d*) *Fenwick* v. *Schmalz* (1868), L. R. 3 C. P. 313; compare *Aktieselskabet Adalands* v. *Whitaker* (*Michael*), *Ltd.* (1913), 18 Com. Cas. 229.

(*e*) *Grant & Co.* v. *Coverdale, Todd & Co., supra*; *"Arden" Steamship Co., Ltd.* v. *Mathwin & Son*, [1912] S. C. 211.

(*f*) *Grant & Co.* v. *Coverdale, Todd & Co., supra*; *Kay* v. *Field, supra*; compare *Stephens* v. *Harris & Co.* (1887), 57 L. J. (Q. B.) 203, C. A.

(*g*) See p. 192, *ante*.

(*h*) *Hudson* v. *Ede* (1868), L. R. 3 Q. B. 412, Ex. Ch; *Sailing Ship Allerton Co.* v. *Falk* (1888), 6 Asp. M. L. C. 287, distinguishing *Grant & Co.* v. *Coverdale, Todd & Co., supra*; *Furness* v. *Forwood Brothers & Co.* (1898), 77 L. T. 95; *Smith and Service* v. *Rosario Nitrate Co.*, [1894] 1 Q. B. 174, C. A.; *Re Richardsons and Samuel* (*M.*) *& Co., supra.*

(*i*) *Re Allison & Co. and Richards* (1904), 20 T. L. R. 584, C. A.; *Gordon Steamship Co., Ltd.* v. *Moxey, Savon & Co., Ltd.* (1913), 108 L. T. 808.

(*k*) *Fenwick* v. *Schmalz, supra* (where, however, the cause of delay

however, the cargo is to be procured from a particular source of supply specified or indicated (*l*) in the charterparty, the charterer cannot claim the protection of the exception merely upon the ground that by reason of the excepted peril he has been prevented from procuring the cargo which he had intended to load or has been delayed in conveying it to the place of loading (*m*). To be excused for his failure to perform his duty, he must show that all available sources of supply or all practicable methods of conveyance, as the case may be, were equally affected by the excepted peril (*n*). In no case, however, is he protected where it appears that the delay or failure might have been avoided if only he had taken reasonable steps for the purpose (*o*).

Effect of exception on demurrage.

If at the time when the excepted peril happens the ship is already on demurrage, the exception, even though it applies to delay or failure in procuring or conveying the cargo, is not as a general rule available, since once the ship is on demurrage the charterer is in default and time runs against him without a break (*p*). It is not unusual, however, for the charterparty to contain an express stipulation suspending the liability for demurrage in certain events (*q*), and such stipulation may apply to matters arising before the actual loading (*r*).

SUB-SECT. 3.—*The Delivery and Stowage of the Cargo.*

How far shipowner bound to accept cargo.

287. A shipowner who puts his ship up as a general ship (*a*), or who runs a line of ships from ports to ports, habitually carrying all

was not in fact covered); *Furness* v. *Forwood Brothers & Co.* (1897), 2 Com. Cas. 223; *Re Richardsons and Samuel* (*M.*) *& Co.*, [1898] 1 Q. B. 261, C. A.

(*l*) This is usually the case when the charterparty provides for loading in accordance with a colliery guarantee (*Monsen* v. *Macfarlane & Co.*, 1895] 2 Q. B. 562, C. A.; *Shamrock Steamship Co.* v. *Storey & Co.* (1899), 5 Com. Cas. 21, C. A.; *Saxon Steamship Co.* v. *Union Steamship Co.* (1900), 9 Asp. M. L. C. 114, H. L.; *Dobell & Co.* v. *Green & Co.*, [1900] 1 Q. B. 526, C. A. (where it was held to be immaterial that the colliery guarantee was not tendered to the shipowner till after the excepted peril had come into operation); *Thorman* v. *Dowgate Steamship Co., Ltd.*, [1910] 1 K. B. 410; compare *Restitution Steamship Co.* v. *Pirie* (*Sir J.*) *& Co.* (1889), 6 T. L. R. 50, C. A.).

(*m*) *The Rookwood* (1894), 10 T. L. R. 314, C. A.; compare *Gardiner* v. *Macfarlane, M'Crindell & Co.* (1889), 20 R. (Ct. of Sess.) 414.

(*n*) *Bruce* v. *Nicolopulo* (1855), 11 Exch. 129; *Stephens* v. *Harris & Co.* (1887), 57 L. J. (Q. B.) 203, C. A.; *Brown* v. *Turner, Brightman & Co.*, [1912] A. C. 12; compare *The Village Belle* (1874), 30 L. T. 232.

(*o*) *Bulman and Dickson* v. *Fenwick & Co.*, [1894] 1 Q. B. 179, C. A.; *Budgett & Co.* v. *Binnington & Co.*, [1891] 1 Q. B. 35, C. A., *per* VAUGHAN WILLIAMS, L.J., at p. 327.

(*p*) *Saxon Steamship Co.* v. *Union Steamship Co., supra; Shamrock Steamship Co., Ltd.* v. *Storey & Co., supra;* see *Tyne and Blyth Shipping Co.* v. *Leech, Harrison and Forwood*, [1900] 2 Q. B. 12 (where a deduction was allowed for time lost whilst the ship was absent under repairs).

(*q*) *Lilly & Co.* v. *Stevenson & Co.* (1895), 22 R. (Ct. of Sess.) 278.

(*r*) *Ibid.*

(*a*) *Mors* v. *Sluce* (1672), 1 Mod. Rep. 85; *Coggs* v. *Bernard* (1703), 2 Ld. Raym. 909; 1 Smith, L. C., 11th ed., p. 173; *Barclay* v. *Cuculla y Gana* (1784), 3 Doug. (K. B.) 389; *Laveroni* v. *Drury* (1852), 8 Exch. 166.

SECT. 3. **The Loading.**

goods brought to him (*b*), is a common carrier (*c*). He is therefore bound, like any other common carrier, on payment of a reasonable charge, to accept for the purpose of carriage all goods brought to him, provided that they are goods which he holds himself out as carrying in the ordinary course of business, and that there is room in the ship for them (*d*). A shipowner who is not a common carrier is not bound to accept any goods, unless he has entered into a contract to that effect (*e*). Thus, a shipowner whose ship has been chartered to carry goods on an outward voyage to a particular port is not bound to accept a cargo from the charterer for the return voyage, but may load goods for his own benefit, or bring the ship home in ballast at his pleasure (*f*). If, however, he has contracted to load goods belonging to a particular shipper, he is bound to accept them when tendered unless he has some lawful excuse (*g*); otherwise he is guilty of a breach of contract sounding in damages (*h*).

Excuses :

He is excused in the following cases, namely :—

(1) failure to load ;

(1) Where the shipper fails to tender any goods within the period allowed for loading (*i*), the shipowner is not bound to wait any longer (*k*), and a tender of goods at a later date is inoperative (*l*). He is not, however, entitled to depart sooner, since he is under contract to remain the full period (*m*), unless the contract has already been repudiated by the shipper (*n*), and the repudiation has been accepted by the shipowner as a final breach (*o*).

(2) refusal to load ;

(2) Where the shipper refuses to load, the shipowner may treat his refusal as a final breach discharging the contract (*p*). He may at once bring an action against the shipper for the breach, and is not bound to wait until the expiration of the period allowed for

(*b*) *Nugent* v. *Smith* (1875), 1 C. P. D. 19, *per* BRETT, J., at p. 28; reversed without affecting this point (1876), 1 C. P. D. 423, C. A. But a person who lets out lighters to individual customers on application is not in the same position (*Liver Alkali Co.* v. *Johnson* (1874), L. R. 9 Exch. 338, Ex. Ch., *per* BRETT, J., at p. 344; *Nugent* v. *Smith*, *supra*, *per* COCKBURN, C.J., at p. 433).

(*c*) As to the position of a common carrier generally, see title CARRIERS, Vol. IV., pp. 6 *et seq.*

(*d*) See *ibid.*, p. 6; compare *Benett* v. *Peninsular and Oriental Steam-Boat Co.* (1848), 6 C. B. 775, where it was held that an action lay against common carriers of passengers for refusing to carry a passenger.

(*e*) *Liver Alkali Co.* v. *Johnson*, *supra*, *per* BRETT, J., at p. 344; *Nugent* v. *Smith*, *supra*, *per* COCKBURN, C.J., at p. 433.

(*f*) *Cockburn* v. *Wright* (1840), 6 Bing. (N. C.) 223; *Cross* v. *Pagliano* (1870), L. R. 6 Exch. 9.

(*g*) See the text, *infra*; compare *Wheeler* v. *Bavidge* (1854), 9 Exch. 668, where the contract was for voyages in succession.

(*h*) See pp. 209, 210, *post*; compare *Seeger* v. *Duthie* (1860), 8 C. B. (N. S.) 45.

(*i*) As to the period allowed for loading, see p. 119, *ante*.

(*k*) *Jamieson* v. *Laurie* (1796), 6 Bro. Parl. Cas. 474; *Matthews* v. *Lowther* (1850), 5 Exch. 574.

(*l*) *Danube and Black Sea Rail. Co.* v. *Xenos* (1863), 13 C. B. (N. S.) 825.

(*m*) *Petersen* v. *Dunn & Co.* (1895), 1 Com. Cas. 8; *Esposito* v. *Bowden* (1857), 7 E. & B. 763, Ex. Ch.

(*n*) See the text, *infra*.

(*o*) *Reid* v. *Hoskins* (1856), 6 E. & B. 953, Ex. Ch.

(*p*) *Danube and Black Sea Rail. Co.* v. *Xenos*, *supra*; *Bradford* v. *Williams* (1872), L. R. 7 Exch. 259.

loading (*q*). In this case a tender of goods after the breach has been accepted as final is inoperative (*r*). On the other hand, the shipowner may decline to treat the shipper's refusal as a final breach, in which case the contract is not discharged, but remains in force (*s*). There is, therefore, no breach until the period allowed for loading has expired without the shipper having delivered his goods to the shipowner (*t*). Until such period has expired the shipper may at any time withdraw his refusal and begin to load, or he may be released in the meantime from his obligation to load by the happening of an excepted event (*u*).

(3) cargo not as described;

(3) Where the goods tendered do not correspond with the description in the contract (*a*) the shipowner may refuse them (*b*). If, however, the contract gives the shipper an option under which he may select the goods to be loaded, he may exercise his option as he thinks fit (*c*); and, provided that the shipper exercises his option reasonably, the shipowner cannot refuse the goods tendered on the ground that it would be more advantageous to him if the option was exercised in a different manner (*d*).

(4) dangerous goods;

(4) Where the goods tendered, though otherwise in accordance with the contract, are of a dangerous nature (*e*), the shipowner may refuse to accept them (*f*), unless, with knowledge of their nature, he has expressly contracted to carry them (*g*).

(5) improper packing;

(5) Where the goods tendered are improperly or insufficiently packed, the shipowner may refuse to accept them (*h*). He cannot, however, insist on the goods being packed in any other than the usual packages (*i*).

(6) excessive amount;

(6) Where under a contract for a full and complete cargo more goods are tendered than the ship can reasonably stow, the shipowner is entitled to refuse the excess (*k*). He must, however, fulfil the

(*q*) See title CONTRACT, Vol. VII., p. 438.

(*r*) *Danube and Black Sea Rail. Co.* v. *Xenos* (1863), 13 C. B. (N. S.) 825.

(*s*) *Reid* v. *Hoskins* (1856), 6 E. & B. 953, Ex. Ch.

(*t*) *Ibid.*; compare *Dimech* v. *Corlett* (1858), 12 Moo. P. C. C. 199.

(*u*) *Reid* v. *Hoskins*, *supra*.

(*a*) See p. 99, *ante*.

(*b*) *Mackill* v. *Wright Brothers & Co.* (1888), 14 App. Cas. 106; *Lebeau* v. *General Steam Navigation Co.* (1872), L. R. 8 C. P. 88, *per* GROVE, J., at p. 97. As to the shipowner's position if he accepts the goods in ignorance of their real character, see p. 99, *ante*.

(*c*) See p. 100, *ante*.

(*d*) *Moorsom* v. *Page* (1814), 4 Camp. 103; *Irving* v. *Clegg* (1834), 1 Bing. (N. C.) 53; *Cockburn* v. *Alexander* (1848), 6 C. B. 791; *Duckett* v. *Satterfield* (1868), L. R. 3. C. P. 227; *Southampton Steam Colliery Co.* v. *Clarke* (1870), L. R. 6 Exch. 53, Ex. Ch.; *Stanton* v. *Richardson* (1875), 3 Asp. M. L. C. 23, H. L.

(*e*) See pp. 100, 101, *ante*.

(*f*) *Brass* v. *Maitland* (1856), 6 E. & B. 470, *per* Lord CAMPBELL, C.J., at p. 484; *Farrant* v. *Barnes* (1862), 11 C. B. (N. S.) 553, *per* WILLES, J., at p. 563; *Bamfield* v. *Goole and Sheffield Transport Co., Ltd.*, [1910] 2 K. B. 94, 107, 115, C. A.

(*g*) *Brass* v. *Maitland*, *supra*; *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A., *per* BRAMWELL, L.J., at p. 288.

(*h*) *Ohrloff* v. *Briscall, The "Helene"* (1866), L. R. 1 P. C. 231.

(*i*) *Cuthbert* v. *Cumming* (1855), 11 Exch. 405.

(*k*) *Mackill* v. *Wright Brothers & Co.*, *supra*; *Stanton* v. *Richardson*, *supra*.

SECT. 3. **The Loading.**

contract by loading the ship to her full capacity (*l*). Where he has contracted to carry a specified quantity of goods (*m*) he must find room for them, otherwise he will be liable in damages for failing to load them, unless the contract is made subject to there being room in the ship (*n*).

(7) exceptions.

(7) Where the operation of loading, so far as it falls to be performed by the shipowner, is prevented or delayed by some cause excepted in the contract (*o*), the shipowner is excused for the failure or delay (*p*), provided that he has taken all reasonable precautions to ensure the due performance of the loading (*q*). The same principle applies where the prevention or delay is attributable to a cause within the contemplation of the parties at the date of the contract (*r*).

Place of delivery to ship.

288. Apart from custom or special contract, it is the duty of the charterer or other shipper, at his own expense, to bring the goods to the side of the ship, within reach of her tackle (*s*), and to deliver them there to the shipowner, or to his servants authorised to take delivery on his behalf (*t*). If, therefore, the ship is lying at a wharf the shipper must deliver the goods alongside; he is not entitled simply to deposit them on the wharf at some distance from the ship and to require the shipowner, at his own expense, to provide the necessary labour for removing them from the place of deposit to the ship (*a*). If the ship is lying at anchor during the loading, so that the goods have to be taken out to her in lighters, it is the duty of the shipper to provide the necessary lighters and to pay the expenses of lightering the goods (*b*). The shipowner or his servants may, however,

(*l*) *Furness* v. *Tennant, Sons & Co.* (1892), 66 L. T. 635, C. A. But the charterer may be precluded from complaining if the shipowner's inability to carry a full cargo is due to the methods of loading adopted, of which the charterer was cognisant and to which he made no objection (*Hovill* v. *Stephenson* (1830), 4 C. & P. 469).

(*m*) See p. 101, *ante*. As to the effect of a statement as to the ship's capacity, see *Pust* v. *Dowie* (1864), 5 B. & S. 20, Ex. Ch.; *Societa Anonyma Ungherese di Armanento Marittimo Oriente* v. *Tyser Line, Ltd.* (1902), 8 Com. Cas. 25; and see p. 91, *ante*.

(*n*) *The "Norway"* (*Owners*) v. *Ashburner, The "Norway"* (1865), 3 Moo. P. C. C. (N. S.) 245.

(*o*) See p. 107, *ante*; compare *Philpott* v. *Swann* (1861), 11 C. B. (N. S.) 270.

(*p*) *Geipel* v. *Smith* (1872), L. R. 7 Q. B. 404; compare *Hocquard* v. *R.*, *"The Newport"* (1858), 6 W. R. 310, P. C.; *Atkinson* v. *Ritchie* (1809), 10 East, 530.

(*q*) See pp. 116, 177 *et seq.*, *ante*.

(*r*) *Cunningham* v. *Dunn* (1878), 3 C. P. D. 443, C. A.

(*s*) *Holman & Sons* v. *Dasnières* (1886), 2 T. L. R. 607, C. A. The lifting of the goods to the tackle must be done by the shipper's men (*ibid.*). The principles governing delivery to the ship are the same as those governing delivery to the consignee at the port of discharge; compare pp. 265 *et seq.*, *post*.

(*t*) *Mackenzie* v. *Rowe* (1810), 2 Camp. 482; *Cobban* v. *Downe* (1803), 5 Esp. 41; *Glengarnock Iron and Steel Co.* v. *Cooper & Co.* (1895), 22 R. (Ct. of Sess.) 672.

(*a*) *Fletcher* v. *Gillespie* (1826), 3 Bing. 635. Nor can he require the shipowner to prepare the cargo for shipment, as, for instance, by pressing bales of wool (*Cockburn* v. *Alexander* (1848), 6 C. B. 791, where evidence of custom was rejected).

(*b*) *Trindade* v. *Levy* (1861), 2 F. & F. 441.

consent to accept delivery of the goods before they are actually brought alongside, and in this case the necessary expenses of removal to the ship will be borne by the shipowner (*c*). Thus, where the ship has to be loaded afloat, the charterparty may provide that the goods are to be taken from the shore to the ship at the shipowner's expense (*d*), and there may be a custom of the port of loading to the same effect (*e*). Any such custom is, however, excluded by an express provision of the charterparty that the goods are to be delivered alongside by the charterer (*f*). An agreement on the part of the shipowner to bear the expenses of removal is not to be inferred from the mere fact that he has provided the necessary labour for the purpose upon the shipper's refusal to do so (*g*).

Effect of delivery.

289. Upon delivery the shipper's responsibility ceases, since he has fulfilled his contract (*h*). If the goods put on board are destroyed through any cause, he cannot be compelled to replace them (*i*); and, if it becomes necessary to unload the ship for some temporary purpose, the shipowner must bear the expenses of unloading and reloading (*k*). The shipper is entitled to demand redelivery of the goods shipped if he is refused a bill of lading (*l*), or is tendered a bill of lading of improper form (*m*); he cannot, however, demand them in any other case without paying the freight which would have been earned by their carriage (*n*) and indemnifying the master against the consequences of having signed a bill of lading for them (*o*). In the case of the charterer payment of freight is not a necessary condition precedent to redelivery, since his obligation under the charterparty to ship a cargo revives (*p*).

Risk during delivery.

290. Until delivery the goods remain at the shipper's risk (*q*). If, therefore, lightering is necessary, the risks of the transit from

(*c*) *British Columbia Saw-Mill Co.* v. *Nettleship* (1868), L. R. 3 C. P. 499; *Holman & Sons* v. *Dasnières* (1886), 2 T. L. R. 607, C. A.

(*d*) *Nottebohn* v. *Richter* (1886), 18 Q. B. D. 63, C. A.; compare *Wiener* v. *Wilsons and Furness-Leyland Line* (1910), 15 Com. Cas. 294, C. A.

(*e*) *Scrutton* v. *Childs* (1877), 36 L. T. 212.

(*f*) Compare *The Nifa*, [1892] P. 411, doubting the construction placed upon the particular contract in *Scrutton* v. *Childs*, *supra*.

(*g*) *Fletcher* v. *Gillespie* (1826), 3 Bing. 635.

(*h*) *Strugnell* v. *Friedrichsen* (1862), 12 C. B. (N. S.) 452 (where the goods having been landed owing to a casualty to the ship and forwarded by another ship to their destination, it was held that the charterer could not be compelled to ship another cargo); compare *Smith* v. *Wilson* (1807), 8 East, 437.

(*i*) *Jones* v. *Holm* (1867), L. R. 2 Exch. 335.

(*k*) *General Steam Navigation Co.* v. *Slipper* (1862), 11 C. B. (N. S.) 493.

(*l*) *Falk* v. *Fletcher* (1865), 18 C. B. (N. S.) 403.

(*m*) *Peek* v. *Larsen* (1871), L. R. 12 Eq. 378; *Armstrong* v. *Allan Brothers & Co.* (1892), 8 T. L. R. 613. If the shipowner alters the destination of the ship after shipment, he must give specific notice of the alteration to the shippers (*Peel* v. *Price* (1815), 4 Camp. 243, where the shipper was held entitled to recover the excess premium charged on his policies), who, in this case, are, it seems, entitled to demand redelivery.

(*n*) *Tindall* v. *Taylor* (1854), 4 E. & B. 219.

(*o*) *Davidson* v. *Gwynne* (1810), 12 East, 381; *Tindall* v. *Taylor*, *supra*.

(*p*) *Thompson* v. *Small* (1845), 1 C. B. 328; *Re Child, Ex parte Nyholm* (1873), 2 Asp. M. L. C. 165.

(*q*) Compare p. 202, *post*.

SECT. 3. The Loading.

shore to ship fall upon him and not upon the shipowner (*r*). Where there is a charterparty, the duty of the charterer to provide a cargo in accordance with his contract is not wholly discharged until he has actually delivered to the ship the whole of the cargo contracted for (*s*). It is immaterial that he has fulfilled the conditions precedent to the loading and has his cargo in readiness (*t*). If, therefore, the actual operation of loading is delayed, interrupted, or prevented through the intervention of any cause whatever (*a*), he is, unless he has some lawful excuse, responsible in damages for any detention of the ship beyond the time allowed for loading (*b*) or for any loss arising from deficiency in the quantity delivered (*c*), and may, in addition, where he is wholly unable to deliver his cargo to the ship within such time, discharge the shipowner from his duty to receive the cargo (*d*).

When charterer excused: (1) shipowner's default;

The charterer is excused for failure or delay in loading in the following cases, namely:—

(1) Where the delay or failure is attributable to the shipowner's inability, without lawful excuse, to perform his part of the loading, the charterer is not responsible (*e*). In this case he is entitled to receive from the shipowner any damages sustained in consequence of such delay or failure (*f*). Where, however, the loading is to be performed by the shipowner and the charterer jointly, the charterer is not excused (*g*) unless he is in fact prevented from performing his part by reason of the shipowner's inability to perform his own part of the operation (*h*). If the shipowner repudiates the charterparty

(*r*) *Nottebohn* v. *Richter* (1886), 18 Q. B. D. 63, C. A., *per* Lord ESHER, M.R., at p. 65.

(*s*) *Elliott* v. *Lord* (1883), 5 Asp. M. L. C. 63, P. C.; *Christoffersen* v. *Hansen* (1872), L. R. 7 Q. B. 509 (where a cesser clause was held not to come into operation until after the loading had been completed). As to the effect of a cesser clause upon the liability to load, see, further, pp. 133, 134, *ante*.

(*t*) *Barker* v. *Hodgson* (1814), 3 M. & S. 267.

(*a*) Even though the charterer is not responsible for the delay (*Adams* v. *Royal Mail Steam Packet Co.* (1858), 5 C. B. (N. S.) 492; *Barret* v. *Dutton* (1815), 4 Camp. 333; *Watson Brothers Shipping Co.* v. *Mysore Manganese Co.* (1910), 15 Com. Cas. 159; *Abchurch Steamship Co.* v. *Stinnes*, [1911] S. C. 1010).

(*b*) *Lawson* v. *Burness* (1862), 1 H. & C. 396; *Ashcroft* v. *Crow Orchard Colliery Co.* (1874), L. R. 9 Q. B. 540; *The Village Belle* (1874), 30 L. T. 232; *Jones* v. *Adamson* (1875), 1 Ex. D. 60; *Elliott* v. *Lord* (1883), 5 Asp. M. L. C. 63, P. C.; *Monsen* v. *Macfarlane & Co.*, [1895] 2 Q. B. 562, C. A.; *Potter* (*John*) *& Co.* v. *Burrell & Son*, [1897] 1 Q. B. 97, C. A.; *Jackson* v. *Galloway* (1838), 5 Bing. (N. C.) 71 (where a different port of loading was substituted by agreement); compare *Blech* v. *Balleras* (1860), 3 E. & E. 203.

(*c*) *Kirk* v. *Gibbs* (1857), 1 H. & N. 810.

(*d*) *Wilson and Coventry* v. *Thoresen's Linie* (1910), 15 Com. Cas. 262; see p. 196, *ante*.

(*e*) *Seeger* v. *Duthie* (1860), 8 C. B. (N. S.) 45; *Harris* v. *Best, Ryley & Co.* (1892), 68 L. T. 76, C. A.; *Taylor* v. *Clay* (1846), 9 Q. B. 713; *Harris* v. *Haywood Gas Coal Co.* (1877), 14 Sc. L. R. 605.

(*f*) *Carali* v. *Xenos* (1862), 2 F. & F. 740; compare *Welch, Perrin & Co.* v. *Anderson, Anderson & Co.* (1891), 7 Asp. M. L. C. 177, C. A.

(*g*) *Budgett & Co.* v. *Binnington & Co.*, [1891] 1 Q. B. 35, C. A.

(*h*) *Harris* v. *Best, Ryley & Co.*, *supra*; compare *Benson* v. *Blunt* (1841), 1 Q. B. 870; *Bradley* v. *Goddard* (1863), 3 F. & F. 638; and see, further, p. 272, *post*.

altogether, the charterer is discharged from his obligation to load, and need not ship his goods even though the shipowner subsequently offers to accept them (*i*).

(2) contemplated cause;

(2) Where the delay or failure in loading is attributable to a cause within the contemplation of the parties at the time when the charterparty is made, the charterer is not responsible (*k*).

(3) performance unlawful;

(3) Where the performance of the contract has become unlawful, the charterer is released from his obligation to load (*l*).

(4) exceptions.

(4) Where the delay or failure in loading is attributable to some cause expressly excepted by the contract, the charterer is not responsible (*m*). The ordinary exceptions of the charterparty inserted for the protection of the charterer (*n*) do not apply, unless the charterer is ready with his cargo and is in a position to commence the actual operation of loading (*o*). Thus, where the cargo is stored at a place some distance from the ship, and the charterer is prevented by some excepted peril from bringing it alongside the ship, he is not excused unless it is clear that the parties contemplated that the cargo would be stored in that place, so that its conveyance thence to the ship is to be regarded as part of the operation of loading (*p*). In no case, however, is the charterer protected if he is himself in default (*q*).

Destruction of goods.

The destruction of such goods as have already been put on board does not discharge the charterer from his duty to complete the loading (*r*), even though such destruction is due to an excepted peril (*s*). Since, however, the delivery of the goods destroyed has discharged him *pro tanto*, he cannot be required to load other goods to take their place (*t*), nor, apparently, can he claim the right to

(*i*) *Danube and Black Sea Rail. Co.* v. *Xenos* (1863), 13 C. B. (N. S.) 825. As to the effect of a refusal on the part of the charterer, compare p. 196, *ante*, p. 208, *post*.

(*k*) *Cunningham* v. *Dunn* (1878), 3 C. P. D. 443, C. A., following *Ford* v. *Cotesworth* (1870), L. R. 5 Q. B. 544, Ex. Ch.; compare *Little* v. *Stevenson & Co.*, [1896] A. C. 108; *Leidemann* v. *Schultz* (1853), 14 C. B. 38; *King* v. *Hinde* (1883), 12 L. R. Ir. 113; and contrast *Hudson* v. *Clementson* (1856), 18 C. B. 213.

(*l*) *Reid* v. *Hoskins* (1856), 6 E. & B. 953, Ex. Ch.

(*m*) *Adamson* v. *Newcastle Steam-Ship Freight Insurance Association* (1879), 4 Q. B. D. 462; *Petersen* v. *Dunn & Co.* (1895), 43 W. R. 349; *Larsen* v. *Sylvester & Co.*, [1908] A. C. 295; *Crawford and Rowat* v. *Wilson, Sons & Co.* (1896), 1 Com. Cas. 277, C. A. If the ship is already on demurrage, the exception does not apply unless specially made applicable (*Lilly & Co.* v. *Stevenson & Co.* (1895), 22 R. (Ct. of Sess.) 278).

(*n*) See pp. 129 *et seq.*, *ante*.

(*o*) *The Village Belle* (1874), 30 L. T. 232; *Kay* v. *Field* (1882), 10 Q. B. D. 241, C. A.; *Grant & Co.* v. *Coverdale, Todd & Co.* (1884), 9 App. Cas. 470; compare *Re Richardsons and Samuel* (*M.*) *& Co.*, [1898] 1 Q. B. 261, C. A.

(*p*) See p. 192, *ante*.

(*q*) *Re Richardsons and Samuel* (*M.*) *& Co.*, *supra* (where, in consequence of an accident on the railway, which was covered by the exception, the charterer had discharged his own labourers and thus delayed the loading).

(*r*) *Jones* v. *Holm* (1867), L. R. 2 Exch. 335.

(*s*) *Aitken, Lilburn & Co.* v. *Ernsthausen & Co.*, [1894] 1 Q. B. 773, C. A.; compare *Weir & Co.* v. *Girvin & Co.*, [1900] 1 Q. B. 45, C. A.

(*t*) *Jones* v. *Holm*, *supra*.

SECT. 3. **The Loading.**

do so (*a*); in this case the shipowner is entitled to fill the space left vacant by shipping goods for his own benefit (*b*).

When goods at shipowner's risk.

291. The shipowner's responsibility attaches as soon as the goods are received by his servants (*c*). It is his duty, apart from special contract or usage (*d*), to have the goods put on board and duly stowed in the holds or other places provided for the purpose, and to pay the expenses of so doing, including the cost of conveyance to the ship, where delivery is taken before they are brought alongside (*e*). The goods are then at his risk, and, except in so far as he has some lawful excuse (*f*), he is liable if they are lost or damaged after they have come to his hands (*g*). His liability being thus absolute, it is unnecessary, in a sense, to consider what are his duties in connexion with the loading, since it is immaterial whether the loss or damage is attributable to his negligence in performing such duties (*h*) or to some accidental cause beyond his control (*i*). He cannot, however, claim the benefit of any exception in the charterparty unless he has duly performed his duties in connexion with the loading (*k*), except in so far as he has been prevented from doing so by the cause specified in the exception (*l*); nor can he hold the charterer responsible for the detention of the ship where the delay in loading the ship is attributable to his own default (*m*).

(*a*) This seems to follow from the fact that the shipowner is equally discharged *pro tanto* by his receipt of the original goods.

(*b*) *Aitken, Lilburn & Co.* v. *Ernsthausen & Co.*, [1894] 1 Q. B. 773, C. A. (where it was held that freight thus earned was not to be taken into account in measuring the damages upon the charterer's refusal to complete the loading). As to the payment of advance freight, see *Weir & Co.* v. *Girvin & Co.*, [1900] 1 Q. B. 45, C. A.

(*c*) *Cobban* v. *Downe* (1803), 5 Esp. 41; *Fragano* v. *Long* (1825), 4 B. & C. 219; *British Columbia Saw-Mill Co.* v. *Nettleship* (1868), L. R. 3 C. P. 499; *Grant & Co.* v. *Coverdale, Todd & Co.* (1884), 9 App. Cas. 470, *per* Lord SELBORNE, L.C., at p. 475.

(*d*) See p. 199, *ante*, p. 205, *post*.

(*e*) *Holman & Sons* v. *Dasnières* (1886), 2 T. L. R. 607, C. A.

(*f*) The exceptions in the charterparty apply if delivery is taken alongside, though the loss takes place before the goods are actually placed on board (*Pyman* v. *Burt* (1884), Cab. & El. 207); compare *The Carron Park* (1890), 15 P. D. 203, where the goods were damaged before sailing; *The Southgate*, [1893] P. 329; but see *Dampskibsselskabet "Skjoldborg"* v. *Calder & Co.* (1911), 17 Com. Cas. 97, where, owing to the form of the contract, the goods were held to be at the shipowner's absolute risk till actually put on board. If the shipowner by his contract undertakes to accept the goods at a distance and to convey them to the ship, his liability during the conveyance is, apart from any special term in the contract, apparently that of an ordinary bailee (*Nottebohn* v. *Richter* (1886), 18 Q. B. D. 63, C. A., *per* Lord ESHER, M.R., at p. 65). But the conveyance to the ship may be part of the voyage contracted for (*Wiener* v. *Wilsons and Furness-Leyland Line* (1910), 15 Com. Cas. 294, C. A.).

(*g*) *British Columbia Saw-Mill Co.* v. *Nettleship, supra*; *Cobban* v. *Downe, supra*; *Fragano* v. *Long, supra*; *Morewood* v. *Pollok* (1853), 1 E. & B. 743.

(*h*) See p. 203, *post*.

(*i*) See p. 204, *post*.

(*k*) *The Oquendo* (1878), 38 L. T. 151.

(*l*) *The Duero* (1869), L. R. 2 A. & E. 393; *Norman* v. *Binnington* (1890), 25 Q. B. D. 475; *The Carron Park* (1890), 15 P. D. 203.

(*m*) *Harris* v. *Best, Ryley & Co.* (1892), 68 L. T. 76, C. A.; compare p. 272, *post*.

SECT. 3.
The Loading.

Duties of shipowner.

292. It is the duty of the shipowner, except where he engages a stevedore for the purpose, to employ a master who is competent to supervise the operation of loading (*n*), and, if the master is guilty of negligence in that behalf, the shipowner is responsible (*o*). Suitable tackle must be provided for the purpose of hoisting the goods on board and lowering them into the holds (*p*), and efficient men must be employed to work the tackle and to stow the goods (*q*). The goods must be stowed with due care and skill (*r*), any dunnage (*s*) that may be required for the purpose of protecting them during the voyage being provided (*t*). If they are improperly stowed, and are in consequence destroyed or damaged by some cause which would not have been able to operate but for such improper stowage, the shipowner is not protected by an exception which covers the actual cause of the destruction or damage (*a*). Thus, where goods fetch away in a storm and are broken, the shipowner cannot rely upon an exception that he is not to be accountable for breakage if it is shown (*b*) that the loss was consequent on the negligent manner in which they were stowed (*c*); where casks are

(*n*) *Anglo-African Co.* v. *Lamzed* (1866), L. R. 1 C. P. 226 (where the charterer failed to appoint a stevedore as required by the charterparty and the master accordingly supervised the loading); *Swainston* v. *Garrick* (1833), 2 L. J. (EX.) 255.

(*o*) *Sandeman* v. *Scurr* (1866), L. R. 2 Q. B. 86. The master is himself responsible to the shipper (*Goff* v. *Clinkard* (1750), 1 Wils. 282, n.; *Blaikie* v. *Stembridge* (1859), 6 C. B. (N. S.) 894, 911, Ex. Ch.). He is also responsible to the shipowner where, but only where, he is personally guilty of negligence (*Blaikie* v. *Stembridge, supra; Swainston* v. *Garrick, supra*). Where, however, the stevedore is the servant of the charterer, the master is not responsible, either to the shipper or to the shipowner, for the stevedore's negligence (*Blaikie* v. *Stembridge, supra; Swainston* v. *Garrick, supra*); see p. 207, *post*.

(*p*) Abbott on Shipping, 5th ed., p. 224; 14th ed., p. 504.

(*q*) A sufficient number of persons must also be employed to protect the goods on board against theft; see *Morse* v. *Slue* (1671), 1 Vent. 190, 238; *Rich* v. *Kneeland* (1613), Cro. Jac. 330; Abbott on Shipping, 5th ed., p. 223; 14th ed., p. 503. As to the effect of an exception against theft, see pp. 113, 114, *ante*.

(*r*) *Swainston* v. *Garrick, supra; Gillespie* v. *Thompson* (1856), 6 E. & B. 477, n.; *Anglo-African Co.* v. *Lamzed, supra; Furness* v. *Tennant, Sons & Co.* (1892), 66 L. T. 635, C. A.; compare *Zipsy* v. *Hill* (1858), 1 F. & F. 570. As to the statutory provisions relating to grain cargoes, see pp. 80, 81, *ante*.

(*s*) That is, pieces of wood placed against the sides and bottom of the hold, to preserve the cargo from the effects of leakage; but other articles may be used, such as mats (*Hogarth* v. *Walker*, [1900] 2 Q. B. 283, C. A.), and, probably, cargo (*The Marathon* (1879), 40 L. T. 163, 166).

(*t*) Abbott on Shipping, 5th ed., p. 224; 14th ed., p. 504; *The Cressington*, [1891] P. 152. As to the duty of providing broken stowage, see p. 103, *ante*.

(*a*) But an express exception against negligence will protect him, if framed in terms wide enough to cover negligent stowage (*The Duero* (1869), L. R. 2 A. & E. 393); see p. 204, *post*.

(*b*) The burden of proof is on the shipper (*Muddle* v. *Stride* (1840), 9 C. & P. 380; *Ohrloff* v. *Briscall, The "Helene"* (1866), L. R. 1 P. C. 231; *Czech* v. *Steam Navigation Co.* (1867), L. R. 3 C. P. 14; *The Prosperino Palasso* (1873), 29 L. T. 622; *The Ida* (1875), 32 L. T. 541, P. C.; *Moes, Moliere and Tromp* v. *Leith and Amsterdam Shipping Co.* (1867), 5 Macph. (Ct. of Sess.) 988 (followed in *Horseley* v. *Baxter Brothers & Co., The "Hesper"* (1893), 20 R. (Ct. of Sess.) 333)); but see *The Alexandra* (1866), 14 L. T. 742.

(*c*) *Phillips* v. *Clark* (1857), 2 C. B. (N. S.) 156.

SECT. 3. The Loading.

strained through the pitching of the ship in heavy weather and allow their contents to escape, he is responsible if the casks were badly stowed, in spite of an exception in the contract against perils of the sea (*d*), or even against leakage (*e*), though he would have been protected by such exception if he had not been in default (*f*). The same principle applies where goods of different kinds are stowed either in contact or in close proximity to each other, and the goods of one of the kinds are in consequence injuriously affected by the proximity of goods of another kind (*g*). Thus, if barrels containing liquids are stowed along with goods which are liable to heat, and, in consequence of such goods heating, the barrels are caused to become leaky so that their contents escape and are lost, the shipowner is guilty of negligence if such heating and consequent leakage ought reasonably to have been foreseen by him (*h*), since it was his duty to guard against the consequences by stowing the two parcels of goods in places where they could not affect each other (*i*), and, being guilty of negligence in the performance of this duty, he cannot claim the protection of an express exception against leakage (*k*). If, on the other hand, he was ignorant of the consequences that might ensue from the proximity of the two parcels, and could not reasonably be expected to foresee them, he is not guilty of negligence, and may therefore rely upon the exception (*l*). If there is no exception in the contract applicable to the cause of loss, no question of negligent stowage arises; however masterly the mode of stowage may have been he is responsible, since the goods are at his risk (*m*). Thus, the ordinary exceptions against heating, leakage or the like apply only to the actual goods which heat or leak; they do not cover the loss which other goods sustain in consequence of such heating or leakage (*n*). For this purpose a special form of exception is required. Sometimes the contract expressly provides that the shipowner is not to be responsible for negligent or improper stowage (*o*), or it may be framed in terms sufficiently wide to cover it (*p*); but the ordinary negligence clause is not sufficient (*q*).

Exception.

(*d*) *The Catherine Chalmers* (1874), 32 L. T. 847; *The Ville de l'Oriente* (1860), 2 L. T. 62.

(*e*) *Phillips* v. *Clark* (1857), 2 C. B. (N. S.) 156.

(*f*) *The Catherine Chalmers, supra; Phillips* v. *Clark, supra; Chiesman & Co.* v. *Steamship Modena (Owners), The Modena* (1911), 16 Com. Cas. 293.

(*g*) *Mackill* v. *Wright Brothers & Co.* (1888), 14 App. Cas. 106; *Hayn* v. *Culliford* (1879), 4 C. P. D. 182, C. A.; *The Figlia Maggiore* (1868), L. R. 2 A. & E. 106; compare *The "Freedom"* (1871), L. R. 3 P. C. 594.

(*h*) *Ohrloff* v. *Briscall, The "Helene"* (1866), L. R. 1 P. C. 231.

(*i*) *The Alexandra* (1866), 14 L. T. 742.

(*k*) *Ibid.*; *Ohrloff* v. *Briscall, The "Helene," supra.*

(*l*) *Ohrloff* v. *Briscall, The "Helene," supra.*

(*m*) *Gillespie* v. *Thompson* (1856), 6 E. & B. 477, n.; *Alston* v. *Herring* (1856), 11 Exch. 822; *Hayn* v. *Culliford, supra* (where there was negligent stowage).

(*n*) *Thrift* v. *Youle & Co.* (1877), 2 C. P. D. 432; *The Nepoter* (1869), L. R. 2 A. & E. 375; see p. 115, *ante*.

(*o*) *Bond, Conolly & Co.* v. *Federal Steam Navigation Co.* (1906), 22 T. L. R. 685, C. A.

(*p*) *The Duero* (1869), L. R. 2 A. & E. 393; *Baerselman* v. *Bailey*, [1895]

(*q*) For note (*q*) see p. 205, *post*.

Place of stowage.

293. The goods shipped must be stowed in the proper places provided for the purpose (*r*). The shipper has no right to claim the use of any other part of the ship (*s*), nor can the shipowner insist on stowing them elsewhere (*t*). If, apart from agreement, he does so, he is responsible for any loss or damage sustained by the goods, and cannot rely upon any exception of the contract to exempt him from responsibility (*a*). The deck is not a proper place of stowage (*b*), and the shipowner is not entitled to stow goods on deck (*c*), except in the following cases, namely:—

Deck cargo.

(1) Where a usage of trade has sanctioned the practice (*d*). It is not sufficient that it is usual, unless the shipper expressly stipulates to the contrary, to carry the particular goods on deck (*e*).

(2) Where the master has the shipper's consent to stow the goods on deck (*f*). There may have been an express term of the contract to this effect (*g*); and it seems that the shipper's consent may be implied from his conduct, as where he sees the goods stowed on deck and makes no objection (*h*), or from the nature of the goods being such that they cannot be stowed below deck (*i*).

When shipowner not liable.

294. If the contract provides that the charterer is himself to load the goods and to be responsible for their proper stowage, the shipowner is clearly not liable for bad stowage (*k*). Nor is he liable where the charterer or his agent (*l*) is present during the operation

2 Q. B. 301, C. A.; *Norman* v. *Binnington* (1890), 25 Q. B. D. 475; compare *Good* v. *London Steam-Ship Owners' Association* (1871), L. R. 6 C. P. 563, *per* WILLES, J.

(*q*) *Hayn* v. *Culliford* (1879), 4 C. P. D. 182, C. A. (where a further clause that the master, officers and crew in the transmission of the goods should be considered the servants of the shipper, owner, or consignee was held not to affect the shipowner's responsibility for negligent stowage); *The Ferro*, [1893] P. 38.

(*r*) *Royal Exchange Shipping Co.* v. *Dixon* (1886), 12 App. Cas. 11; *Steamship Calcutta Co., Ltd.* v. *Weir* (*Andrew*) *& Co.*, [1910] 1 K. B. 759.

(*s*) *Mitcheson* v. *Nicol* (1852), 7 Exch. 929; *Neill* v. *Ridley* (1854), 9 Exch. 677; *Wills & Co.* v. *Burrell & Son* (1894), 21 R. (Ct. of Sess.) 527.

(*t*) Compare *Jardine, Matheson & Co.* v. *Clyde Shipping Co.*, [1910] 1 K. B. 627.

(*a*) *The Oquendo* (1878), 38 L. T. 151; *Royal Exchange Shipping Co.* v. *Dixon, supra*; *Newall* v. *Royal Exchange Shipping Co.* (1885), 33 W. R. 868.

(*b*) *Gould* v. *Oliver* (1840), 2 Man. & G. 208; *Royal Exchange Shipping Co.* v. *Dixon, supra*. As to the statutory provisions relating to deck cargo, see pp. 79, 80, *ante*.

(*c*) The shipowner may carry goods on deck for his own benefit (*Neill* v. *Ridley, supra*). As to general average and goods carried on deck, see pp. 315 *et seq.*, *post*.

(*d*) *Gould* v. *Oliver, supra*; compare *Da Costa* v. *Edmunds* (1815), 4 Camp. 142, discussed in *Milward* v. *Hibbert* (1843), 3 Q. B. 120.

(*e*) *Royal Exchange Shipping Co.* v. *Dixon, supra*.

(*f*) Abbott on Shipping, 5th ed., p. 355; 14th ed., p. 785.

(*g*) *Burton* v. *English* (1883), 12 Q. B. D. 218, C. A.; *Wright* v. *Marwood* (1881), 7 Q. B. D. 62, C. A.; *Johnson* v. *Chapman* (1865), 19 C. B. (N. S.) 563.

(*h*) *Gould* v. *Oliver, supra*; *Royal Exchange Shipping Co.* v. *Dixon, supra* (where, however, in the special circumstances of the case, it was held that the goods were so placed at the shipowner's risk).

(*i*) *Milward* v. *Hibbert, supra, per* LORD DENMAN, L.J., at p. 136.

(*k*) Compare *The Catherine Chalmers* (1874), 32 L. T. 847.

(*l*) A lighterman employed to convey the goods to the ship is not the

SECT. 3. The Loading.

of loading, and, with full knowledge of what is being done, does not object either to the methods (*m*) or places (*n*) of stowage, or to the manner in which the loading is carried out (*o*).

Employment of stevedore.

295. Where the actual work of the loading is delegated to a stevedore, the stevedore is, as a general rule, to be regarded as the servant of the shipowner, who, as being the person primarily responsible for the loading, is liable to the shipper (*p*), in the absence of an exception covering the stevedore's negligence (*q*), for the manner in which the stevedore performs his work (*r*), and also to the stevedore for his charges (*s*). The shipowner's liability is not taken away by a provision in the charterparty that the stevedore is to be appointed by the charterer, since the shipowner's duty to load the cargo remains, notwithstanding the charterer's failure to appoint any stevedore (*t*), and the mere fact that the charterer is to appoint the stevedore is not inconsistent with the existence of the relation of master and servant between the shipowner and the stevedore when appointed (*a*). As regards a shipper other than the charterer, this is clearly the case (*b*). Even as regards the charterer himself, the position appears to be the same (*c*). He is not liable to pay demurrage or damages for detention if the loading is delayed beyond the proper time through the negligence or default of a stevedore although the stevedore is nominated by him, on the ground that the stevedore is, nevertheless, the shipowner's servant (*d*); and it seems therefore that the charterer is entitled, on the same ground,

charterer's agent for this purpose (*The Figlia Maggiore* (1868), L. R. 2 A. & E. 106).

(*m*) *Ohrloff* v. *Briscall, The "Helene"* (1866), L. R. 1 P. C. 231; compare *Major* v. *White* (1835), 7 C. & P. 41.

(*n*) See p. 205, *ante*.

(*o*) The same principle applies where, owing to the method adopted, the ship is unable to carry the full quantity contracted for (*Hovill* v. *Stephenson* (1830), 4 C. & P. 469). A mere permission to load in a particular manner does not relieve the shipowner from the consequences of negligent stowage (*Hutchinson* v. *Guion* (1858), 5 C. B. (N. S.) 149).

(*p*) Where third persons are injured by the negligence of the stevedore's servants, the stevedore (*Burns* v. *Poulsom* (1873), L. R. 8 C. P. 563), and not the shipowner (*Murray* v. *Currie* (1871), L. R. 6 C. P. 24), is, as a general rule, responsible; see, further, titles MASTER AND SERVANT, Vol. XX., pp. 65, note (*e*), 149, 267; NEGLIGENCE, Vol. XXI, p. 472, note (*i*).

(*q*) *Baerselman* v. *Bailey*, [1895] 2 Q. B. 301, C. A. If the stevedore is negligent, the shipowner is not protected by an exception against "any act, neglect or default of the pilot, master, or mariners in the navigation or management of the ship" (*The Ferro*, [1893] P. 38).

(*r*) *Swainston* v. *Garrick* (1833), 2 L. J. (EX.) 255.

(*s*) *Eastman* v. *Harry* (1876), 33 L. T. 800, C. A.

(*t*) *Anglo-African Co.* v. *Lamzed* (1866), L. R. 1 C. P. 226.

(*a*) *Steinman & Co.* v. *Angier Line*, [1891] 1 Q. B. 619, C. A.; *Andersen* v. *Crundall & Co.* (1898), 14 T. L. R. 256; compare *Eastman* v. *Harry*, *supra*; and see note (*e*), p. 207, *post*.

(*b*) *Sandeman* v. *Scurr* (1866), L. R. 2 Q. B. 86; *The St. Cloud* (1863), 8 L. T. 54; *Swainston* v. *Garrick*, *supra*; *Eastman* v. *Harry*, *supra*; *The Ferro*, *supra*. But the shipper may by his conduct preclude himself from holding the shipowner responsible (*Major* v. *White* (1835), 7 C. & P. 41).

(*c*) See note (*e*), p. 207, *post*.

(*d*) *Harris* v. *Best, Ryley & Co.* (1892), 68 L. T. 76, C. A.

to hold the shipowner responsible if the goods are improperly stowed by the stevedore acting as the shipowner's servant (*e*). The charterparty may, however, provide not merely that the stevedore is to be appointed by the charterer, but also that he is to be employed and paid by him (*f*). The stevedore is then to be regarded as the servant of the charterer, who is, therefore, not entitled to hold the shipowner responsible for improper stowage (*g*). On the contrary, he is himself responsible to the shipowner for any loss or damage which the shipowner may suffer in consequence of improper stowage, unless the charterparty contains a stipulation exempting him from responsibility in such a case (*h*); and he is also responsible to the owners of any goods shipped which may be injured by reason of the improper stowage (*i*).

SUB-SECT. 4.—*The Measure of Damages* (*a*).

Failure to provide cargo.

296. The charterparty may contain a provision for the payment of a specified sum as liquidated damages where the charterer, without lawful excuse, fails to provide the cargo stipulated for (*b*). In the absence of any such provision, or where the sum specified is to be regarded as a penalty (*c*), the damages are unliquidated (*d*), and

(*e*) *Sack* v. *Ford* (1862), 13 C. B. (N. S.) 90 (where the charterparty expressly provided that the charterer was not to be responsible to the shipowner for bad stowage, and it was held that the shipowner was therefore liable to the charterer for the stevedore's negligence); *Ohrloff* v. *Briscall, The "Helene"* (1866), L. R. 1 P. C. 231, *per* Dr. LUSHINGTON, at p. 234; *Harris* v. *Best, Ryley & Co.* (1892), 68 L. T. 76, C. A., *per* Lord ESHER, M.R.; *Andersen* v. *Crundall & Co.* (1898), 14 T. L. R. 256; but see *Murray* v. *Currie* (1871), L. R. 6 C. P. 24, *per* WILLES, J. In *Blaikie* v. *Stembridge* (1859), 6 C. B. (N. S.) 894, 911, Ex. Ch., the action was brought against the master, and it was held that he was not responsible, as the stevedore was not his servant, but the view was expressed that the stevedore might be the shipowner's servant though appointed by the charterer. In *The Catherine Chalmers* (1874), 32 L. T. 847, the court professed to follow *Blaikie* v. *Stembridge*, *supra*, and held the shipowner not to be responsible, though the charterparty expressly provided that the stowage was to be at the shipowner's risk; but it is submitted that the decision was incorrect; compare *The Ferro*, [1893] P. 38.

(*f*) See p. 206, *ante*.

(*g*) *Harris* v. *Best, Ryley & Co.*, *supra*, *per* Lord ESHER, M.R.; compare *Royal Mail Steamship Co.* v. *Macintyre Brothers & Co.* (1911), 16 Com. Cas. 231 (theft). But if the charterer is afterwards reimbursed the stevedore's expenses by the shipowner, the stevedore is to be deemed, at least as regards shippers other than the charterer, to be the shipowner's servant (*Sandeman* v. *Scurr* (1866), L. R. 2 Q. B. 86).

(*h*) *Harris* v. *Best, Ryley & Co.*, *supra*. As to an exception protecting the charterer, see pp. 131 *et seq.*, *ante*.

(*i*) *Swainston* v. *Garrick* (1833), 2 L. J. (EX.) 255.

(*a*) See also titles CARRIERS, Vol. IV., pp. 17 *et seq.*, 91 *et seq.*; CONFLICT OF LAWS, Vol. VI., pp. 247, 248; DAMAGES, Vol. X., pp. 301 *et seq.*

(*b*) *Heugh* v. *Escombe* (1861), 4 L. T. 517; *Puller* v. *Staniforth* (1809), 11 East, 232; *Bell* v. *Puller* (1810), 2 Taunt. 285; compare *Sparrow* v. *Paris* (1862), 7 H. & N. 594; see p. 135, *ante*.

(*c*) *Winter* v. *Trimmer* (1762), 1 Wm. Bl. 395; *Harrison* v. *Wright* (1811), 13 East, 343; compare *Rayner* v. *Rederiaktiebolaget Condor*, [1895] 2 Q. B. 289.

(*d*) Where the stipulated sum is payable in a particular event, which does not happen, the damages are unliquidated (*Staniforth* v. *Lyall* (1830), 7 Bing. 169).

SECT. 3. **The Loading.**

the measure of damages is the estimated amount of freight which would have been earned if the charterer had provided the cargo (*e*), less an allowance for the expenses which would have been incurred in earning it (*f*). A further allowance must be made if the ship has been able to find other employment, in respect of any profit arising out of such employment (*g*); if such profit is greater than the profit which would have been earned under the charterparty, the damages will be nominal only (*h*).

Seeking other employment for the ship.

How far the shipowner is bound to seek for other employment or to accept it, if offered by the charterer or by a third person, is a question not free from doubt (*i*). Since a refusal on the part of the charterer to provide a cargo is not a final breach unless the shipowner elects to treat it as such, and the shipowner is therefore entitled to treat the charterparty, even after the refusal, as subsisting throughout the whole of the period allowed for loading (*k*), the charterer has no cause of complaint if the shipowner, during such period, declines to accept other employment from himself, since by accepting it the shipowner might be deemed to have exonerated and discharged the charterer from his original undertaking (*l*); nor is the shipowner, during the period allowed for loading, bound to seek or to accept employment elsewhere, since, by his acceptance of such employment, he clearly indicates an intention to treat the charterparty as discharged (*m*). Where, therefore, he obtains employment for his ship after the expiration of the period allowed for loading, at a rate of freight lower than that offered or obtainable previously, the allowance to be made is to be calculated with reference to the freight actually earned, and not the freight which would or might have been earned if he had elected to treat the charterparty as discharged by the charterer's refusal to load (*n*). Whether after the expiration of the period allowed for loading the shipowner is bound to find some employment for his ship, if possible, and whether the charterer is entitled to an allowance for the freight which might have been earned but for the shipowner's default in

(*e*) *Westland* v. *Robinson* (undated), cited 2 Vern. 212; Abbot on Shipping, 5th ed., p. 200; 14th ed., p. 678. Where the charterparty provides for the loading of different classes of goods at the charterer's option at varying rates of freight, the average freight is to be taken calculated upon the usual quantity carried upon such voygaes (*Thomas* v. *Clarke and Todd* (1818), 2 Stark. 450).

(*f*) *Smith* v. *M'Guire* (1858), 3 H. & N. 554. It is no defence that the ship was afterwards lost on her voyage so that, if the goods had been loaded, no freight would have been earned (*Stephenson* v. *Price* (1784), 3 Doug. (K. B.) 353).

(*g*) *Smith* v. *M'Guire, supra*; *Puller* v. *Staniforth* (1809), 11 East, 232. No allowance is to be made where the contract expressly fixes a sum to be paid as liquidated damages (*Bell* v. *Puller* (1810), 2 Taunt. 285).

(*h*) *Staniforth* v. *Lyall* (1830), 7 Bing. 169.

(*i*) See note (*o*), p. 209, *post*.

(*k*) *Reid* v. *Hoskins* (1856), 6 E. & B. 953, Ex. Ch.

(*l*) *Harries* v. *Edmonds* (1845), 1 Car. & Kir. 686; *Hudson* v. *Hill* (1874), 2 Asp. M. L. C. 278; but see *Wilson* v. *Hicks* (1857), 26 L. J. (EX.) 242, where the question was left to the jury whether the master had acted unreasonably in refusing the employment offered.

(*m*) *Avery* v. *Bowden* (1856), 6 E. & B. 953, 962, Ex. Ch.

(*n*) *Harries* v. *Edmonds*, *supra*.

refusing other employment or in taking no steps to seek it, are questions to which different answers have been given (*o*). It is probable, upon the principle that in assessing the damages for a breach of contract regard must be had not only to what the injured party has done, but also to what he had the means of doing, and as a prudent man ought in reason to have done, to minimise his loss (*p*), that the shipowner is bound to do what is reasonable and to avail himself of any opportunity of employment that may present itself (*q*). The charterer must, in addition, pay any demurrage which may have accrued due before his refusal to load (*r*).

Failure to ship proper cargo.

297. If the charterer, without lawful excuse, ships a less quantity of goods than that required by the charterparty (*s*), or if the goods shipped are not in accordance with the charterparty (*t*), the measure of damages is the difference between the freight actually earned, including any profit earned by carrying the goods of third persons (*u*), and the freight that would have been earned if the charterer had fulfilled his obligation (*a*). Such damages are usually known as dead freight (*b*).

"Dead freight."

Failure to supply ship.

298. Where the shipowner, without lawful excuse, fails to load the goods stipulated for, whether by reason of the non-arrival of the ship within the period allowed for loading or otherwise, two

(*o*) It was suggested that he was not bound to seek for employment in *Smith* v. *M'Guire* (1858), 3 H. & N. 554, *per* MARTIN, B., at p. 567; and that he was bound to do so in *Harries* v. *Edmonds* (1845), 1 Car. & Kir. 686; *Wilson* v. *Hicks* (1857), 26 L. J. (EX.) 242 (where the lay days had not expired); *Bradford* v. *Williams* (1872), L. R. 7 Exch. 259, *per* BRAMWELL, B., at p. 262; *Gabarron* v. *Kreeft*, *Kreeft* v. *Thompson* (1875), L. R. 10 Exch. 274. In *Thompson* v. *Inglis* (1813), 3 Camp. 428, it was held that the shipowner was not bound to wait after the day fixed in the charterparty for sailing, though the charterer offered him a cargo if the ship would wait, but, as the day fixed was the day when the convoy passed the port of loading, the risk of capture would have been increased if she had waited, and the course proposed was therefore not reasonable.

(*p*) *Frost* v. *Knight* (1872), L. R. 7 Exch. 111, Ex. Ch., *per* COCKBURN, C.J., at p. 115; see, generally, titles DAMAGES, Vol. X., pp. 331 *et seq.*; SALE OF GOODS, Vol. XXV., pp. 268 *et seq.*

(*q*) *Bradford* v. *Williams*, *supra*; compare Abbott on Shipping, 5th ed., p. 428; 14th ed., p. 867.

(*r*) *Saxon Steamship Co.* v. *Union Steamship Co.* (1900), 9 Asp. M. L. C. 114, H. L., where it was held that demurrage was payable also after the date of refusal until the ship, with reasonable dispatch, obtained other employment.

(*s*) *Steamship Heathfield Co.* v. *Rodenacher* (1896), 2 Com. Cas. 55, C. A.; Abbott on Shipping, 5th ed., p. 277; 14th ed., p. 672; compare —— v. *Noell* (1661), 1 Keb. 100.

(*t*) *Young* v. *Canning Jarrah Timber Co.* (1899), 4 Com. Cas. 96.

(*u*) Abbott on Shipping, 5th ed., p. 278; 14th ed., pp. 672, 673.

(*a*) *Young* v. *Canning Jarrah Timber Co.*, *supra*; *Aitken, Lilburn & Co.* v. *Ernsthausen & Co.*, [1894]1 Q. B. 773, C. A. (where, however, the charterer was held not to be entitled to be credited with the freight earned by shipping goods on the shipowner's account to replace goods destroyed after shipment, but only with the freight earned by shipping goods after the charterer's failure to complete the loading). If on the charterer being unable to complete the loading the shipowner fills up the ship with his own goods, the charterer cannot afterwards claim them (*Lidgett* v. *Williams* (1845), 4 Hare, 456, 464).

(*b*) This phrase includes unliquidated damages (*McLean* v. *Fleming* (1871), L. R. 2 Sc. & Div. 128, approved in *Kish* v. *Taylor*, [1912] A. C. 604), and is not confined to liquidated damages, as was held in *Pearson* v. *Goschen* (1864), 17 C. B. (N. S.) 352, and *Gray* v. *Carr* (1871), L. R. 6 Q. B. 522, Ex. Ch. As to the lien for dead freight, see pp. 134, 135, *ante*.

SECT. 3. The Loading.

factors have to be taken into consideration in measuring the damages (*c*), namely:—

(1) The value of the ship to the charterer. The measure of damages is the estimated amount of bill of lading freight which the charterer would have been able to obtain from shippers at the port of loading if the ship had been available at the proper time, less the amount of the chartered freight (*d*). If he is compelled to charter another ship in order to carry out his engagements, and, in consequence of a rise in freight, has to pay a larger amount of freight, the measure of damages is the difference between the amount of freight actually paid and the chartered freight (*e*).

(2) The value of the goods to the charterer. If owing to the shipowner's default the charterer is compelled to pay a higher price to obtain a cargo than he would have had to pay if the ship had been available at the proper time, he may recover, in addition to any increased freight, the increase in the price of the cargo (*f*). If no ship is available at the port of loading, so that the charterer is unable to carry his goods to the port of discharge, the damages are to be measured, not by the freight, but by the market price of the goods at the port of discharge at the time when they should have arrived, less the price payable at the port of loading at the time when the loading should have taken place (*g*). If, however, the goods are afterwards brought in by another ship, their market price at the port of discharge at the time of arrival must be substituted for the price at the port of loading (*h*).

Partial failure.

299. The same principles are to be applied in measuring the damages where the shipowner loads part of the goods but fails to load them all (*i*). In this case the shipowner is nevertheless entitled to recover freight upon the quantity actually carried, and the charterer must counterclaim in respect of any right to damages for his failure to load (*k*).

Loss of profit.

300. The charterer is not, as a general rule, entitled to recover

(*c*) Where the contract provides for the payment of liquidated damages, the charterer need not prove actual damage (*Sparrow* v. *Paris* (1862), 7 H. & N. 594; compare *Sharp* v. *Gibbs* (1857), 1 H. & N. 801); but the sum stipulated for is not payable unless the shipowner is guilty of the particular default contemplated by the stipulation (*Valente* v. *Gibbs* (1859), 6 C. B. (N. S.) 270; *Seeger* v. *Duthie* (1860), 8 C. B. (N. S.) 45); compare title DAMAGES, Vol. X., pp. 329 *et seq.*

(*d*) See *Hadley* v. *Baxendale* (1854), 9 Exch. 341; *Watson Steamship Co., Ltd.* v. *Merryweather & Co., Ltd.* (1913), 108 L. T. 423; and compare *The Argentino* (1888), 13 P. 191, C. A., *per* BOWEN, L.J., at p. 201, affirmed (1889), 14 App. Cas. 519; *The Okehampton* (1913), 29 T. L. R. 731, C. A.

(*e*) *Featherston* v. *Wilkinson* (1873), L. R. 8 Exch. 122; *Nelson* (*Thomas*) *& Sons* v. *Dundee East Coast Steam Shipping Co., Ltd.*, [1907] S. C. 927.

(*f*) *Featherston* v. *Wilkinson, supra;* compare *Welch, Perrin & Co.* v. *Anderson, Anderson & Co.* (1891), 7 Asp. M. L. C. 177, C. A.

(*g*) *Ströms Bruks Aktie Bolag* v. *Hutchison* (*John and Peter*), [1905] A. C. 515; *Smith, Edwards & Co.* v. *Tregarthen* (1887), 6 Asp. M. L. C. 137; compare *Featherston* v. *Wilkinson, supra.* As to notice of a special contract, see *Prior* v. *Wilson* (1860), 1 L. T. 549.

(*h*) *Smith, Edwards & Co.* v. *Tregarthen, supra.*

(*i*) *Ibid.* As to the measure of damages under a lump sum charter where the lump sum is expressed to be based on the shipowner's guarantee of a specified capacity, see *Societa Anonyma Ungherese di Armamento Marittimo Oriente* v. *Tyser Line, Ltd.* (1902), 8 Com. Cas. 25.

(*k*) *Ritchie* v. *Atkinson* (1808), 10 East, 295; see p. 308, *post.*

loss of profit (*l*). On the other hand, any extra profit which he has actually made must be taken into account (*m*).

SECT. 4.—*The Voyage.*

SUB-SECT. 1.—*The Seaworthiness of the Ship.*

Seaworthiness at commencement.

301. At the commencement of the voyage (*n*) the ship must be reasonably fit for accomplishing the service which the shipowner has engaged to perform (*o*). She must therefore be seaworthy, that is, fit to meet and undergo the perils of the sea and other incidental risks to which she must, of necessity, be exposed in the course of the voyage then about to be undertaken (*p*). It is not sufficient that she was seaworthy at the commencement of the loading (*q*), since the standard by which her seaworthiness (*r*) is to be measured is different (*s*). Nevertheless, the same principles are to be applied in determining whether the ship is seaworthy, namely, that she must be fit not only to put to sea, but also to carry to its destination the particular cargo which she has taken on board (*t*).

Fitness to encounter perils.

302. To render the ship seaworthy in the strict sense of the word she must, at the time of her departure, be in a fit state, as to repairs, equipment and crew, and in all other respects, to encounter the ordinary perils likely to be encountered on the particular voyage at the particular season of the year (*u*). She must, therefore, be tight, staunch and strong, and furnished with all tackle and apparel necessary for the intended voyage (*a*). Thus, there is clearly a breach of this condition if, at the time of sailing, she is in

(*l*) *Scaramanga, Manoussin & Co.* v. *English & Co.* (1895), 1 Com. Cas. 99; compare *Walton* v. *Fothergill* (1835), 7 C. & P. 392; see p. 290, *post.*

(*m*) See p. 291, *post;* compare *British Westinghouse Co., Ltd.* v. *Underground Railways Co. of London, Ltd.*, [1912] A. C. 673.

(*n*) *The Rona* (1884), 51 L. T. 28. As to when the voyage is said to begin, see pp. 219, 220, *post.*

(*o*) *Lyon* v. *Mells* (1804), 5 East, 428; *Kopitoff* v. *Wilson* (1876), 1 Q. B. D. 377; *Steel* v. *State Line Steamship Co.* (1877), 3 App. Cas. 72; *The Marathon* (1879), 40 L. T. 163; *Gilroy, Sons & Co.* v. *Price & Co.*, [1893] A. C. 56. The same principle applies where a ship is chartered under a time charter (*Tully* v. *Howling* (1877), 2 Q. B. D. 182, C. A.; *Hogarth* v. *Miller*, [1891] A. C. 48).

(*p*) *Kopitoff* v. *Wilson, supra;* compare title INSURANCE, Vol. XVII., pp. 422 *et seq.;* and, for a statutory definition of "seaworthy," see Marine Insurance Act, 1906 (6 Edw. 7, c. 41), s. 39. It is an offence to send a ship to sea in such an unseaworthy state as to be likely to endanger life; see p. 77, *ante;* title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 559, 560.

(*q*) *Cohn* v. *Davidson* (1877), 2 Q. B. D. 455; see p. 186, *ante.*

(*r*) The absence of seaworthiness is usually expressed by the word "unseaworthiness," but the word "seaworthlessness" has also been used (*Le Cheminant* v. *Pearson* (1812), 4 Taunt. 367, *per* MANSFIELD, C.J., at p. 379).

(*s*) *Cohn* v. *Davidson, supra.*

(*t*) See pp. 186 *et seq.*, *ante.*

(*u*) *Dixon* v. *Sadler* (1839), 5 M. & W. 405, *per* PARKE, B., at p. 414 (affirmed (1841), 8 M. & W. 895, Ex. Ch.; approved in *Hedley* v. *Pinkney & Sons Steamship Co.*, [1894] A. C. 222, *per* Lord HERSCHELL, L. C., at p. 227); *Burges* v. *Wickham* (1863), 3 B. & S. 669, *per* BLACKBURN, J., at p. 689; *Steel* v. *State Line Steamship Co., supra.* For a case of special contract, see *Robertson* v. *Amazon Tug and Lighterage Co.* (1881), 7 Q. B. D. 598, C. A.

(*a*) Abbott on Shipping, 5th ed., p. 218; 14th ed., p. 488.

SECT. 4. The Voyage.

a leaky state (*b*), or insufficiently ballasted (*c*), or if her sails are rotten (*d*), or boilers defective (*e*), or if her ground tackle is inefficient (*f*). There is equally a breach of the condition where, though she is, at the time of her sailing, apparently efficient, she suffers from some defect which will show itself in the course of the voyage, so that she cannot, in fact, be regarded as efficient (*g*). Thus, she may not be furnished with a supply of coals (*h*), or provisions (*i*), or medicines (*k*), sufficient to last the whole voyage (*l*); her boilers may be filled with muddy water, which will ultimately, by depositing the mud and thus clogging the steam pipes, render the boilers useless (*m*); her port-holes may be open or insecurely fastened, so that, although there may be no immediate danger, a change of weather will enable the sea to gain access to the cargo by entering the open port-holes or bursting the fastenings (*n*). The existence of any such defect is not, however, necessarily to be regarded as proof of unseaworthiness (*o*). A defect which is of a temporary nature only (*p*), or which is of a trivial character capable of being put right in a few minutes, such as, for instance, a cabin port-hole left open at the time of sailing (*q*), cannot reasonably be said to render the ship unfit to encounter the perils of the voyage (*r*). She is therefore seaworthy in spite of the defect, and it is immaterial that the defect is not in fact put right; in that case there is negligence on the part of the crew, but not unseaworthiness of the ship (*s*). If, on the other hand, the defect, though trivial,

(*b*) *Lyon* v. *Mells* (1804), 5 East, 428.

(*c*) *Leuw* v. *Dudgeon* (1867), L. R. 3 C. P. 17, n.

(*d*) *Wedderburn* v. *Bell* (1807), 1 Camp. 1.

(*e*) *Quebec Marine Insurance Co.* v. *Commercial Bank of Canada* (1870), L. R. 3 P. C. 234.

(*f*) *Wilkie* v. *Geddes* (1815), 3 Dow, 57, H. L.

(*g*) *Cohn* v. *Davidson* (1877), 2 Q. B. D. 455; see p. 216, *post*.

(*h*) *Thin* v. *Richards & Co.*, [1892] 2 Q. B. 141, C. A.; *The Vortigern*, [1899] P. 140, C. A.; *McIver & Co., Ltd.* v. *Tate Steamers, Ltd.*, [1903] 1 K. B. 362, C. A.; but see *Walford de Baerdemaecker & Co.* v. *Galindez Brothers* (1897), 2 Com. Cas. 137 (where insufficient coal was held not to amount to being unseaworthy); *Cunningham* v. *Frontier S.S. Co.*, [1906] 2 I. R. 12, C. A. (list owing to faulty stowage); and compare *The Undaunted* (1886), 11 P. D. 46, and *Klein* v. *Lindsay*, [1911] A. C. 194.

(*i*) *The Wilhelm* (1865), 14 L. T. 636.

(*k*) *Woolf* v. *Claggett* (1800), 3 Esp. 257.

(*l*) As to voyages by stages, see pp. 214 *et seq.*, *post*.

(*m*) *Seville Sulphur and Copper Co., Ltd.* v. *Colvils, Lowden & Co.* (1880), 15 R. (Ct. of Sess.) 616; but see *Cunningham* v. *Colvils, Lowden & Co.* (1888), 16 R. (Ct. of Sess.) 295, where the voyage was in stages.

(*n*) *Steel* v. *State Line Steamship Co.* (1877), 3 App. Cas. 72; compare *Upperton* v. *Union Castle Mail Steamship Co., Ltd* (1903), 9 Com. Cas. 50, C. A. It is immaterial that the port-hole was properly opened in the first instance (*Mendl & Co.* v. *Ropner & Co.*, [1913] 1 K. B. 27).

(*o*) *Steel* v. *State Line Steamship Co., supra*. In *Tate* v. *Crosby, Magee & Co.* (1898), unreported, defective stowage of deck cargo was held to render the ship unseaworthy.

(*p*) *The Pentland* (1897), 13 T. L. R. 430; *Hedley* v. *Pinkney & Sons Steamship Co.*, [1894] A. C. 222.

(*q*) *Steel* v. *State Line Steamship Co., supra*, approved in *Hedley* v. *Pinkney & Sons Steamship Co., supra, per* Lord HERSCHELL, L.C., at p. 228.

(*r*) See also *Leonard* v. *Leyland & Co.* (1902), 18 T. L. R. 727 (hook and davit).

(*s*) *Steel* v. *State Line Steamship Co., supra, per* Lord BLACKBURN, at

cannot be put right during the voyage, the ship is not in a fit state to encounter the perils of the voyage, and is therefore unseaworthy (*t*).

Adequate crew etc.

303. The ship must also be furnished with an adequate number of persons of competent skill and ability to navigate her (*a*). It is therefore necessary to take into consideration the length of the voyage and the circumstances in which it is undertaken (*b*). A ship may be unseaworthy, though her complement is in all other respects adequate, if her mates are not competent navigators, so that in the event of any accident to the master there is no one else on board capable of performing his duties (*c*). Similarly, where it is required by usage or the laws of the country that a pilot should be employed to take charge of the ship until she reaches the open sea (*d*), a pilot must, if available, be taken on board (*e*). The ship must also have on board all papers and documents necessary for the protection of the ship and cargo (*f*) and for the due performance of the voyage, such as, for instance, her bill of health (*g*) and manifest (*h*); but the absence of a document, such as a certificate of stowage given at the port of loading, which is not a necessary document, does not prevent the ship from fulfilling the contract, and does not, therefore, render her unseaworthy (*i*).

Stowage etc. of cargo.

304. A ship which is otherwise seaworthy may be rendered unseaworthy by reason of the presence of her cargo on board (*k*). It is essential that she should be fit to encounter the perils of the voyage as a laden ship (*l*). A ship cannot, therefore, be regarded

p. 91; *Gilroy, Sons & Co.* v. *Price & Co.*, [1893] A. C. 56, *per* Lord HERSCHELL, L.C., at p. 64; *Hedley* v. *Pinkney & Sons Steamship Co.*, [1894] A. C. 222; *The Diamond*, [1906] P. 282 (where a stove which was negligently overheated caused the cargo to take fire, and it was held that the ship was not unseaworthy, since the stove was quite safe if properly used).

(*t*) *Steel* v. *State Line Steamship Co.* (1877), 3 App. Cas. 72; followed in *Gilroy, Sons & Co.* v. *Price & Co.*, *supra*; compare *The Schwan*, [1909] A. C. 450 (where water escaped through a cock which the engineer did not know to be capable of opening three ways and which was not properly turned off).

(*a*) *Shore* v. *Bentall* (1828), 7 B. & C. 798, n.; *Tait* v. *Levi* (1811), 14 East, 481. For the statutory requirements as to crews, see pp. 38 *et seq.*, *ante*.

(*b*) *Clifford* v. *Hunter* (1827), Mood. & M. 103; *Tait* v. *Levi*, *supra*. A particular kind of crew may be required for different stages of the voyage (*Hollingworth* v. *Brodrick* (1837), 7 Ad. & El. 40, *per* PATTESON, J., at p. 47; *Bouillon et Cie.* v. *Lupton* (1863), 15 C. B. (N. S.) 113).

(*c*) *Clifford* v. *Hunter*, *supra*; *Tait* v. *Levi*, *supra*.

(*d*) As to the employment of pilots, see pp. 609 *et seq.*, *post*.

(*e*) Abbott on Shipping, 5th ed., p. 222; 14th ed., p. 491; compare *Law* v. *Hollingsworth* (1797), 7 Term Rep. 160, not overruled as to this point in *Dixon* v. *Sadler* (1839), 8 M. & W. 895, Ex. Ch.; *Hollingworth* v. *Brodrick*, *supra*, *per* PATTESON, J., at p. 44; *Phillips* v. *Headlam* (1831), 2 B. & Ad. 380.

(*f*) For the statutory requirements as to papers, see p. 81, *ante*.

(*g*) *Levy* v. *Costerton* (1816), 4 Camp. 389.

(*h*) *Dutton* v. *Powles* (1861), 8 Jur. (N. S.) 970, Ex. Ch.

(*i*) *Wilson* v. *Rankin* (1865), L. R. 1 Q. B. 162, Ex. Ch.

(*k*) *S.S.* "*City of Lincoln*" (*Master and Owners*) v. *Smith*, [1904] A. C. 250, P. C.

(*l*) *Steel* v. *State Line Steamship Co.*, *supra*, *per* Lord CAIRNS, L.C., at p. 77; *Gilroy, Sons & Co.* v. *Price & Co.*, *supra*, *per* Lord HERSCHELL, L.C., at p. 63.

SECT. 4. The Voyage.

as seaworthy if she is overloaded at the time of her departure (*m*), or if she carries on deck goods which, having due regard to the safety of the ship, ought not to be carried there (*n*). Similarly, the ship may be rendered unseaworthy owing to the method in which the cargo is stowed (*o*). A defect which might otherwise be put right, such as, for instance, an insecurely fastened port-hole, may be concealed and rendered inaccessible by the cargo being piled against it (*p*); or goods of a bulky nature, such as armour-plates, may be improperly stowed, so that, owing to the movement of the ship in a heavy sea, they fetch away and break through the side of the ship, thus causing her to sink with the rest of her cargo (*q*).

Fitness to carry cargo.

305. The ship must, in addition, be fit to carry the particular cargo shipped (*r*). It is not sufficient that, at the time of the loading (*s*), she was fit to receive it: the condition of seaworthiness is not satisfied unless she is equally fit, at the time of her departure, to contain it and preserve it from harm (*t*). Thus, the particular articles making up the cargo must be properly stowed so that they cannot break loose and suffer loss or damage (*a*); and there must be no goods on board, even though they may have been shipped afterwards, which, from their nature, will be likely to endanger the goods in respect of which the question of seaworthiness arises (*b*). Moreover, the ship must be free from defects which, though not endangering the safety of the ship herself, yet endanger the safety of the cargo by permitting the sea to have access to the cargo (*c*) or otherwise (*d*).

Voyage in stages.

306. Where the voyage is divided into stages, either naturally (*e*) or by agreement between the parties (*f*), the condition as to seaworthiness is sufficiently fulfilled if the ship, upon entering upon any particular stage of the voyage, is seaworthy for that stage; she need not necessarily be fit, at that time, to perform the whole voyage (*g*). Thus, if her course lies partly by canal or river and

(*m*) *Biccard* v. *Shepherd* (1861), 14 Moo. P. C. C. 471; see p. 79, *ante*.

(*n*) *Daniels* v. *Harris* (1874), L. R. 10 C. P. 1; see pp. 79, 80, *ante*.

(*o*) *Kopitoff* v. *Wilson* (1876), 1 Q. B. D. 377; *Steel* v. *State Line Steamship Co.* (1877), 3 App. Cas. 72.

(*p*) *Steel* v. *State Line Steamship Co.*, *supra*; compare *Gilroy, Sons & Co.* v. *Price & Co.*, [1893] A. C. 56.

(*q*) *Kopitoff* v. *Wilson*, *supra*.

(*r*) *Stanton* v. *Richardson* (1875), 3 Asp. M. L. C. 23, H. L.; compare *Parker* v. *Potts* (1815), 3 Dow, 23, H. L., *per* Lord ELDON, L.C., at p. 32.

(*s*) See p. 188, *ante*.

(*t*) *Cohn* v. *Davidson* (1877), 2 Q. B. D. 455.

(*a*) *Kopitoff* v. *Wilson*, *supra*.

(*b*) *Ingram and Royle, Ltd.* v. *Services Maritimes du Treport* (1913), 30 T. L. R. 79, C. A. (where, however, the shipowner was held to be protected by M. S. Act, 1894, s. 502); compare *Thorley* (*Joseph*), *Ltd.* v. *Orchis Steamship Co., Ltd.*, [1907] 1 K. B. 660, C. A.

(*c*) *Steel* v. *State Line Steamship Co., supra*; followed in *Gilroy, Sons & Co.* v. *Price & Co., supra*; *The Rona* (1884), 51 L. T. 28.

(*d*) *Kay* v. *Wheeler* (1867), L. R. 2 C. P. 302, Ex. Ch.; *Laveroni* v. *Drury* (1852), 8 Exch. 166.

(*e*) As where the voyage is partly by river and partly by sea.

(*f*) Such an agreement may be implied where it is usual to call at various ports on the way (Abbott on Shipping, 5th ed., p. 239; 14th ed., p. 522).

(*g*) *The Vortigern*, [1899] P. 140, C. A.; *McIver & Co., Ltd.* v. *Tate*

partly by sea, the ship is to be considered as seaworthy if, on leaving the river port, she is fit to encounter the usual perils of navigating the river, and it is not necessary that she should then be fit to put to sea (*h*). She must, however, on reaching the sea, be seaworthy in the full sense of the word; otherwise there is at the time when she actually puts to sea a breach of the condition, notwithstanding the fact that she was on leaving port seaworthy for the earlier portion of the voyage (*i*). Similarly, where the ship must necessarily, in the course of her voyage, encounter ice, she need not, on starting, be adequately strengthened and equipped for the purpose, if it is the usual practice of ships proceeding on that particular voyage to visit a port of call before reaching the latitudes where ice may be expected, and to furnish themselves there with the requisite strengthening and equipment; but she must, on leaving such usual port of call, be fitted to encounter ice (*k*). In accordance with the same principle, a steamship which is bound for a distant port is not unseaworthy because she has not on board a sufficient supply of coal to take her to her destination, provided that it is the usual practice to coal on the way (*l*), or it is agreed between the parties that she may do so (*m*). On leaving port, however, she must have on board sufficient coal to take her to the next port of call (*n*).

Commencement of each stage.

Where the voyage is in stages, a ship which at starting was seaworthy for the whole voyage must nevertheless continue to be seaworthy at the commencement of each and every subsequent stage (*o*); and there is therefore a breach of the condition as to seaworthiness if she commences any stage in an unseaworthy state, in spite of the fact that her unseaworthiness arises after she has started upon her voyage (*p*). Thus, a ship which has liberty to

Steamers, Ltd., [1903] 1 K. B. 362, C. A.; compare *Buchanan & Co.* v. *Faber* (1899), 4 Com. Cas. 223. The employment of lighters to discharge the cargo is not to be regarded as a separate stage so as to make it a condition that the lighters are to be seaworthy (*Lane* v. *Nixon* (1866), L. R. 1 C. P. 412); but a lighter used for transhipment must be seaworthy (*The Galileo*, [1914] P. 9, C. A.).

(*h*) *Bouillon et Cie.* v. *Lupton* (1863), 15 C. B. (N. S.) 113; *Cunningham* v. *Colvils, Lowden & Co.* (1888), 16 R. (Ct. of Sess.) 295; compare *Dixon* v. *Sadler* (1839), 5 M. & W. 405, *per* PARKE, B., at p. 414 (affirmed (1841), 8 M. & W. 895, Ex. Ch.); *Hogarth* v. *Miller*, [1891] A. C. 48 (time charter).

(*i*) *Bouillon et Cie.* v. *Lupton*, *supra*; *Seville Sulphur and Copper Co., Ltd.* v. *Colvils, Lowden & Co.* (1880), 15 R. (Ct. of Sess.) 616.

(*k*) *Thompson* v. *Hopper* (1856), 6 E. & B. 172, *per* ERLE, J., at p. 177.

(*l*) *The Vortigern*, [1899] P. 140, C. A.; *McIver & Co., Ltd.* v. *Tate Steamers, Ltd.*, [1903] 1 K. 362, C. A.

(*m*) *Yrazu* v. *Astral Shipping Co.* (1904), 20 T. L. R. 153.

(*n*) *Thin* v. *Richards & Co.*, [1892] 2 Q. B. 151, C. A.; followed in *The Vortigern*, *supra*. It is immaterial that the charterer has contracted to supply the coals required, if the master has negligently omitted to take on board an adequate supply (*McIver & Co., Ltd.* v. *Tate Steamers, Ltd.*, *supra*).

(*o*) If, therefore, in the course of the voyage she comes within a compulsory pilotage district, the voyage through that district is to be regarded as a separate stage, and she is therefore unseaworthy if she improperly fails to have a pilot on board (*Law* v. *Hollingsworth* (1797), 7 Term Rep. 160, as explained in *Hollingworth* v. *Brodrick* (1837), 7 Ad. & El. 40, *per* PATTESON, J., at p. 44).

(*p*) *Greenock Steamship Co.* v. *Maritime Insurance Co.*, [1903] 2 K. B. 657, C. A., following *The Vortigern*, *supra*.

SECT. 4. The Voyage.

call at various ports may be seaworthy on sailing from her first port, but may become unseaworthy afterwards by overloading at a later port; in this case there is a breach of the condition when she leaves such later port (*q*).

Extent of duty.

307. The duty of the shipowner to provide a seaworthy ship is absolute (*r*). He warrants the fitness of his ship when she sails, and not merely that he will honestly and *bonâ fide* endeavour to make her fit (*s*). He is therefore responsible for any latent defect the existence of which renders the ship unseaworthy (*t*), and it is immaterial that he has done his best to provide an efficient ship and that the defect could not have been detected by any reasonable means before it actually showed itself (*a*). At the same time the shipowner's duty does not extend to providing a perfect ship and one that can never, without the happening of some extraordinary peril, break down (*b*). There is no positive or fixed standard of seaworthiness (*c*); seaworthiness in any particular case is to be measured by the nature of the ship concerned and by the kind of adventure in which she is engaged (*d*). All that is necessary is that the ship should possess that degree of fitness to encounter the perils of the voyage which it would be usual and prudent and as of course to require at the commencement of the voyage (*e*); and if it appears that a prudent owner would never have sent the ship to sea without remedying the defect if he had known of its existence, a ship that puts to sea with the defect unremedied must be regarded as unseaworthy (*f*). It therefore follows that the standard of seaworthiness rises as progress is made in shipbuilding (*g*), and the shipowner does not fulfil his duty unless his ship is reasonably equipped with modern improvements (*h*). Nevertheless, as seaworthiness is merely a relative term (*i*), the character of the

(*q*) *Biccard* v. *Shepherd* (1861), 14 Moo. P. C. C. 471.

(*r*) Unless he has contracted himself out of it (*Nelson Line (Liverpool), Ltd.* v. *Nelson (James) & Sons, Ltd.*, [1908] A. C. 16); see *Wiener & Co.* v. *Wilsons and Furness-Leyland Line, Ltd.* (1910), 103 L. T. 168, C. A.; *Lloyd* v. *General Iron Screw Collier Co.* (1864), 3 H. & C. 284.

(*s*) *Kopitoff* v. *Wilson* (1876), 1 Q. B. D. 377, *per* BLACKBURN, J., at p. 379; compare *Dobell & Co.* v. *Steamship Rossmore Co.*, [1895] 2 Q. B. 408, C. A.

(*t*) *The Glenfruin* (1885), 10 P. D. 103; compare *Cargo ex Laertes* (1887), 12 P. D. 187, where unseaworthiness arising from a latent defect was covered by an exception.

(*a*) *The Glenfruin, supra.*

(*b*) *Readhead* v. *Midland Rail. Co.* (1867), L. R. 2 Q. B. 412, *per* BLACKBURN, J., at p. 440, approving *Burges* v. *Wickham* (1863), 3 B. & S. 669.

(*c*) *Knill* v. *Hooper* (1857), 2 H. & N. 277.

(*d*) *Burges* v. *Wickham, supra,* where a river steamer undertook a sea voyage.

(*e*) *Burges* v. *Wickham, supra, per* BLACKBURN, J., at p. 693.

(*f*) *Gibson* v. *Small* (1853), 4 H. L. Cas. 353, *per* ERLE, J., at p. 384; adopted in *Burges* v. *Wickham, supra, per* BLACKBURN, J., at p. 692; *McFadden* v. *Blue Star Line,* [1905] 1 K. B. 697, *per* CHANNELL, J., at p. 706.

(*g*) *Burges* v. *Wickham, supra.*

(*h*) *Mount Park Steamship Co.* v. *Grey* (1910), *Shipping Gazette,* 12th March, H. L. As to a failure to take a statutory precaution not connected with the carriage of goods, see note (*s*), p. 189, *ante.*

(*i*) *Knill* v. *Hooper, supra.*

particular ship as known to the parties must be taken into consideration (*k*). If she is reasonably efficient for the voyage, the shipowner has fulfilled his duty to supply a seaworthy ship; and on the loss of the ship he is not rendered responsible merely by proof that a stouter ship would have outlived the peril (*l*).

Time when seaworthiness necessary.

308. The time at which the condition must be fulfilled is at the commencement of the voyage (*m*), that is, when the ship leaves her moorings without the intention of returning to them (*n*). If she is seaworthy at that time, the fact that she subsequently becomes unseaworthy is no breach of the condition, since it is no part of the contract that she shall continue to be seaworthy (*o*). On the other hand, if she is unseaworthy at the time of her departure, the shipowner cannot, by subsequent repair, escape the consequence of the breach of condition, and it is immaterial that the ship may in fact have been made thoroughly seaworthy before the loss or damage takes place (*p*).

Effect of unseaworthiness.

309. The consequences of a breach of condition are that the shipowner becomes responsible for all loss or damage which is attributable to the unseaworthiness of his ship (*q*), and that, in the absence of a special exception covering unseaworthiness at starting (*r*), he cannot rely for his protection upon any of the exceptions in the contract as covering the cause of the unseaworthiness (*s*). Thus, if the ship was unseaworthy owing to the fact that she started with an insufficient supply of coal, the shipowner cannot rely upon a negligence clause in the contract and escape responsibility on the ground that it was through the negligence of his servants that the coals were insufficient at starting (*t*), or that no call was made at a usual coaling station, thereby rendering his ship unseaworthy when she entered upon a new stage of the voyage (*a*). Similarly, where a port-hole has been left open or insecurely fastened in circumstances amounting to unseaworthiness (*b*), the shipowner is responsible if sea water gains access to the cargo and damages it; he is

(*k*) *Burges* v. *Wickham* (1863), 3 B. & S. 669.

(*l*) *Amies* v. *Stevens* (1718), 1 Stra. 127; followed in *Blower* v. *Great Western Rail. Co.* (1872), L. R. 7 C. P. 655.

(*m*) *Steel* v. *State Line Steamship Co.* (1877), 3 App. Cas. 72, *per* Lord CAIRNS, L.C., at p. 76, and *per* Lord BLACKBURN, at p. 90; *Cohn* v. *Davidson* (1877), 2 Q. B. D. 455; *McFadden* v. *Blue Star Line*, [1905] 1 K. B. 697.

(*n*) *The Rona* (1884), 51 L. T. 28. As to when the voyage may be said to commence, see, further, pp. 219, 220, *post*.

(*o*) This principle applies also to time charters (*Havelock* v. *Seddes* (1809), 10 East, 555; *Ripley* v. *Scaife* (1826), 5 B. & C. 167). As to the duty of repairing a ship which becomes unseaworthy on the voyage, see p. 221, *post*. As to a voyage in stages, see pp. 214 *et seq.*, *ante*.

(*p*) *Dunbar* v. *Smuthwaite* (1854), 3 W. R. 68; *Gilroy, Sons & Co.* v. *Price & Co.*, [1893] A. C. 56, *per* Lord HERSCHELL, L.C., at p. 63.

(*q*) *Lyon* v. *Mells* (1804), 5 East, 428.

(*r*) *Cargo ex Laertes* (1887), 12 P. D. 187; *The Northumbria*, [1906] P. 292; compare *South American Export Syndicate* v. *Federal Steam Navigation Co.* (1909), 14 Com. Cas. 228.

(*s*) *The Glenfruin* (1885), 10 P. D. 103; *Ship "Maori King"* (*Owners of Cargo*) v. *Hughes*, [1895] 2 Q. B. 550, C. A.; *The Europa*, [1908] P. 84. Nor can he rely on M. S. Act, 1894, s. 502, when fire ensues owing to the defect (*Asiatic Petroleum Co.* v. *Lennard's Carrying Co.*, [1914] 1 K. B. 419, C. A.).

(*t*) *The Vortigern*, [1899] P. 140, C. A.

(*a*) *Ibid.*

(*b*) See p. 214, *ante*.

SECT. 4. The Voyage.

not excused either by an exception against perils of the sea (*c*) or even by an exception against negligence (*d*). The failure to provide a seaworthy ship does not, however, preclude the shipowner in every case of loss or damage from relying upon an exception; he remains covered except in so far as the loss or damage is attributable to unseaworthiness (*e*).

Burden of proof.

310. The burden of proving unseaworthiness rests upon the shipper (*f*). The fact, however, that the ship becomes leaky or goes to the bottom shortly after putting to sea, without there being any storm or other external circumstances to account for the condition or loss, is *primâ facie* evidence of unseaworthiness, and shifts upon the shipowner the burden of proving that she was in fact seaworthy at the time of her departure (*g*).

SUB-SECT. 2.—*The Prosecution of the Voyage.*

Obtaining clearances etc.

311. When the loading is completed and all things are prepared for the commencement of the voyage, it is the duty of the master to obtain the necessary clearances, or permission to sail, from the proper officer at the port of loading (*h*), and, except where, by the terms of the charterparty, the charterer has undertaken to do so (*i*), to pay the necessary port and other charges for that purpose (*k*), including light dues, when payable (*l*). Until this duty has been performed, the ship is not ready to commence her voyage (*m*).

(*c*) Compare *The Glenfruin* (1885), 10 P. D. 103; *Buchanan & Co.* v. *Faber* (1899), 4 Com. Cas. 223.

(*d*) *Steel* v. *State Line Steamship Co.* (1877), 3 App. Cas. 72, followed in *Gilroy, Sons & Co.* v. *Price & Co.*, [1893] A. C. 56; compare *Seville Sulphur and Copper Co., Ltd.* v. *Colvils, Lowden & Co.* (1888), 15 R. (Ct. of Sess.) 616; *Upperton* v. *Union Castle Mail Steamship Co.* (1903), 9 Com. Cas. 50, C. A.

(*e*) *Kish* v. *Taylor*, [1912] A. C. 604, approving *The Europa*, [1908] P. 84, and explaining *Strang, Steel & Co.* v. *Scott (A.) & Co.* (1889), 14 App. Cas. 601, P. C.

(*f*) *Lindsay* v. *Klein, The Tatjana*, [1911] A. C. 194. A ship is *primâ facie* to be deemed seaworthy (*Parker* v. *Potts* (1815), 3 Dow, 23, H. L.).

(*g*) *Watson* v. *Clark* (1813), 1 Dow, 336, H. L., commented on in *Pickup* v. *Thames Insurance Co.* (1878), 3 Q. B. D. 594, C. A.; *Parker* v. *Potts, supra; Ajum Goolam Hossen & Co.* v. *Union Marine Insurance Co., Hajee Cassim Joosub* v. *Ajum Goolam Hossen & Co.*, [1901] A. C. 362, P. C.; *Lindsay* v. *Klein, The Tatjana, supra.*

(*h*) See p. 81, *ante*.

(*i*) A charterer who has undertaken to pay all "port charges" is not bound to pay pilotage dues (*Whittal & Co.* v. *Rahtken's Shipping Co., Ltd.*, [1907] 1 K. B. 783); compare *London Transport Co., Ltd.* v. *Bessler, Waechter & Co., Ltd.* (1908), 24 T. L. R. 531, H. L., where the contract provided for payment by the steamer of customs dues on the cargo, not exceeding a certain limit, and it was held that the limitation thereby imposed did not extend to an export tax, which the shipowner was therefore bound to pay. The charterer may similarly undertake to pay "dock dues," which include all proper charges which can be and are imposed by the dock authority in respect of the entrance into and use of the dock by the ship (*The Katherine* (1913), 30 T. L. R. 52).

(*k*) *London Transport Co., Ltd.* v. *Bessler, Waechter & Co., Ltd., supra*; compare *Societa Anonima Ungherese di Armamenti Marittimo* v. *Hamburg South American Steamship Co.* (1912), 106 L. T. 957.

(*l*) *Newman and Dale* v. *Lamport and Holt*, [1896] 1 Q. B. 20. As to light dues, see pp. 629 *et seq.*, *post*.

(*m*) *Hudson* v. *Bilton* (1856), 6 E. & B. 565; compare *Roelandts* v. *Harrison* (1854), 9 Exch. 444, *per* PARKE, B., at p. 456.

Sailing from port.

312. Upon obtaining his clearances, it is the duty of the master to commence the voyage without delay (*n*). Where no time is specified for the ship's departure, the master is bound to start within a reasonable time (*o*). He need not, therefore, put to sea at once, if the weather is unpropitious, considering the nature of the ship, but may wait until the weather moderates (*p*). If, however, the master has no lawful excuse for his delay in starting, the shipowner is liable to the shipper for the consequences (*q*), since the shipper's duty is fulfilled when the loading is completed (*r*), and all risk of subsequent delay falls upon the shipowner (*s*). The shipowner is therefore responsible for any delay occasioned by the master's failure to obtain clearance at an earlier date, even though such failure is attributable to circumstances beyond the master's control (*a*), or by the inability of the ship to proceed upon the voyage (*b*), unless the cause of such inability is covered by an exception (*c*).

What constitutes sailing.

313. Whenever the contract specifies the date at which the ship is required to commence her voyage, it becomes important to consider what acts on the part of the ship constitute the commencement of the voyage, since a failure to commence the voyage on the due date is a breach of contract for which the shipowner is responsible, unless excused by an exception (*d*). The point is also important in connexion with the payment of advanced freight (*e*), which is usually made payable on the final sailing of the ship from her port of loading (*f*) or so many days afterwards (*g*), since, if the ship is lost, after the completion of the loading, but before she has finally sailed, the shipowner will not be entitled to recover even the advanced freight (*h*). To constitute a final sailing for this purpose (*i*) it is not sufficient that the ship should have her clearances on board and be ready to sail (*k*), or even that she has left her moorings or broken ground (*l*); she must have taken her final departure from her port of loading (*m*), and must be at sea, outside

(*n*) See *The Wilhelm* (1865), 14 L. T. 636.
(*o*) See p. 94, *ante*.
(*p*) Compare *Burges* v. *Wickham* (1863), 3 B. & S. 669.
(*q*) *The Wilhelm*, *supra*.
(*r*) *Smith* v. *Wilson* (1817), 6 M. & S. 78; see p. 199, *ante*.
(*s*) *The Wilhelm*, *supra*.
(*a*) *Barret* v. *Dutton* (1815), 4 Camp. 333.
(*b*) *Pringle* v. *Mollett* (1840), 6 M. & W. 80; *The Wilhelm*, *supra*.
(*c*) See pp. 107 *et seq.*, *ante*.
(*d*) See p. 179, *ante*.
(*e*) As to advance freight, see pp. 311 *et seq.*, *post*.
(*f*) *Roelandts* v. *Harrison* (1854), 9 Exch. 444.
(*g*) *Great Indian Peninsula Rail. Co.* v. *Turnbull* (1885), 53 L. T. 325; *Price* v. *Livingstone* (1882), 9 Q. B. D. 679, C. A.; *Sailing-ship "Garston" Co.* v. *Hickie* (1885), 15 Q. B. D. 580, C. A.
(*h*) *Sailing-ship "Garston" Co.* v. *Hickie*, *supra*; *Thompson* v. *Gillespy* (1855), 5 E. & B. 209; and see p. 312, *post*.
(*i*) As to the meaning of "final sailing" in a policy of marine insurance, see title INSURANCE, Vol. XVII., pp. 419, 420.
(*k*) *Roelandts* v. *Harrison*, *supra*.
(*l*) *Thompson* v. *Gillespy*, *supra*; *Roelandts* v. *Harrison*, *supra*; *Sailing-ship "Garston" Co.* v. *Hickie*, *supra*; *Hudson* v. *Bilton* (1856), 6 E. & B. 565.
(*m*) *Roelandts* v. *Harrison*, *supra*; *Price* v. *Livingstone*, *supra*.

SECT. 4. The Voyage.

the limits of the port in the strict sense of the word (*n*), ready to proceed upon her voyage (*o*). It is not necessary that she should be progressing under her own sail and steam, since she may be in charge of a tug (*p*); nor need she be making progress at all, since she may cast anchor in a roadstead outside for the purpose of awaiting more favourable weather (*q*): she has, nevertheless, got clear of the port for the purpose of proceeding on the voyage, and she has therefore finally sailed within the meaning of the contract (*r*). Since, at the time of her departure, she had no intention of returning, it is immaterial that she is afterwards compelled to return to the port of loading or is driven within its limits by stress of weather (*s*). If, however, the ship, at the time when she leaves the port, is not ready to proceed upon the voyage, either because she is not fully equipped or properly manned (*t*), or because the bills of lading have not been signed (*a*), or her clearances obtained (*b*), and if she leaves the port with the intention of anchoring (*c*) or waiting outside (*d*) until the necessary preparations have been completed, the fact that she has got clear of the port without any intention of returning does not constitute a final sailing, since she is not at that moment in a position to proceed (*e*). If, therefore, she is lost before such preparations are completed, no advance freight is payable (*f*).

Proceeding without delay.

314. After commencing the voyage, it is the duty of the master, except in so far as he has some lawful excuse (*g*), to proceed to the port of discharge without delay, and without calling at any intermediate port, or deviating from the ordinary course of navigation (*h*).

Keeping ship seaworthy.

315. It is the duty of the master, as representing the shipowner, to carry the goods to the port of discharge in the same bottom (*i*), though, in the execution of this duty, he must consider the interests of all persons concerned in the adventure (*k*). He must therefore, as far as possible, maintain the ship in a seaworthy

(*n*) As to the meaning of the word "port," see *Sailing-ship "Garston" Co.* v. *Hickie* (1885), 15 Q. B. D. 580; approved in *Hunter* v. *Northern Marine Insurance Co.* (1888), 13 App. Cas. 717; see p. 182, *ante*.

(*o*) *Roelandts* v. *Harrison* (1854), 9 Exch. 444.

(*p*) *Price* v. *Livingstone* (1882), 9 Q. B. D. 679, C. A.

(*q*) *Thompson* v. *Gillespy* (1855), 5 E. & B. 209; *Price* v. *Livingstone, supra*.

(*r*) *Price* v. *Livingstone, supra*.

(*s*) *Ibid.*

(*t*) *Thompson* v. *Gillespy, supra*.

(*a*) *Ibid.*

(*b*) *Hudson* v. *Bilton* (1856), 6 E. & B. 565.

(*c*) *Thompson* v. *Gillespy, supra; Sailing-ship "Garston" Co.* v. *Hickie, supra, per* BRETT, M.R., at p. 587.

(*d*) *Hudson* v. *Bilton, supra*.

(*e*) *Thompson* v. *Gillespy, supra*.

(*f*) *Roelandts* v. *Harrison, supra; Thompson* v. *Gillespy, supra; Hudson* v. *Bilton, supra;* and see p. 312, *post*.

(*g*) See pp. 95 *et seq.*, *ante*.

(*h*) Abbott on Shipping, 5th ed., p. 239; 14th ed., p. 522.

(*i*) *Duranty* v. *Hart, Cargo ex "Hamburg"* (1863), 2 Moo. P. C. C. (N.S.) 289, 319.

(*k*) *The Rona* (1884), 51 L. T. 28; see p. 223, *post*.

condition throughout the voyage (*l*), and if she becomes unseaworthy must execute any repairs which may be necessary, provided that he has a reasonable opportunity of doing so without any great delay or expense to the various interests involved (*m*). If the master fails to perform his duty in this respect, the shipowner is responsible to the owners of the goods on board his ship (*n*), except in so far as he may be excused by the terms of the contract (*o*). Even where the unseaworthiness is caused by an excepted peril, it is the duty of the master to remedy it by every reasonable means in his power (*p*); otherwise he is guilty of negligence, and the shipowner is not excused, unless he is protected by the terms of his contract against the consequences of the master's negligence (*q*). Thus, where the actual safety of the ship, and consequently of the cargo, is endangered, it is the duty of the master, if possible, to save his ship by removing the cause of danger, as, for instance, by stopping up a leak (*r*), or keeping down the water in the holds by pumping (*s*), or by returning to the port of loading or proceeding to a port of refuge for the purpose of executing the necessary repairs (*t*). Since, however, a mere error of judgment is not equivalent to negligence, the master is not guilty of negligence in continuing his voyage without putting into a port for repairs, if he honestly believes that the ship, in spite of her condition, is capable of reaching her destination, and it is immaterial that she in fact founders before she does so (*a*). When once she has reached a port of refuge, she must not, whatever may be the cause of her unseaworthiness, proceed to sea again in an unseaworthy condition (*b*); otherwise the shipowner is responsible, whether the original cause of her unseaworthiness is covered by an exception or not, since the master, in leaving the port of refuge without repairing, is guilty of negligence (*c*), and,

(*l*) *Assicurazioni Generali* v. *S.S. Bessie Morris Co.*, [1892] 2 Q. B. 652, C. A.; *The Rona* (1884), 51 L. T. 28; *Worms* v. *Storey* (1855), 11 Exch. 427.

(*m*) *Svendsen* v. *Wallace* (1885), 10 App. Cas. 404, *per* Lord BLACKBURN, at pp. 417, 418, approving *Rosetto* v. *Gurney* (1851), 11 C. B. 176, and *Shipton* v. *Thornton* (1838), 9 Ad. & El. 314; *Hill* v. *Wilson* (1879), 4 C. P. D. 329, *per* LINDLEY, J., at p. 333; *Moss* v. *Smith* (1850), 9 C. B. 94, *per* CRESSWELL, J., at p. 106; *Philpott* v. *Swann* (1861), 11 C. B. (N. S.) 270; *Benson* v. *Chapman* (1849), 2 H. L. Cas. 696, *per* ALDERSON, B., at p. 720; *The Rona*, *supra*. The view has been expressed that the shipowner is not bound to execute any repairs at all (*Atwood* v. *Sellar & Co.* (1879), 4 Q. B. D. 342, *per* COCKBURN, C.J., at p. 358; compare *Worms* v. *Storey* (1855), 11 Exch. 427, *per* PARKE, B., at pp. 429, 430); but this is inconsistent with the cases cited above; see also *Wilson* v. *Bank of Victoria* (1867), L. R. 2 Q. B. 203, *per* BLACKBURN, J., at pp. 211, 212.

(*n*) See the cases cited in note (*m*), *supra*.

(*o*) *The Cressington*, [1891] P. 152; compare *The Glenochil*, [1896] P. 10.

(*p*) *The Rona*, *supra*.

(*q*) *Worms* v. *Storey*, *supra*.

(*r*) *The Cressington*, *supra*.

(*s*) Compare *Stanton* v. *Richardson* (1875), 3 Asp. M. L. C. 23, H. L.

(*t*) *Phelps, James & Co.* v. *Hill*, [1891] 1 Q. B. 605, C. A. As to proceeding to a port of refuge, see *Kish* v. *Taylor*, [1912] A. C. 604.

(*a*) *Cohn* v. *Davidson* (1877), 2 Q. B. D. 455 (where the court approved a summing up to this effect).

(*b*) *Worms* v. *Storey*, *supra*; see p. 211, *ante*. As to the master's right to abandon the voyage, see p. 222, *post*.

(*c*) *Worms* v. *Storey*, *supra*; *The Rona*, *supra*.

SECT. 4. The Voyage.

moreover, the ship, if she has called at the port of refuge pursuant to liberty reserved in the contract, is to be regarded, on her departure, as entering upon a new stage of her voyage, for which she must, in the ordinary course, be seaworthy (*d*).

Master's power over cargo.

316. For the purpose of ensuring the due prosecution of the voyage and of maintaining the ship in a seaworthy condition, the master has certain powers over the cargo, the exercise of which, however, is subject to various restrictions (*e*). He may, where the circumstances of the particular case justify it, sacrifice the whole or a portion of the cargo for the purpose of preserving the ship and the rest of the cargo, by jettisoning goods to lighten the ship or by burning them to enable the fires to be kept up under the boilers (*f*). He may sell a portion (*g*), but not the whole (*h*), of the cargo for the purpose of raising funds to defray the expenses of such repairs as may be necessary to enable the ship to complete the voyage (*i*), and for the same purpose he may hypothecate even the whole of the cargo (*k*). No portion of the cargo, however, must be sold or hypothecated unless the master is unable to raise funds in any other way (*l*), and unless there is a prospect of benefit, direct or indirect, to the owners of the cargo (*m*).

Transhipment.

317. If the ship is disabled from continuing her voyage, the master is entitled to tranship the cargo and convey it upon another ship to its destination (*n*). If he is unable or unwilling to do so, he may abandon the voyage, in which case the owner of the cargo is entitled to claim delivery of his cargo at the place where the voyage is abandoned (*o*). Except, however, where the failure to continue the voyage is attributable to some excepted peril, the shipowner is guilty of a breach of contract, since he has engaged to convey the cargo to its destination, and the owner of the cargo is entitled to recover any damages which he may have sustained (*p*). Even where the ship is damaged by an excepted peril, the shipowner is not necessarily absolved, since he is bound to fulfil his engagement by every reasonable and practicable method (*q*). Hence the ship cannot be regarded as having been rendered by an excepted peril incapable of performing her voyage merely because,

(*d*) *The Vortigern*, [1899] P. 140, C. A.; see p. 214, *ante*.
(*e*) See pp. 229 *et seq.*, *post*.
(*f*) See p. 74, *ante*, pp. 317, 318, *post*.
(*g*) See p. 249, *post*.
(*h*) As to when the whole of the cargo may be sold, see pp. 252, 253, *post*.
(*i*) See p. 248, *post*.
(*k*) *Hussey* v. *Christie* (1808), 9 East, 426; *The Gratitudine* (1801), 3 Ch. Rob. 240; *The Elephanta* (1851), 15 Jur. 1185; see p. 240, *post*.
(*l*) *The Dowthorpe* (1843), 2 Wm. Rob. 73; *La Constancia* (1845), 2 Wm. Rob. 404; see p. 243, *post*.
(*m*) *Hallett* v. *Wigram* (1850), 9 C. B. 580; see p. 244, *post*.
(*n*) See pp. 233, *et seq.*, *post*.
(*o*) See p. 236, *post*.
(*p*) *Philpott* v. *Swann* (1862), 11 C. B. (N. S.) 270; *Assicurazioni Generali* v. *S.S. Bessie Morris Co.*, [1892] 2 Q. B. 652, C. A.
(*q*) See *Shipton* v. *Thornton* (1838), 9 Ad. & El. 314; *Tronson* v. *Dent* (1853), 8 Moo. P. C. C. 419.

How far bound to repair.

in consequence of such peril, she wants repairing (*r*) and cannot continue her voyage until she is repaired (*s*). It therefore becomes important to consider how far the shipowner is bound to repair his ship, since, if he does not repair her and abandons the voyage, the question may arise whether his inability to carry the cargo to its destination is to be attributed not to prevention by an excepted peril for which he is not responsible, but to his failure to repair, which is a breach of his duty towards the owner of the cargo (*t*). There is clearly a prevention by an excepted peril where the ship is so damaged that she cannot be repaired (*a*), or where, though she is capable of being repaired, there are no facilities for repairing her at the port of refuge (*b*). On the other hand, the shipowner is bound to repair the ship if it is reasonably possible for him to do so (*c*), and a failure to repair her, by which she is prevented from continuing her voyage, is not a prevention by an excepted peril (*d*). The cost of repairs, however, falls upon the shipowner (*e*), unless the need for repairs is occasioned by a general average loss (*f*); and if the cost is so prohibitive that he cannot prudently and reasonably repair, he cannot be called upon to do so (*g*). If the cost of the repairs necessary to enable the ship to complete her voyage is out of all proportion to the benefit which the shipowner will derive from them, it is impossible, in a business sense, to repair her (*h*), and the shipowner is therefore prevented from completing the voyage not by his failure to repair, but by an excepted peril (*i*). The cost of repairs must, however, be in fact unreasonable; the shipowner is not excused for a failure to repair because the master believed that the repairs could not be executed at a reasonable cost (*k*). In any case, whatever may be the cost of repairs, it is the duty of the shipowner to continue the voyage if he has in fact repaired the ship (*l*).

Seeking port of refuge.

318. Where the master is compelled to seek a port of refuge for the purpose of repairing the ship, he is not necessarily guilty of a deviation because he does not make for the nearest port; he is

(*r*) *Moss* v. *Smith* (1850), 9 C. B. 94.
(*s*) *Benson* v. *Chapman* (1849), 2 H. L. Cas. 696, 720.
(*t*) *Duranty* v. *Hart, Cargo ex "Hamburg"* (1863), 2 Moo. P. C. C. (N. S.) 289; *Hill* v. *Wilson* (1879), 4 C. P. D. 329; *Assicurazioni Generali* v. *S.S. Bessie Morris Co.*, [1892] 2 Q. B. 652, C. A.; *Hansen* v. *Dunn* (1906), 11 Com. Cas. 100; compare *Benson* v. *Duncan* (1849), 3 Exch. 644, Ex. Ch., and see p. 235, *post*.
(*a*) *Moss* v. *Smith, supra*; *Assicurazioni Generali* v. *S.S. Bessie Morris Co., supra*.
(*b*) *Moss* v. *Smith, supra*.
(*c*) See p. 235, *post*.
(*d*) *Philpott* v. *Swann* (1862), 11 C. B. (N. S.) 270; *Assicurazioni Generali* v. *S.S. Bessie Morris Co., supra*.
(*e*) *Benson* v. *Duncan, supra*; *Hallett* v. *Wigram* (1850), 9 C. B. 580.
(*f*) See p. 320, *post*.
(*g*) *Moss* v. *Smith, supra*.
(*h*) *Assicurazioni Generali* v. *S.S. Bessie Morris Co., supra*.
(*i*) *Moss* v. *Smith, supra*; *Assicurazioni Generali* v. *S.S. Bessie Morris Co., supra*.
(*k*) *Cannan* v. *Meaburn* (1823), 1 Bing. 243.
(*l*) *Assicurazioni Generali* v. *S.S. Bessie Morris Co., supra*.

SECT. 4. The Voyage.

entitled to take into consideration the relative merits of different ports as regards their facilities for dealing with the ship or cargo, and may select that port which is, in his opinion, the most suitable (*m*).

SUB-SECT. 3.—*The Preservation of the Cargo.*

Extent of shipowner's duties.

319. In so far as the shipowner is in the position of an insurer (*n*), it is unnecessary to consider his duties in respect of the custody and protection of the cargo during the voyage, since he is absolutely responsible for its safety (*o*). He is therefore equally liable to its owner in case of its loss or damage, whether caused by the failure of himself or his servants to exercise due care (*p*) or by some peril wholly beyond his control (*q*). The existence of a special contract containing exceptions modifies the extent of his liability (*r*); but he remains, as before, liable for all loss or damage not attributable to an excepted peril (*s*). Where, however, the question arises whether or not the loss or damage is to be attributed to an excepted peril, the nature and extent of the shipowner's duties must be taken into account (*a*). In the absence of any express provision in the contract to the contrary (*b*), he is responsible to the cargo owner for the due performance of such duties, and is not protected by the terms of his contract if the loss or damage might, in spite of the happening of an excepted peril, have been avoided had such duties been duly performed (*c*).

Taking care of cargo.

320. It is the duty of the master, as representing the shipowner (*d*), to take reasonable care of the goods entrusted to him (*e*). The extent of this duty varies according to the nature of the

(*m*) *Phelps, James & Co.* v. *Hill*, [1891] 1 Q. B. 605, C. A.

(*n*) See p. 325, *post*.

(*o*) See *ibid.*

(*p*) *Lloyd* v. *General Iron Screw Collier Co.* (1864), 3 H. & C. 284; *Grill* v. *General Iron Screw Colliery Co.* (1868), L. R. 3 C. P. 476, Ex. Ch.; *The Accomac* (1890), 15 P. D. 208, C. A.; *The Chasca* (1875), L. R. 4 A. & E. 446; *Steinman & Co.* v. *Angier Line*, [1891] 1 Q. B. 619, C. A.; *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521, C. A.; *Hayn* v. *Culliford* (1879), 4 C. P. D. 182, C. A.

(*q*) *Spence* v. *Chodwick* (1847), 10 Q. B. 517; *Benson* v. *Duncan* (1849), 3 Exch. 644, Ex. Ch.; *Kay* v. *Wheeler* (1867), L. R. 2 C. P. 302, Ex. Ch.; *Laveroni* v. *Drury* (1852), 8 Exch. 166; *Finlay* v. *Liverpool and Great Western Steamship Co.* (1870), 23 L. T. 251; *De Rothschild* v. *Royal Mail Steam Packet Co.* (1852), 7 Exch. 734; *Thrift* v. *Youle & Co.* (1877), 2 C. P. D. 432.

(*r*) See pp. 107 *et seq.*, *ante*.

(*s*) See, for instance, *Thrift* v. *Youle & Co.*, *supra*; *De Rothschild* v. *Royal Mail Steam Packet Co.*, *supra*; and the cases cited in notes (*p*), (*q*), *supra*.

(*a*) *Notara* v. *Henderson* (1872), L. R. 7 Q. B. 225, Ex. Ch.; and see p. 232, *post*.

(*b*) See p. 116, *ante*.

(*c*) *Adam* v. *Morris* (*J. & D.*) (1890), 18 R. (Ct. of Sess.) 153; and see p. 233, *post*.

(*d*) As to the master's duties as representing the owner of the cargo, see pp. 228, 229, *post*.

(*e*) *Notara* v. *Henderson*, *supra*, *per* WILLES, J., at p. 235.

goods and the circumstances of the particular case (*f*). If the goods, from their nature, require airing or ventilating, as in the case of a fruit cargo, he must take the usual and proper methods for the purpose (*g*). If they are capable of being damaged by water, he must keep the water away from them by pumping the holds clear of drainage (*h*), or by battening down the hatches during heavy weather (*i*), or by taking any other measures that may be reasonably required (*k*). Similarly, if they are capable of being stolen during the voyage, he must protect them against theft (*l*). For loss or damage attributable to the master's failure to perform this duty the shipowner is responsible, in spite of an exception covering the actual cause of such loss or damage (*m*), since, if the goods heat through lack of ventilation (*n*), or are damaged by water (*o*), or are stolen (*p*) through the master's negligence in taking care of them, the efficient (*q*) cause of the loss or damage is not the heating, or the peril of the sea, or the theft, for all of which there may by the terms of the contract be no responsibility, but the master's negligence (*r*). Where, on the other hand, the master has taken all reasonable precautions to preserve the goods, the fact that, notwithstanding such precautions, the goods are lost or damaged, does not preclude the shipowner from relying upon the exceptions of his contract (*s*); and the same principle applies where the master is prevented, by the happening of an excepted peril, from carrying out his duties, as, for instance, where he is prevented from ventilating

(*f*) *Notara* v. *Henderson* (1872), L. R. 7 Q. B. 225, Ex. Ch., *per* WILLES, J., at p. 237. The extent of the master's duty also depends upon the law of the ship's flag (*The Bahia* (1864), 12 L. T. 145).

(*g*) *Tronson* v. *Dent* (1853), 8 Moo. P. C. C. 419, 456; *Steamship Calcutta Co., Ltd.* v. *Weir* (*Andrew*) *& Co.*, reported on this point (1910), 15 Com. Cas. 172, *per* HAMILTON, J., at p. 190. Similarly, if the cargo is composed of live cattle, he must provide an adequate quantity of drinking water (*Vallée* v. *Bucknall Nephews* (1900), 16 T. L. R. 362).

(*h*) *Notara* v. *Henderson, supra; The Nepoter* (1869), L. R. 2 A. & E. 375; compare *Stanton* v. *Richardson* (1875), 3 Asp. M. L. C. 23, H. L.

(*i*) *The Thrunscoe*, [1897] P. 301.

(*k*) *Notara* v. *Henderson, supra.*

(*l*) Abbott on Shipping, 5th ed., p. 245; 14th ed., p. 547.

(*m*) *Vallée* v. *Bucknall Nephews, supra.*

(*n*) *The "Freedom"* (1871), L. R. 3 P. C. 594; *Ohrloff* v. *Briscall, The "Helene"* (1866), L. R. 1 P. C. 231; compare *Phillips* v. *Clark* (1857), 2 C. B. (N. S.) 156; *Leuw* v. *Dudgeon* (1867), L. R. 3 C. P. 17, n.

(*o*) *The Cressington*, [1891] P. 152; *Siordet* v. *Hall* (1828), 4 Bing. 607; compare *Steel* v. *State Line Steamship Co.* (1877), 3 App. Cas. 72; *The Accomac* (1890), 15 P. D. 208, C. A.; *The Nepoter, supra.*

(*p*) *The Prinz Heinrich* (1897), 14 T. L. R. 48.

(*q*) See pp. 232, 233, *post.*

(*r*) The shipowner is, however, protected by an express exception against the master's negligence (*The Cressington, supra; Blackburn* v. *Liverpool, Brazil and River Plate Steam Navigation Co.*, [1902] 1 K. B. 290; *Smitton* v. *Orient Steam Navigation Co.* (1907), 12 Com. Cas. 270).

(*s*) *Ohrloff* v. *Briscall, The "Helene," supra; Laurie* v. *Douglas* (1846), 15 M. & W. 746. The burden of proving that the master has not taken all reasonable precautions lies on the shipper (*Czech* v. *General Steam Navigation Co.* (1867), L. R. 3 C. P. 14; *Moes, Moliere and Tromp* v. *Leith and Amsterdam Shipping Co.* (1867), 5 Macph. (Ct. of Sess.) 988, followed in *Horseley* v. *Baxter Brothers & Co., The "Hesper"* (1893), 20 R. (Ct. of Sess.) 333; *Ohrloff* v. *Briscall, The "Helene," supra; Craig and Rose* v. *Delargy etc.* (1879), 6 R. (Ct. of Sess.) 1269; *The Glendarroch*, [1894]

SECT. 4. The Voyage.

the cargo by a storm (*t*). Even where the loss or damage is attributable to the precautions actually adopted by the master, as, for instance, where in a storm goods are jettisoned (*a*), or the cargo heats owing to the hatches being battened down (*b*), the fact that such precautions were rendered necessary by an excepted peril must be taken into consideration, and the excepted peril, and not the master's act, must be regarded as the efficient cause (*c*).

Checking deterioration.

321. It is the duty of the master not merely to do what is necessary to preserve the goods on board his ship during the ordinary incidents of the voyage, but also to take reasonable measures to check and arrest their loss, destruction, or deterioration through accidents, for the necessary effects of which there is, by reason of an exception in the contract, no original liability upon the shipowner (*d*); and for the master's failure to perform this part of his duty the shipowner is equally responsible (*e*). In considering what measures are reasonable, it is not sufficient to point to the fact that the goods have been lost or damaged, and to suggest measures which might have been taken to prevent them being so lost or damaged (*f*); it is necessary to take into account all circumstances affecting the risk, trouble, delay and inconvenience, and in particular the place, the season, the extent of the deterioration, the opportunity and means at hand, and the interests of other persons concerned in the adventure, which it might be unfair to prejudice for the sake of the part of the cargo in peril (*g*). It must be shown that the measures suggested would have been reasonable and prudent to take in the interest of the shipper, and would in fact have been taken by him if the whole adventure had been under his control and at his risk (*h*), and in addition that there is nothing in the circumstances of the case indicating any special risk, trouble, inconvenience, or other objection (*i*). Moreover, the liability of the shipowner does not necessarily depend upon the result of the measures actually taken by the master (*k*). A fair allowance must be made for the difficulties in which the master may be involved.

P. 226, C. A.; *The Ida* (1875), 32 L. T. 541, P. C.; *Muddle* v. *Stride* (1840), 9 C. & P. 380; *Williams* v. *Dobbie* (1884), 11 R. (Ct. of Sess.) 982).

(*t*) *The Thrunscoe*, [1897] P. 301.

(*a*) See p. 228, *post.*

(*b*) *The Thrunscoe, supra.*

(*c*) *Ibid.*; *The Diamond*, [1906] P. 282; compare *The Barcore*, [1896] P. 294.

(*d*) *Notara* v. *Henderson* (1872), L. R. 7 Q. B. 225, Ex. Ch., *per* WILLES, J., at p. 235; compare *Tronson* v. *Dent* (1853), 8 Moo. P. C. C. 419, 456.

(*e*) *Adam* v. *Morris* (*J. & D.*) (1890), 18 R. (Ct. of Sess.) 153.

(*f*) *Notara* v. *Henderson, supra, per* WILLES, J., at p. 237; compare pp. 227 *et seq., post.*

(*g*) *Notara* v. *Henderson, supra*; *Tronson* v. *Dent, supra*; *Australasian Steam Navigation Co.* v. *Morse* (1872), L. R. 4 P. C. 222; *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A.

(*h*) *Notara* v. *Henderson, supra*; *Atlantic Mutual Insurance Co.* v. *Huth* (1880), 16 Ch. D. 474, C. A.

(*i*) *Notara* v. *Henderson, supra.* Therefore the master is at liberty to take into account questions of expense (*Tronson* v. *Dent, supra*; *Australasian Steam Navigation Co.* v. *Morse, supra*).

(*k*) *Notara* v. *Henderson, supra*; compare Abbott on Shipping, 5th ed., p. 241; 14th ed., p. 528.

It must be borne in mind that he is to exercise a discretionary power, and no liability arises unless it can be affirmatively proved that he has been guilty of a breach of duty (*l*). At the same time the question whether the shipowner is or is not liable does not depend upon the master's honest belief that what he proposes to do is the right thing; the master must consider the interest not merely of the ship, but of the whole adventure, and act accordingly (*m*).

Preventing damage from spreading.

322. In the performance of this part of his duty the master must, if the goods suffer damage in the course of the voyage, endeavour to save them, and must, as far as possible, by pumping or using other proper means, prevent the damage from spreading (*n*). He is not, however, bound to seek a port of refuge as soon as it becomes clear that by going on some mischief will be done to some portion of the cargo, especially if such a course will put all concerned to enormous expense (*o*), and the ship remains in a fit condition to continue her voyage (*p*). The performance of this duty, whether it is for the joint benefit of the shipowner and the cargo owner, or for the benefit of the cargo owner only, cannot be insisted on if a deviation is involved (*q*). Nevertheless, in considering the question whether a deviation is justifiable or not (*r*), the interests of the cargo as well as of the ship may be taken into account as influencing the master's decision (*s*). Moreover, reasonable delay at a port of call for purposes connected with the voyage, though not necessary for its completion, does not amount to deviation (*t*). If, therefore, the ship puts into a port of call or seeks a port of refuge, where an opportunity of coping with the mischief presents itself, the master is entitled to make use of the opportunity, if it is possible to do so without unreasonably delaying the ship (*a*). In fact, as regards the owner of the particular goods affected, it is his duty to make use of it if possible, otherwise the shipowner is responsible for the consequences of the master's breach of duty (*b*). Thus, if it is reasonably possible to remedy the

(*l*) *Notara* v. *Henderson* (1872), L. R. 7 Q. B. 225, Ex. Ch.; *Australasian Steam Navigation Co.* v. *Morse* (1872), L. R. 4 P. C. 222.

(*m*) *The Rona* (1884), 51 L. T. 28; *Atlantic Mutual Insurance Co.* v. *Huth* (1880), 16 Ch. D. 474, C. A.; *Tronson* v. *Dent* (1853), 8 Moo. P. C. C. 419; *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A.; see, further, pp. 237, 244, 248, *post*.

(*n*) *Notara* v. *Henderson*, *supra*.

(*o*) *The Rona*, *supra*.

(*p*) *Notara* v. *Henderson* (1870), L. R. 5 Q. B. 346, *per* COCKBURN, C.J., at p. 354.

(*q*) *Notara* v. *Henderson* (1872), L. R. 7 Q. B. 225, Ex. Ch.

(*r*) See pp. 95 *et seq.*, *ante*. A deviation, otherwise justifiable, does not become unjustifiable because the danger is attributable to the shipowner's default (*Kish* v. *Taylor*, [1912] A. C. 604).

(*s*) *Phelps, James & Co.* v. *Hill*, [1891] 1 Q. B. 605, C. A. It is doubtful whether deviation to save the cargo alone, the ship not being in danger, is justifiable; see *Notara* v. *Henderson* (1870), L. R. 5 Q. B. 346, *per* COCKBURN, C.J., at p. 354.

(*t*) *Notara* v. *Henderson* (1872), L. R. 7 Q. B. 225, Ex. Ch., *per* WILLES, J., at p. 235.

(*a*) *Tronson* v. *Dent*, *supra*; compare *Blasco* v. *Fletcher* (1863), 14 C. B. (N. S.) 147.

(*b*) *The "Norway"* (*Owners*) v. *Ashburner, The "Norway"* (1865), 3 Moo. P. C. C. (N. S.) 245; *Notara* v. *Henderson* (1872), L. R. 7 Q. B. 225, Ex. Ch.; *Hansen* v. *Dunn* (1906), 11 Com. Cas. 100.

SECT. 4. The Voyage.

mischief by landing the goods promptly, the master must land them at once, and the shipowner is responsible for any damage occasioned to the goods by their being kept on board, even though the original cause of the damage to them is covered by an exception (*c*). The master must, in addition, take any other reasonable measures that may be necessary, either by way of drying the goods (*d*) or otherwise (*e*), for the purpose of checking the deterioration and rendering the goods fit to be carried on (*f*). The master's duty in this behalf is not confined to cases of physical damage and deterioration; if from any cause whatever it becomes dangerous to carry the goods on, as for instance where they are contraband of war, so that, if he had continued the voyage with the goods on board, he would have been acting recklessly, it is his duty to land them and to place them in safe custody (*g*). In any case in which the whole of the cargo may be in danger of being lost, it is the duty of the master to save the most valuable portion of the cargo first, if it is possible to do so without unreasonably neglecting the interests of the owners of the other portions of the cargo (*h*).

Master's implied authority on behalf of cargo owner.

323. Though, in dealing with the cargo for the purpose of preserving it from harm, the master acts as agent of the shipowner, so as to render the shipowner liable for his breach of duty, he has also an implied (*i*) authority in cases of accident and emergency to deal with the cargo on its owner's behalf, and for the protection of his interests to act for the safety of the cargo in the best manner possible in the circumstances in which it is placed (*j*). In the exercise of this authority he may jettison a portion of the cargo (*k*), or enter into a salvage agreement in respect of it (*l*); he may make arrangements for drying the cargo at a port of refuge and fitting it to be carried on (*m*); if in his opinion it is unsafe to carry it on, he may warehouse it (*n*) or even sell it (*o*). These acts are done by

(*c*) *Adam* v. *Morris* (*J. & D.*) (1890), 18 R. (Ct. of Sess.) 153; *Hansen* v. *Dunn* (1906), 11 Com. Cas. 100.

(*d*) *Tronson* v. *Dent* (1853), 8 Moo. P. C. C. 419; *Notara* v. *Henderson* (1872), L. R. 7 Q. B. 225, Ex. Ch.; compare *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A.

(*e*) *Notara* v. *Henderson*, *supra*.

(*f*) If the cargo is capable of being carried on, the shipowner is entitled to insist upon it being reshipped, unless the full freight is paid (*The Blenheim* (1885), 10 P. D. 167, 171); compare p. 237, *post*).

(*g*) *Nobel's Explosives Co.* v. *Jenkins & Co.*, [1896] 2 Q. B. 326; *Cargo ex Argos*, *Gaudet* v. *Brown* (1873), L. R. 5 P. C. 134.

(*h*) *Royal Mail Steam Packet Co.* v. *English Bank of Rio de Janeiro* (1887), 19 Q. B. D. 362.

(*i*) The contract may, however, provide that in certain events the master is to be deemed to be acting as agent of the cargo owner as well as of the shipowner; see I. S. F. Strike Expenses Clauses, clause 1. As to the I. S. F. Strike Expenses Clauses, see note (*d*), p. 131, *ante*.

(*j*) *Cargo ex Argos*, *Gaudet* v. *Brown*, *supra*, at p. 165; compare *Droege* v. *Suart*, *The Karnak* (1869), L. R. 2 P. C. 505; see, further, pp. 239, 247, 250, *post*.

(*k*) See p. 317, *post*.

(*l*) *Atlantic Mutual Insurance Co.* v. *Huth* (1880), 16 Ch. D. 474, C. A.

(*m*) *Tronson* v. *Dent*, *supra*; *Notara* v. *Henderson*, *supra*; *Acatos* v. *Burns*, *supra*.

(*n*) *Tronson* v. *Dent*, *supra*; *Cargo ex Argos*, *Gaudet* v. *Brown*, *supra*; *Hansen* v. *Dunn*, *supra*.

(*o*) See p. 250, *post*.

the master in his capacity as agent of the cargo owner, and it is therefore the cargo owner and not the shipowner who is bound by them, and who must accept responsibility for them (*p*). Since, however, the master's authority to act on the cargo owner's behalf is only an implied authority, arising where the circumstances of the particular case justify it, whilst his authority to act on the shipowner's behalf is a general authority, he cannot bind the cargo owner by an improper exercise of his authority (*q*), and the shipowner accordingly remains responsible (*r*).

Justifiable exercise of master's authority:

324. To justify the master in exercising his implied authority on behalf of the cargo owner the following conditions must be fulfilled (*s*), namely:—

(1) when necessary;

(1) It must be reasonably necessary, from the circumstances of the case, that the master should deal with the cargo in some way or other on its owner's behalf (*t*). The necessity must arise, not through the act of persons with whom the master is connected (*a*), but through the force of circumstances, by reason of the events that have happened, casting upon him the duty of acting on the cargo owner's behalf (*b*), because the cargo must not be left to perish or left unguarded or uncared for, and there is no one else who can perform the duty of guarding the cargo or taking care of it, or doing the best with it, except the master (*c*). Moreover, the necessity must involve the interests of the cargo owner: the mere necessity of the ship, apart from the adventure, does not entitle the master to act on behalf of the cargo owner (*d*).

(2) where reasonable course adopted;

(2) The course adopted by the master of dealing with the cargo must have been reasonably necessary in the circumstances of the case (*e*). The mere fact that, in consequence of the events that have happened, something must be done with the cargo, and the master is therefore compelled to decide between alternative courses,

(*p*) See pp. 240, 247, 250, *post*. The master, it seems, has a lien on the cargo for his expenses (*Hingston* v. *Wendt* (1876), 1 Q. B. D. 367, *per* BLACKBURN, J., at p. 373).

(*q*) *Tronson* v. *Dent* (1853), 8 Moo. P. C. C. 419, 449; *Duranty* v. *Hart, Cargo ex "Hamburg"* (1863), 2 Moo. P. C. C. (N. S.) 289, 321; *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A.

(*r*) See pp. 231, 250, *post*. The burden of proof lies on the party asserting that his exercise of authority was justifiable (*Atlantic Mutual Insurance Co.* v. *Huth* (1880), 16 Ch. D. 474, C. A.).

(*s*) Compare pp. 239, 247, 250, *post*, where the application of these principles is considered.

(*t*) *Duranty* v. *Hart, Cargo ex "Hamburg," supra; Atlantic Mutual Insurance Co.* v. *Huth, supra; The Pontida* (1884), 9 P. D. 177, C. A., *per* BRETT, M.R., at p. 180; compare *Droege* v. *Suart, The Karnak* (1869), L. R. 2 P. C. 545.

(*a*) *Tronson* v. *Dent, supra.*

(*b*) *Australasian Steam Navigation Co.* v. *Morse* (1872), L. R. 4 P. C. 222, 230. It is immaterial whether the necessity arises from the inherent vice of the goods or from some other cause (*Acatos* v. *Burns, supra, per* BRETT, L.J., at p. 290).

(*c*) *Tronson* v. *Dent, supra.*

(*d*) *The Onward* (1873), L. R. 4 A. & E. 38; *Duranty* v. *Hart, Cargo ex "Hamburg," supra.*

(*e*) *Tronson* v. *Dent, supra; Australasian Steam Navigation Co.* v. *Morse* (1872), L. R. 4 P. C. 222; *Acatos* v. *Burns, supra; Atlantic Mutual Insurance Co.* v. *Huth, supra.*

SECT. 4. The Voyage.

does not, in itself, bind the cargo owner to accept the course which is actually adopted (*f*). It is not sufficient to show that the master thought that he was doing his best, or even that the course adopted was, so far as can be ascertained, the best (*g*) for all concerned (*h*). It may have been a reasonable course (*i*), it may be clear that the cargo might have suffered further damage if the master had not acted as he did (*k*); nevertheless, it may not have been the proper course to adopt (*l*). To bind the cargo owner it must be shown that, in dealing with the goods, the master has adopted the course which, according to the judgment of a wise and prudent man, is apparently the best for the persons for whom he acts in the emergency which has arisen (*m*).

(3) where communication impossible.

(3) The master must be unable to communicate with the owner of the cargo in time to receive his instructions before dealing with the cargo (*n*). It is the duty of the master to communicate with the owner of the cargo, unless it is impossible to do so owing to the urgency of the case, as where there is danger of an immediate loss unless prompt measures are taken to remedy the mischief (*o*). In considering whether communication is possible, the cost and risk incidental to the delay from the attempt to make such communication, and the probability of failure after every exertion should have been made, must be taken into account (*p*). Moreover, regard must be had to the means of communication available and to the prospect of obtaining an answer in time (*q*). The master must, therefore, employ the telegraph, where this can usefully be done; but the state of the particular telegraph, the way in which it is managed, and how far explanatory messages can be transmitted by it, having regard to the time and circumstances in which the master is placed, are important factors in determining whether communication is possible (*r*). In addition, where the ship is a general ship, the

(*f*) *Australasian Steam Navigation Co.* v. *Morse* (1872), L. R. 4 P. C. 222; *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A., *per* BRAMWELL, L.J., at p. 287.

(*g*) *Atlantic Mutual Insurance Co.* v. *Huth* (1880), 16 Ch. D. 474, C. A., *per* COTTON, L.J., at p. 481; but see *Australasian Steam Navigation Co.* v. *Morse*, *supra*, at p. 230; *Acatos* v. *Burns*, *supra*, *per* BRETT, L.J., at p. 290.

(*h*) *Tronson* v. *Dent* (1853), 8 Moo. P. C. C. 419; compare pp. 244, 252, 253, *post*.

(*i*) *Acatos* v. *Burns*, *supra*.

(*k*) *Tronson* v. *Dent*, *supra*.

(*l*) *Acatos* v. *Burns*, *supra*.

(*m*) *Australasian Steam Navigation Co.* v. *Morse*, *supra*; *Acatos* v. *Burns*, *supra*; *Atlantic Mutual Insurance Co.* v. *Huth*, *supra*, *per* THESIGER, L.J., at p. 478; compare *Christy* v. *Row* (1808), 1 Taunt. 300.

(*n*) *Duranty* v. *Hart, Cargo ex "Hamburg"* (1863), 2 Moo. P. C. C. (N. S.) 289, explaining *Wilkinson* v. *Wilson, The "Bonaparte"* (1853), 8 Moo. P. C. C. 450; *The Olivier* (1862), Lush. 484; *Cargo ex Argos, Gaudet* v. *Brown* (1873), L. R. 5 P. C. 134; *The Lizzie* (1868), L. R. 2 A. & E. 254; *Acatos* v. *Burns*, *supra*; compare *La Ysabel* (1812), 1 Dods. 273.

(*o*) *Duranty* v. *Hart, Cargo ex "Hamburg,"* *supra*. On the other hand, if the cargo is not perishable, there may be no urgency (*The Onward* (1873), L. R. 4 A. & E. 38; *Kleinwort, Cohen & Co.* v. *Cassa Marittima of Genoa* (1877), 2 App. Cas. 156, P. C.).

(*p*) *Droege* v. *Suart, The Karnak* (1869), L. R. 2 P. C. 505, 513.

(*q*) *Wallace* v. *Fielden, The Oriental* (1851), 7 Moo. P. C. C. 398; *Australasian Steam Navigation Co.* v. *Morse*, *supra*.

(*r*) *Australasian Steam Navigation Co.* v. *Morse*, *supra*.

position is modified by the circumstances that the cargo belongs to different owners and that the task of tracing out and communicating with them must add greatly to the master's labours, and might lead to the neglect of more pressing duties connected with the saving and dealing with the goods (*s*). These circumstances do not, however, in themselves absolve the master of a general ship from the duty of communicating with such owners of cargo as are known to him (*t*).

Where communication possible.

Where communication is possible, a master who fails to communicate with the owner of the cargo cannot bind him by his dealings with it, since his implied authority to act on its owner's behalf has never come into existence (*a*). He therefore remains the agent of the shipowner, and if he deals improperly with the cargo in the purported exercise of such authority, renders the shipowner liable for the consequences (*b*). On the other hand, if the owner of the cargo neglects to reply to the communication (*c*), or refuses to give instructions (*d*), the master's implied authority, if the circumstances otherwise justify its exercise, comes into existence, and he is entitled to take such steps as may appear to him to be reasonably necessary in the interests of the owner of the cargo. He cannot, however, disregard any instructions which he may receive, and it is immaterial that, in disregarding them, he acted *bonâ fide* and that the steps which he took were reasonable (*e*).

Expenses.

325. Wherever the master has implied authority to deal with the cargo on its owner's behalf, he is entitled to charge the owner with the expenses properly incurred in so doing (*f*), and, if necessary, he may exercise a lien over the cargo in respect of such expenses (*g*). He is also entitled to raise funds for the purpose of defraying such expenses by hypothecating the whole of the cargo (*h*), or by selling a portion of it (*i*), and may, in case of need, pledge the cargo owner's credit (*k*). He cannot, however, charge the cargo owner with such expenses as are properly payable by the shipowner (*l*).

(*s*) *Australasian Steam Navigation Co.* v. *Morse* (1872), L. R. 4 P. C. 222; *Phelps, James & Co.* v. *Hill*, [1891] 1 Q. B. 605, C. A.

(*t*) *The Gratitudine* (1801), 3 Ch. Rob. 240, *per* Lord STOWELL, at p. 266.

(*a*) *Duranty* v. *Hart, Cargo ex "Hamburg"* (1863), 2 Moo. P. C. C. (N. S.) 289; *The Onward* (1873), L. R. 4 A. & E. 38; *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A. The communication must state fully what steps the master proposes to take (*The Onward, supra*; *Kleinwort, Cohen & Co.* v. *Cassa Marittima de Genoa* (1877), 2 App. Cas. 156, P. C.).

(*b*) As to the measure of damages, see *Acatos* v. *Burns, supra*.

(*c*) *Droege* v. *Suart, The Karnak* (1869), L. R. 2 P. C. 505.

(*d*) *Garriock* v. *Walker* (1873), 1 R. (Ct. of Sess.) 100; compare *Australasian Steam Navigation Co.* v. *Morse, supra*.

(*e*) *Acatos* v. *Burns, supra, per* BRETT, L.J., at p. 291; *Dymond* v. *Scott* (1877), 5 R. (Ct. of Sess.) 196; see also pp. 245, 253, *post*.

(*f*) *Cargo ex Argos, Gaudet* v. *Brown* (1873), L. R. 5 P. C. 134.

(*g*) *Hingston* v. *Wendt* (1876), 1 Q. B. D. 367.

(*h*) *Cargo ex Sultan* (1859), Sw. 504; *The Glenmanna* (1860), Lush. 115; see p. 247, *post*.

(*i*) See p. 249, *post*.

(*k*) *Hingston* v. *Wendt, supra, per* BLACKBURN, J., at p. 371.

(*l*) *Cargo ex Argos, Gaudet* v. *Brown, supra*. Under the I. S. F. Strike Expenses Clauses (see note (*d*), p. 131, *ante*), clauses 2, 3, provision is made for apportioning the expenses incurred under clause 1 between the shipowner and the cargo owner, the cargo owner not being liable for

SECT. 4. **The Voyage.**

Shipowner's liability.

326. Even though the master may not have been guilty of a breach of duty, either as regards the ship (*m*) or as regards the cargo (*n*), the shipowner is nevertheless liable for any loss or damage which the cargo (*o*) may sustain, unless the cause of the loss or damage is covered by an exception in the contract (*p*). To exempt the shipowner, it is not sufficient to prove that the loss or damage took place and that, at the same time, an excepted peril happened (*q*); he must show that the loss or damage was proximately caused by the excepted peril (*r*). Where there is only one cause to which the loss or damage can be attributed, the position of the shipowner depends merely upon the construction to be placed upon the language of the particular exception (*s*). If the language used is wide enough to include the actual cause of the loss, he is exempt from liability (*t*): if he has failed to include it, he remains liable (*a*). Thus, a cargo which is eaten by rats in the hold of a ship is not lost, within the meaning of an exception, either by a peril of the sea (*b*), or by the act of God (*c*). Where, however, there has been a succession at intervals of causes which must have existed in order to bring about the loss, the question arises as to which cause must be taken as the cause to which the loss is to be attributed (*d*). If there has been an interruption in the sequence of causes, the last cause alone is to be taken into consideration, and the others rejected, although the loss could not have been brought about without them (*e*). Thus, where a cargo is damaged owing to the fact that sea-water gains access to it through a hole in the

Proximate cause.

more than 20 per cent. of the actual net value of the cargo, and under clause 4 the shipowner is given a lien on the cargo for the amount due from the cargo owner.

(*m*) See pp. 211 *et seq.*, *ante*.

(*n*) See pp. 224 *et seq.*, *ante*.

(*o*) As to the measure of damages recoverable, see pp. 288 *et seq.*, *post*.

(*p*) Abbott on Shipping, 5th ed., p. 251; 14th ed., p. 577; see pp. 107 *et seq.*, *ante*.

(*q*) *Wilson, Sons & Co.* v. *The "Xantho"* (*Owners of Cargo*) (1887), 12 App. Cas. 503, *per* Lord HERSCHELL, at p. 512; *Philpott* v. *Swann* (1861), 11 C. B. (N. S.) 270.

(*r*) *Smith* v. *Shepherd* (1796), cited in Abbott on Shipping, 5th ed., p. 253; 14th ed., p. 578; *Wilson, Sons & Co.* v. *The "Xantho"* (*Owners of Cargo*), *supra*; *Hamilton, Fraser & Co.* v. *Pandorf & Co.* (1887), 12 App. Cas. 518; *The "Freedom"* (1871), L. R. 3 P. C. 594; compare title INSURANCE, Vol. XVII., p. 437.

(*s*) For the rules of construction to be applied, see p. 138, *ante*.

(*t*) *Hamilton, Fraser & Co.* v. *Pandorf & Co.*, *supra*; *The Pearlmoor*, [1904] P. 286.

(*a*) *Taylor* v. *Dunbar* (1869), L. R. 4 C. P. 206; *Thames and Mersey Marine Insurance Co.* v. *Hamilton, Fraser & Co.* (1887), 12 App. Cas. 484; *Dale* v. *Hall* (1750), 1 Wils. 281; *Laveroni* v. *Drury* (1852), 8 Exch. 166; *Kay* v. *Wheeler* (1867), L. R. 2 C. P. 302, Ex. Ch.; *Taylor* v. *Liverpool and Great Western Steam Co.* (1874), L. R. 9 Q. B. 546; *The Nepoter* (1869), L. R. 2 A. & E. 375; *Thrift* v. *Youle & Co.* (1877), 2 C. P. D. 432; *Barrow* v. *Williams* (1890), 7 T. L. R. 37; and see pp. 107 *et seq.*, *ante*.

(*b*) *Hamilton, Fraser & Co.* v. *Pandorf & Co.*, *supra*; *Kay* v. *Wheeler*, *supra*; *Laveroni* v. *Drury*, *supra*.

(*c*) *Dale* v. *Hall*, *supra*.

(*d*) Compare *Reischer* v. *Borwick*, [1894] 2 Q. B. 548, C. A., *per* LINDLEY, L.J., at p. 551.

(*e*) Compare *Pink* v. *Fleming* (1890), 25 Q. B. D. 396, C. A., *per* Lord ESHER, M.R., at p. 397, as explained in *Reischer* v. *Borwick* *supra*.

ship's side, the damage is attributable, if no question of negligence on the part of the master or crew or seaworthiness of the ship arises, to a peril of the sea (*f*); and it is unnecessary to inquire into the cause of there being a hole through which the sea water is enabled to enter the ship (*g*). Though it is true that the water could not have entered in the absence of the hole, and that the damage therefore would not have happened if the cause which produced the hole had not operated, nevertheless, the immediate and proximate cause of the damage is the entrance of the water (*h*). The cause which produced the hole, whether it is a cannon-ball striking the ship (*i*), or a rat gnawing a pipe which communicates with the sea (*k*), must be disregarded as being only the remote cause of the damage. If, on the other hand, a cause other than the last cause continues to be in operation at the time when the loss takes place, it may become impossible to hold that the last cause only is the proximate cause of the loss to the exclusion of the other (*l*). Each may be as much a proximate cause of the loss as the other, and the preceding cause may in fact, for the purpose of an exception, be the efficient cause of the loss (*m*). Thus, where the water gains access to the cargo through a port-hole negligently left open (*n*), or through a hole intentionally bored in the side of the ship by the crew (*o*), any damage to the cargo, though, in one sense, attributable to a peril of the sea, namely, the entrance of the water, is equally attributable to the negligence which leaves the port-hole open, or to the wilful misconduct which seeks to scuttle the ship; and the shipowner cannot, therefore, rely upon the one proximate cause of the damage which is covered by an exception against perils of the sea, to the exclusion of the other cause, which falls outside this exception (*p*).

SUB-SECT. 4.—*Transhipment of the Cargo.*

Different kinds of transhipment.

327. Since the contract of carriage, as a general rule, implies a term that the cargo is to be carried to its destination in the same bottom (*q*), it is necessary to consider how far the rights and

(*f*) *Hamilton, Fraser & Co.* v. *Pandorf & Co.* (1887), 12 App. Cas. 518; *Wilson, Sons & Co.* v. *The "Xantho"* (*Owners of Cargo*) (1887), 12 App. Cas. 503.

(*g*) *Wilson, Sons & Co.* v. *The "Xantho"* (*Owners of Cargo*), *supra*; *Hamilton, Fraser & Co.* v. *Pandorf & Co.*, *supra*.

(*h*) *Hamilton Fraser & Co.* v. *Pandorf & Co.*, *supra*.

(*i*) *Wilson, Sons & Co.* v. *The "Xantho"* (*Owners of Cargo*), *supra*, *per* Lord HERSCHELL, at p. 509, doubting *Cullen* v. *Butler* (1816), 5 M. & S. 461.

(*k*) *Hamilton, Fraser & Co.* v. *Pandorf & Co.*, *supra*.

(*l*) *The Thrunscoe*, [1897] P. 301; compare *Reischer* v. *Borwick*, [1894] 2 Q. B. 548, C. A.

(*m*) Compare *Nugent* v. *Smith* (1876), 1 C. P. D. 423, C. A.; *Grill* v. *General Iron Screw Collier Co.* (1866), L. R. 1 C. P. 600; *Reischer* v. *Borwick*, *supra*.

(*n*) *Steel* v. *State Line Steamship Co.* (1877), 3 App. Cas. 72, *per* Lord BLACKBURN, at p. 88; *The Accomac* (1887), 15 P. D. 208, C. A.

(*o*) *The Chasca* (1875), L. R. 4 A. & E. 446.

(*p*) See also *Phillips* v. *Clark* (1857), 2 C. B. (N. S.) 156; *Lloyd* v. *General Iron Screw Collier Co.* (1864), 3 H. & C. 284; *Grill* v. *General Iron Screw Colliery Co.* (1868), L. R. 3 C. P. 476, Ex. Ch.; *Ohrloff* v. *Briscall*, *"The Helene"* (1866), L. R. 1 P. C. 231; *The "Freedom"* (1871), L. R. 3 P. C. 594; *The Nepoter* (1869), L. R. 2 A. & E. 375.

(*q*) See p. 220, *ante*.

SECT. 4. The Voyage.

liabilities of the parties are affected by the transhipment of the cargo during the voyage, in order that it may be carried to its destination in another ship. For this purpose three kinds of transhipment must be distinguished, namely:—(1) Transhipment under an express term of the contract (*r*); (2) transhipment, after the ship has been disabled from continuing her voyage, in the interests of the shipowner (*s*); and (3) transhipment, after the voyage has been abandoned, in the interests of the cargo owner (*t*).

Transhipment under contract.

328. Where transhipment takes place in accordance with an express term of the contract, the rights and liabilities of the parties depend upon the construction and effect of the particular term employed (*a*). There may be a term in any contract of carriage giving the shipowner liberty at any port to tranship the goods and forward them by another ship (*b*). Such a term is convenient where, as is sometimes the case, the shipowner is by the contract given wide control over the movements of the ship (*c*). He may, in this case, even after the goods have been shipped and whilst the ship is on the way to the port of discharge, change her destination and give orders which will prevent her from calling at the port of discharge named in the contract (*d*). Nevertheless, the contract gives him the option of performing it by transhipment; he is not guilty of a breach of contract in ordering the ship to a different port and in sending on the goods to their original destination in another ship, and he may, therefore, notwithstanding the transhipment, rely for protection upon the exceptions of the original contract (*e*).

Through bills of lading.

A term relating to transhipment is usually contained in a through contract of carriage (*f*), under which transhipment is contemplated as a necessary step in the prosecution of the voyage upon which the goods are embarked (*g*). The general obligations of the shipowner with whom the through contract was made continue in force, notwithstanding the transhipment (*h*). A provision, therefore, that the goods are to be transhipped and forwarded at the shipper's risk is to be construed as throwing upon the shipper merely the risk arising out of and connected with the actual

(*r*) See the text, *infra*.

(*s*) See pp. 235 *et seq.*, *post*. The position of the master as regards transhipment of this kind depends upon the law of the ship's flag (*The Bahia* (1864), 12 L. T. 145; *The Express* (1872), L. R. 3 A. & E. 597); compare note (*m*), p. 240, *post*.

(*t*) See pp. 239, 240, *post*.

(*a*) *Greeves* v. *West India and Pacific Steamship Co.* (1870), 22 L. T. 615, Ex. Ch.; *Stuart* v. *British and African Steam Navigation Co.* (1875), 32 L. T. 257; *Carali* v. *Xenos* (1862), 2 F. & F. 740; *Hadji Ali Akbar & Sons, Ltd.* v. *Anglo-Arabian and Persian Steamship Co., Ltd.* (1906), 11 Com. Cas. 219; *Wiles & Co., Ltd.* v. *Ocean Steamship Co., Ltd.* (1912), 107 L. T. 825.

(*b*) *Hadji Ali Akbar & Sons, Ltd.* v. *Anglo-Arabian and Persian Steamship Co., Ltd., supra*.

(*c*) See pp. 96, 97, *ante*.

(*d*) *Hadji Ali Akbar & Sons, Ltd.* v. *Anglo-Arabian and Persian Steamship Co., Ltd., supra*.

(*e*) *Ibid.*

(*f*) As to through contracts of carriage, see p. 149, *ante*.

(*g*) *Greeves* v. *West India and Pacific Steamship Co., supra*; *Stuart* v. *British and African Steam Navigation Co., supra*; *Carali* v. *Xenos, supra*.

(*h*) *Stuart* v. *British and African Steam Navigation Co., supra*; *Carali* v. *Xenos, supra*.

transhipment; it does not relieve the shipowner from the risks of the subsequent voyage (*i*), or from the duty of providing proper and suitable means of transhipment (*j*). If, however, the provision in the contract relates only to the forwarding of the goods, without mentioning transhipment, the risk of damage during transhipment remains with the shipowner, though he is not liable for damage occasioned subsequently, as, for instance, by negligent stowage upon the second ship (*k*). Moreover, the shipowner's obligation to use reasonable dispatch requires him to tranship the goods with due diligence (*l*); and, if he fails to do so, he is responsible to the shipper for the consequences of any delay that may ensue (*m*). His obligation in this behalf is not lessened by a provision in the contract by which he is allowed, at the shipper's risk and expense, to retain the goods at the port of transhipment until they can be forwarded; such a provision is intended to apply to the delay which is contemplated as incidental to the transhipment in the ordinary course of business, and not to a delay which the shipowner could have avoided by the reasonable performance of his duty (*n*).

Loss before transhipment.

On the other hand, the loss of the goods before transhipment does not entitle their owner to claim a return of any portion of the freight if paid in advance, since the contract is entire and the consideration for which the freight has been paid has been partly performed (*o*).

Transhipment to earn freight.

329. The fact that the ship is disabled by an excepted peril from continuing the voyage does not, in itself, entitle the master to tranship the goods and forward them to their destination by another ship (*p*), since it is his primary duty to complete the voyage in his own ship (*q*). He must, therefore, if it is reasonably possible, repair the ship so as to render her fit to proceed on the voyage (*r*); and when this is done, he may insist on reshipping the goods if they have been landed, for the purpose of completing the voyage (*s*). If, however, it is impossible to repair her because she

(*i*) *Stuart* v. *British and African Steam Navigation Co.* (1875), 32 L. T. 257; *Carali* v. *Xenos* (1862), 2 F. & F. 740.

(*j*) *The Galileo*, [1914] P. 9, C. A.

(*k*) *Allan, Brothers & Co.* v. *James, Brothers & Co.* (1897), 3 Com. Cas. 10.

(*l*) *Carali* v. *Xenos*, *supra*.

(*m*) *Ibid.*

(*n*) *Ibid.*

(*o*) *Greeves* v. *West India and Pacific Steamship Co.* (1870), 22 L. T. 615, Ex. Ch.

(*p*) *Duranty* v. *Hart, Cargo ex "Hamburg"* (1863), 2 Moo. P. C. C. (N. S.) 289.

(*q*) *Shipton* v. *Thornton* (1838), 9 Ad. & El. 314, *per* Lord DENMAN, C.J., at p. 333; *The Bahia* (1864), 12 L. T. 145, citing *Blasco* v. *Fletcher* (1863), 14 C. B. (N. S.) 147, and *Benson* v. *Chapman* (1849), 2 H. L. Cas. 696, 720. The extent of the master's duty in this respect depends upon the law of the ship's flag (*The Bahia, supra*; *The Express* (1872), L. R. 3 A. & E. 597).

(*r*) *Cook* v. *Jennings* (1797), 7 Term Rep. 381, *per* LAWRENCE, J., at p. 385; *Benson* v. *Chapman*, *supra*; *Assicurazioni Generali* v. *S.S. Bessie Morris Co.*, [1892] 2 Q. B. 652, C. A.; *Hansen* v. *Dunn* (1906), 11 Com. Cas. 100; *Hill* v. *Wilson* (1879), 4 C. P. D. 329, *per* LINDLEY, J., at p. 333; *Moss* v. *Smith* (1850), 9 C. B. 94, *per* CRESSWELL, J., at p. 106; *Svendsen* v. *Wallace* (1885), 10 App. Cas. 404, *per* Lord BLACKBURN, at p. 418, disapproving *Atwood* v. *Sellar & Co.* (1879), 4 Q. B. D. 342, *per* COCKBURN, C.J., at p. 358.

(*s*) *Blasco* v. *Fletcher*, *supra*; *The Blenheim* (1885), 10 P. D. 167.

SECT. 4. The Voyage.

is a wreck (*a*), or if owing to the extent of the damage which she has sustained she cannot be repaired without very great loss of time or without incurring an unreasonable expense (*b*), the master is prevented, *ex hypothesi*, by an excepted peril, from performing his duty; and he is, therefore, discharged from his obligation to repair the ship and to carry on the goods in the same bottom (*c*). Since, however, no freight is earned unless the goods are delivered by the shipowner at their port of destination (*d*), the master is at liberty, for the purpose of enabling the freight to be earned, to tranship the goods into another ship to be forwarded on account of the shipowner (*e*). It is not, however, it seems, the duty of the master, as representing the shipowner, to tranship the goods (*f*); and he cannot therefore be compelled to do so against his will (*g*). If he thinks fit, he may give up the attempt to forward the goods to their destination on the shipowner's behalf, and may abandon the voyage altogether (*h*). In this case he must deliver the goods to their owner at the place where they lie, and no freight will be payable (*i*), inasmuch as the condition upon which alone it becomes payable has not been performed, and has been rendered incapable of performance by the master's own act (*k*). At the same time, he is not bound to abandon the voyage; it is his right to tranship the goods for the

(*a*) Abbott on Shipping, 5th ed., p. 240; 14th ed., p. 523; compare *Moss* v. *Smith* (1850), 9 C. B. 94; *Assicurazioni Generali* v. *S.S. Bessie Morris Co.*, [1892] 2 Q. B. 652, C. A.

(*b*) *De Cuadra* v. *Swann* (1864), 16 C. B. (N. S.) 772; *Moss* v. *Smith* *supra*; *Hansen* v. *Dunn* (1906), 11 Com. Cas. 100.

(*c*) *Shipton* v. *Thornton* (1838), 9 Ad. & El. 314; *Gibbs* v. *Grey*, *Grey* v. *Gibbs* (1857), 2 H. & N. 22, *per* POLLOCK, C.B., at p. 31; *Benson* v. *Duncan* (1849), 3 Exch. 644, Ex. Ch., *per* PATTESON, J., at p. 655. The same principle applies where the cargo has been rendered unfit to be carried on (*The Savona*, [1900] P. 252; *Blasco* v. *Fletcher* (1863), 14 C. B. (N. S.) 147).

(*d*) See p. 303, *post*.

(*e*) *Hunter* v. *Prinsep* (1808), 10 East, 378, *per* Lord ELLENBOROUGH, C.J., at p. 394; compare *Dickie* v. *Rodocanachi* (1859), 4 H. & N. 455; *Harrowing Steamship Co.* v. *Thomas*, [1913] 2 K. B. 171, C. A. (where the ship was wrecked outside her port of discharge, but part of the cargo was saved and delivered by the master to the consignee).

(*f*) The question whether it is the master's duty to tranship the cargo was discussed, but not decided, in *Shipton* v. *Thornton*, *supra*; see also *Cook* v. *Jennings* (1797), 7 Term Rep. 381, *per* LAWRENCE, J., at p. 385; *The Gratitudine* (1801), 3 Ch. Rob. 240; *Tronson* v. *Dent* (1853), 8 Moo. P. C. C. 419, 455; *De Cuadra* v. *Swann*, *supra*; *The Bahia* (1864), 12 L. T. 145, citing *Duranty* v. *Hart*, *Cargo ex "Hamburg"* (1863), 2 Moo. P. C. C. (N. S.) 289, 319; *Hansen* v. *Dunn*, *supra*, where KENNEDY, J., at p. 102, expressed the opinion that the master was not bound to employ another vessel to complete the voyage at his own loss. It may, however, be the master's duty, in the interests of the cargo owner, to tranship the cargo; see pp. 239, 240, *post*.

(*g*) *De Cuadra* v. *Swann*, *supra*.

(*h*) As to what constitutes an abandonment, compare *The Cito* (1881), 7 P. D. 5, C. A., with *The Leptir* (1885), 52 L. T. 768; and see *The Kathleen* (1874), L. R. 4 A. & E. 269; *The Arno* (1895), 72 L. T. 621, C. A.

(*i*) *Cook* v. *Jennings*, *supra*; *Hunter* v. *Prinsep*, *supra*; *Liddard* v. *Lopes* (1809), 10 East, 526; *The Kathleen*, *supra*; *The Cito*, *supra*; *The Arno*, *supra*. As to when *pro ratâ* freight will be payable, see pp. 314, 315, *post*.

(*k*) *Hunter* v. *Prinsep*, *supra*; *Cleary* v. *McAndrew*, *Cargo ex Galam* (1863), 2 Moo. P. C. C. (N. S.) 216; *Metcalfe* v. *Britannia Ironworks Co.* (1877), 2 Q. B. D. 423; *Castel and Latta* v. *Trechman* (1884), Cab. & El. 276.

purpose of earning the freight, if, in his opinion, such a course would be beneficial to the interests of the shipowner (*l*). The forwarding of the goods to their destination in this manner is deemed to be a fulfilment of the original contract (*m*). If, therefore, the master decides to exercise his right, the owner of the goods cannot require him to hand them over at the place where they lie, except upon the terms of paying the whole amount of the freight (*n*). If the master is able and willing to perform the contract in a manner in which he has a right to perform it, and if the condition upon which the freight becomes payable remains unperformed, its non-performance is attributable, not to any default on the part of the master, but to wrongful prevention by the owners of the goods (*o*).

Duties of master.

330. The master is entitled to retain the goods in his possession, notwithstanding that their owner has demanded their delivery, for a reasonable time whilst he is considering what is the best course to adopt, whether he shall repair the ship, or forward the goods in another ship, or abandon the voyage (*p*). At the same time he has no right to sacrifice the interests of the owner of the goods to the interests of the shipowner; he must not neglect his duty as regards the preservation of the goods entrusted to his care (*q*). For the purpose of ascertaining, therefore, what is a reasonable time all the circumstances of the case must be taken into account, including any delay attributable to the interference of the authorities, whether judicial or administrative, at the place where the goods are lying (*r*). Moreover, the condition of the goods must be taken into consideration (*s*), and, if they are damaged owing to the master's failure to tranship them at an earlier date, the shipowner is responsible (*t*).

Original contract unaffected.

331. Where the master transhipps the goods in order that he may earn his freight, the original contract of carriage remains in force as between the shipowner and the owner of the goods until their final

(*l*) *Shipton* v. *Thornton* (1838), 9 Ad. & El. 314; *Hansen* v. *Dunn* (1906), 11 Com. Cas. 100.

(*m*) *Shipton* v. *Thornton, supra, per* Lord DENMAN, C.J., at p. 335; *Gibbs* v. *Grey, Grey* v. *Gibbs* (1857), 2 H. & N. 26, *per* POLLOCK, C.B., at p. 33; *Hill* v. *Wilson* (1879), 4 C. P. D. 329, *per* LINDLEY, J., at p. 333.

(*n*) *Lutwidge* v. *Grey* (1733), H. L., noted in Abbott on Shipping, 5th ed., p. 307; 14th ed., p. 717; *Luke* v. *Lyde* (1759), 2 Burr. 882; *Shipton* v. *Thornton, supra, per* Lord DENMAN, C.J., at p. 336; *Blasco* v. *Fletcher* (1863), 14 C. B. (N. S.) 147; *The Bahia* (1864), 12 L. T. 145; compare *The Blenheim* (1885), 10 P. D. 167. But discount will be allowed to be deducted in respect of the payment being made at an earlier date (*Blasco* v. *Fletcher, supra*).

(*o*) *Cook* v. *Jennings* (1797), 7 Term Rep. 381, *per* LAWRENCE, J., at p. 385; *Hunter* v. *Prinsep* (1808), 10 East, 378; *Shipton* v. *Thornton, supra*; *Blasco* v. *Fletcher, supra*; *Cleary* v. *McAndrew, Cargo ex Galam* (1863), 2 Moo. P. C. C. (N. S.) 216; compare *The Soblomsten* (1866), L. R. 1 A. & E. 293, where *pro ratâ* freight was allowed.

(*p*) *Cleary* v. *McAndrew, Cargo ex Galam, supra*; *The Bahia, supra*; *The Soblomsten, supra*; *Hansen* v. *Dunn, supra*.

(*q*) *Hansen* v. *Dunn, supra*.

(*r*) *The Bahia, supra*; compare *Cleary* v. *McAndrew, Cargo ex Galam, supra*.

(*s*) *Blasco* v. *Fletcher supra*.

(*t*) *Hansen* v. *Dunn, supra*.

SECT. 4. The Voyage.

delivery at the port of discharge (*a*). The contract made by the master with the owner of the ship in which the goods are to be forwarded is made upon the original shipowner's behalf, and not by the master as agent for the owner of the goods (*b*). It is, therefore, a contract between the two shipowners, and does not affect the existing contractual rights of the owner of the goods (*c*). He remains liable to pay freight, when the goods arrive at their destination, to the shipowner with whom he originally contracted (*d*). He must pay freight at the original rate, and is not entitled to take advantage of the fact that the freight payable by the shipowner himself on the transhipment is at a lower rate (*e*). He cannot, therefore, claim to have his goods delivered to him on paying *pro ratâ* freight (*f*) at the original rate in respect of the portion of the voyage traversed before the transhipment, together with a sum equivalent to the actual freight payable under the contract of transhipment (*g*). The amount of freight payable by him is the full freight that would have been paid by him in the ordinary course if the voyage had not been interrupted (*h*), less any moneys advanced to the master of the original ship (*i*). On the other hand, the first shipowner remains bound by the terms of the original contract; he is, therefore, unless excused by such terms, responsible for the safe carriage of the goods to their destination (*k*), and cannot rely upon any exception contained in the contract of transhipment which is not already contained in the original contract (*l*).

(*a*) *Lutwidge* v. *Grey* (1733), H. L., noted in Abbott on Shipping, 5th ed., pp. 307, 309; 14th ed., p. 717.

(*b*) *Matthews* v. *Gibbs* (1860), 3 E. & E. 282. The name inserted in the bill of lading given in respect of the transhipment is usually that of the agent of the ship from which the goods are transhipped (*Gibbs* v. *Grey*, *Grey* v. *Gibbs* (1857), 2 H. & N. 22, 24, n.; *Shipton* v. *Thornton* (1838), 9 Ad. & El. 314).

(*c*) *Ronneberg* v. *Falkland Islands Co.* (1864), 17 C. B. (N. S.) 1; *Matthews* v. *Gibbs*, *supra*; compare *Gibbs* v. *Grey*, *Grey* v. *Gibbs*, *supra*, *per* POLLOCK, C.B., at p. 31. But, if the goods are damaged after the transhipment, their owner may have a remedy in tort against the second shipowner; compare *Ronneberg* v. *Falkland Islands Co.*, *supra*; *Hayn* v. *Culliford* (1879), 4 C. P. D. 182, C. A.; and see *Dalyell* v. *Tyrer* (1858), E. B. & E. 899; *Foulkes* v. *Metropolitan District Rail. Co.* (1880), 5 C. P. D. 157, C. A., *per* BRAMWELL, L.J., at p. 159.

(*d*) *Shipton* v. *Thornton*, *supra*.

(*e*) *Ibid.*, where the question was also raised, but not decided, as to whether if the shipowner had to pay freight at a higher rate than the original rate, he could charge the goods with the difference as a general average loss, and it was pointed out that the master's right to tranship on the shipowner's account might be limited to those cases in which the voyage could be completed on the original terms as to freight, and that, if freight could not be procured at that rate, the master might tranship the goods as agent for their owner. As to transhipment on behalf of the owner of the goods, see pp. 239, 240, *post*.

(*f*) As to *pro ratâ* freight, see pp. 314, 315, *post*.

(*g*) *Shipton* v. *Thornton*, *supra*.

(*h*) *Ibid.*; compare *The Hibernian*, [1907] P. 277, C. A.

(*i*) *Matthews* v. *Gibbs*, *supra*.

(*k*) *Ronneberg* v. *Falkland Islands Co.*, *supra*.

(*l*) *The Bernina* (1886), 12 P. D. 36; *Matthews* v. *Gibbs*, *supra*. The ship to which the goods are transhipped must not be an unsafe or improper ship for the purpose (*Ronneberg* v. *Falkland Islands Co.*, *supra*).

Prevention of voyage.

332. The master is equally at liberty to tranship the goods for the purpose of earning his freight where the continuance of the voyage in the same bottom is prevented by some cause which is not within his or the shipowner's control and not excepted from the contract (*m*). If, however, he abandons the voyage the shipowner will be responsible to the owner of the goods for his failure to carry the goods to their destination, since the completion of the voyage is not prevented by a cause for which the shipowner is excused (*n*).

Transhipment on cargo owner's behalf.

333. Though transhipment, as a method of fulfilling the original contract in the interests of the shipowner, may prove impracticable on the ground of expense, as, for instance, where the freight payable under the contract of transhipment would exceed the full freight payable under the original contract (*o*), the master may, nevertheless, be entitled, as agent through necessity, to tranship the goods on their owner's behalf (*p*). His duty as regards the preservation of the goods does not come to an end with the abandonment of the voyage (*q*), and, though he has no longer any right to tranship the goods on the shipowner's behalf (*r*), it is still his duty to consider the interests of the owner of the goods (*s*). He must, therefore, land the goods and warehouse them until they can be delivered to their owner, or until their owner's instructions can be received (*t*). If, however, it is necessary to act promptly and there is no time or opportunity to consult the owner before deciding what course to take (*a*), the master may tranship the goods at once, without communicating with the owner, if, in the circumstances of the case, immediate transhipment is reasonably justifiable as being the most beneficial course to be taken in the interests of the owner of the goods (*b*). Thus, transhipment is justifiable where the goods are perishable (*c*), or where the ship is in danger of foundering when she is met by another ship to which

(*m*) *The Bernina* (1886), 12 P. D. 36.

(*n*) See p. 222, *ante*.

(*o*) *Hansen* v. *Dunn* (1906), 11 Com. Cas. 100. It is possible that, where the freight chargeable for the transhipment exceeds the original freight, the master's right to tranship on the shipowner's account ceases (*Shipton* v. *Thornton* (1838), 9 Ad. & El. 314, *per* Lord DENMAN, C.J., at p. 337).

(*p*) *Mitchell* v. *Darthez* (1836), 2 Bing. (N. C.) 555.

(*q*) *The Glenmanna* (1860), Lush. 115 (where the master was not allowed to charge the cargo owner for his services, since they were rendered in the performance of his ordinary duties as master); compare *Ronneberg* v. *Falkland Islands Co.* (1864), 17 C. B. (N. S.) 1, *per* ERLE, C.J., at pp. 10, 13.

(*r*) *Shipton* v. *Thornton*, *supra*, *per* DENMAN, C.J., at p. 537; *The Cito* (1881), 7 P. D. 5, C. A.

(*s*) *Shipton* v. *Thornton*, *supra*.

(*t*) *Liddard* v. *Lopes* (1809), 10 East, 526; Abbott on Shipping, 5th ed., p. 243; 14th ed., p. 530.

(*a*) The master has no authority to tranship the goods on behalf of their owner, if the goods are at a port where their owner has, to the knowledge of the master, an agent or house of business, without communicating with him or giving him the option of receiving the goods there (*Gibbs* v. *Grey*, *Grey* v. *Gibbs* (1857), 2 H. & N. 22, *per* POLLOCK, C.B., at p. 31, applying *Shipton* v. *Thornton*, *supra*).

(*b*) See *The Gratitudine* (1801), 3 Ch. Rob. 240. As to when the master may sell the goods, see p. 75, *ante*, pp. 247 *et seq.*, *post*; as to his power to hypothecate them, see pp. 240 *et seq.*, *post*.

(*c*) *Gibbs* v. *Grey*, *Grey* v. *Gibbs*, *supra*, *per* MARTIN, B., at p. 29.

SECT. 4. The Voyage.

they can be transferred (*d*). In this case the master enters into the contract of transhipment as agent of the owner of the goods and not as representing the shipowner (*e*). The owner of the goods is, therefore, bound by the terms of the contract, and may be liable to pay to the second shipowner freight at a rate higher than that reserved by the original contract (*f*). The master must, however, make a reasonable contract of transhipment; he has no general authority to represent the owner of the goods, and cannot bind him by a contract to pay freight at a rate exceeding the current rate at the port of transhipment (*g*); nor can he bind him to pay freight, even at the current rate, upon a larger quantity of goods than is, in fact, shipped. His authority is limited to the transhipment of the actual goods in his possession; and he cannot, therefore, contract on behalf of their owner to load a full cargo upon the ship which he has engaged, or, in the alternative, to pay dead freight (*h*). In accordance with the same principle, he has no authority to make false statements as to the quantity of goods to be transhipped (*i*).

Where the master tranships the goods on their owner's behalf, both he and the shipowner are, after the transhipment, free from further responsibility (*k*); and the shipowner cannot claim freight accruing due in respect of the transhipment (*l*).

SUB-SECT. 5.—*Hypothecation of the Cargo.*

Definition.

334. The master is entitled, subject to certain conditions (*m*), as agent of necessity on behalf of the cargo owner, to hypothecate the cargo (*n*) for the purpose of raising funds to enable him either to complete the voyage in the same bottom (*o*), or to forward the goods to their destination (*p*). By hypothecation of the cargo is meant a pledge of the cargo without immediate change of possession; it gives a right to the person making advances on the faith of it to have the possession of the goods if the advances are not paid at the

(*d*) But see *The Bernina* (1886), 12 P. D. 36.

(*e*) *Mitchell* v. *Darthez* (1836), 2 Bing. (N. C.) 555; *Shipton* v. *Thornton* (1838), 9 Ad. & El. 314, *per* Lord DENMAN, C.J., at p. 337.

(*f*) *Shipton* v. *Thornton*, *supra*.

(*g*) *Gibbs* v. *Grey*, *Grey* v. *Gibbs* (1857), 2 H. & N. 22; *Matthews* v. *Gibbs* (1860), 3 E. & E. 282.

(*h*) *Gibbs* v. *Grey*, *Grey* v. *Gibbs*, *supra*, at p. 26. As to the meaning of "dead freight," see p. 209, *ante*.

(*i*) *Gibbs* v. *Grey*, *Grey* v. *Gibbs*, *supra*; compare *Matthews* v. *Gibbs*, *supra*, where the contract was shown to be fraudulent.

(*k*) Abbott on Shipping, 5th ed., p. 241; 14th ed., p. 528.

(*l*) *Mitchell* v. *Darthez*, *supra*. See also *Wiles & Co., Ltd.* v. *Ocean Steamship Co., Ltd.* (1912), 107 L. T. 825.

(*m*) See pp. 242 *et seq.*, *post*. The extent of the master's authority is governed by the law of the ship's flag (*Droege* v. *Suart*, *The Karnak* (1869), L. R. 2 P. C. 505; *The Gaetano and Maria* (1882), 7 P. D. 137, C. A.; *Lloyd* v. *Guibert* (1865), L. R. 1 Q. B. 115, Ex. Ch.; but see *Duranty* v. *Hart*, *Cargo ex "Hamburg"* (1863), 2 Moo. P. C. C. (N. S.) 289). As to hypothecation of freight, see p. 72, *ante*.

(*n*) This hypothecation by the master must be distinguished from hypothecation of the cargo by its owner as a method of raising funds to pay for it, as to which see title SALE OF GOODS, Vol. XXV., pp. 200 *et seq.* As to actions in bottomry and *respondentia*, see title ADMIRALTY, Vol. I., pp. 65 *et seq.*

(*o*) See p. 69, *ante*, p. 243, *post*.

(*p*) See p. 74, *ante*, p. 247, *post*.

stipulated time; but it leaves to the owner of the goods hypothecated the power of making such repayment, and thereby freeing them from the obligation (*q*). It is, therefore, contrary to the nature of the transaction, and consequently contrary to the duty and beyond the power of the master, to engage that the lender shall at all events have the goods delivered at their port of destination to him or his agents, to be there sold or disposed of by him or them, without reserving the right of redemption to their owner, and such an engagement will not be binding upon their owner, who will still have the right to take the goods upon payment of the money for which they may have been engaged (*r*). All that the hypothecation confers upon the lender is a maritime lien (*s*) enforceable against the cargo (*a*), and the cargo owner is not responsible beyond its value (*b*). Moreover, the transaction involves a maritime risk, that is to say, the repayment of the advance must depend upon the safe arrival of the cargo at its port of destination (*c*). To entitle the lender to payment in full of his advance, the whole of the cargo hypothecated must arrive; if only a portion arrives, owing to the rest being lost on the way, a proportionate part of the loss falls upon the lender, who is only entitled to be paid a proportionate amount of his advance; whilst if no cargo arrives at all, he loses the whole of his money (*d*).

Right conferred upon lender.

335. Where the hypothecation applies to the cargo only, the contract is called *respondentia* (*e*); where, as is usually the case, the ship and freight are included, it is called a contract by bottomry (*f*). The instrument embodying the transaction is, as a general rule, in the form of a bond (*g*) or bill of sale (*h*). No particular form of instrument is, however, required, so long as the intention of the parties to undertake a maritime risk is clearly

Respondentia and bottomry.

(*q*) Abbott on Shipping, 5th ed., p. 241; 14th ed., p. 528.

(*r*) *Ibid.*, 5th ed., pp. 122, 242; 14th ed., p. 529.

(*s*) As to maritime liens, see pp. 617 *et seq.*, *post.*

(*a*) *The Gratitudine* (1801), 3 Ch. Rob. 240; compare *Busk* v. *Fearon* (1803), 4 East, 319. As to the method of enforcing a maritime lien, see p. 620, *post.*

(*b*) *The Nostra Senora del Carmine* (1854), 18 Jur. 730.

(*c*) *The Onward* (1873), L. R. 4 A. & E. 38; *The Elephanta* (1851), 15 Jur. 1185; compare *Stainbank* v. *Shepard* (1853), 13 C. B. 418.

(*d*) *Cargo ex Sultan* (1859), 5 Jur. (N. S.) 1060. But if a portion of the cargo hypothecated is afterwards sold, the cargo owner is not entitled to a deduction in respect of the value of such portion (*The Salacia* (1862), Lush. 578).

(*e*) The term is also applied to loans which are conditional on the safe arrival of the cargo, but under which the lender has only a personal remedy against the borrower, and has no claim against the goods, the instrument not containing any formal hypothecation of the cargo (Abbott on Shipping, 5th ed., p. 121; 14th ed., p. 191, citing 2 Bl. Com. 458, and *Busk* v. *Fearon* (1803), 4 East, 319).

(*f*) See the cases cited throughout this sub-section; and see p. 69, *ante.*

(*g*) For a form of a bottomry bond, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 65.

(*h*) For a form of a bottomry bill, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 67. Such instruments need not be registered as bills of sale (Bills of Sale Act, 1891 (54 & 55 Vict. c. 35), s. 1); see title BILLS OF SALE, Vol. III., pp. 9, 19.

SECT. 4. The Voyage.

shown (*i*). This intention must appear on the face of the instrument; a verbal undertaking is not sufficient (*k*). Thus, a bill of exchange given by the master to the lender does not become an instrument of hypothecation, because the master at the same time enters into a verbal engagement that the cargo shall be bound (*l*). On the other hand, an instrument of hypothecation which is otherwise valid is not necessarily invalidated by the fact that it is intended to operate only as collateral security to a bill of exchange, since the mere existence of the bill of exchange is not inconsistent with the advance having been made upon the security of the cargo (*m*). Where the form of the instrument is ambiguous, the rate of interest payable under it may be taken into consideration; the fact that the lender charges only the rate of interest current for a land risk is evidence that he does not intend to undertake a maritime risk (*n*).

The master's authority to hypothecate the cargo probably exists only in the case of voyages from one country to another, and does not extend to coasting voyages (*o*).

When hypothecation justified.

336. To justify the master in hypothecating the cargo for the purpose of raising funds to enable him to complete the voyage the following conditions must be fulfilled, namely:—

Necessary expenditure.

(1) The expenditure for which the funds are required must be reasonably necessary for the completion of the voyage (*p*). Since the master's authority depends upon the necessity of the case, it must be shown that the actual expenditure incurred was justified by the circumstances (*q*). Thus, when the ship is in need of repair, necessity cannot justify repairs beyond the extent required to enable her to complete her voyage; he must not avail himself of the opportunity to get a great deal more work done than is

(*i*) Abbott on Shipping, 5th ed., p. 126; 14th ed., p. 194; *Stainbank* v. *Shepard* (1853), 13 C. B. 418.

(*k*) Abbott on Shipping, 5th ed., p. 126; 14th ed., p. 194.

(*l*) *Ex parte Halkett* (1815), 19 Ves. 474.

(*m*) *Stainbank* v. *Shepard, supra; Smith* v. *Bank of New South Wales, The "Staffordshire"* (1872), L. R. 4 P. C. 194; *Cochrane* v. *Gilkison* (1854), 16 Dunl. (Ct. of Sess.) 548; *The Onward* (1873), L. R. 4 A. & E. 38; but see *The North Star* (1860), Lush. 45.

(*n*) *The Emancipation* (1840), 1 Wm. Rob. 124.

(*o*) *The Gaetano and Maria* (1882), 7 P. D. 137, C. A., *per* BRETT, L.J. Where, however, cargo is shipped on a foreign ship, the master has authority to deal with it according to the law of the country to which the ship belongs, unless the charterparty otherwise provides; see *The Gaetano and Maria, supra; Lloyd* v. *Guibert* (1865), L. R. 1 Q. B. 115, Ex. Ch.; *The August*, [1891] P. 328; *The Industrie* (1893), 7 Asp. M. L. C. 457, C. A. As to proof and effect of foreign law, see *Messina* v. *Petrococchino* (1872), L. R. 4 P. C. 144; *Minna Craig Steamship Co.* v. *Chartered Mercantile Bank of India, London and China*, [1897] 1 Q. B. 460, C. A.; *The Pontida* (1884), 9 P. D. 102; and titles CONFLICT OF LAWS, Vol. VI., pp. 215, 216, 295, 296; EVIDENCE, Vol. XIII., pp. 488, 491.

(*p*) *The Gratitudine* (1801), 3 Ch. Rob. 240; *Droege* v. *Suart, The Karnak* (1869), L. R. 2 P. C. 505; *The Pontida* (1884), 9 P. D. 177, C. A.; compare *Gunn* v. *Roberts* (1874), L. R. 9 C. P. 331.

(*q*) *Gunn* v. *Roberts, supra; The Pontida, supra; Kleinwort, Cohen & Co.* v. *Cassa Marittima of Genoa* (1877), 2 App. Cas. 156, P. C.; *The Glenmanna* (1860), Lush. 115.

actually required, in order that she may be reclassed (*r*); nor must he pay, even for the necessary repairs, at an exorbitant rate (*s*). He has, therefore, no authority to hypothecate the cargo for a larger sum than is reasonably necessary according to the ordinary course of prudent conduct (*t*). If, however, he does so, the hypothecation is not wholly inoperative, but remains valid to the extent to which money is needed for the actual necessities of the ship (*a*).

The master may hypothecate the cargo, in case of need, to pay for repairs (*b*) or supplies to his ship (*c*), or to cover disbursements incurred at a port of refuge (*d*). He is not entitled, however, to hypothecate the cargo to meet expenditure incurred on previous voyages (*e*).

Inability to raise funds otherwise.

(2) The master must be unable to procure funds in any other way (*f*). The necessity of the case which is required to justify hypothecation of the cargo is not restricted to the circumstances in which the expenditure was incurred, but extends to the method of procuring funds actually adopted (*g*). It is the master's duty, if possible, to borrow money upon the personal credit of the shipowner (*h*), or by hypothecation of the ship or freight (*i*), and if he has already succeeded in doing so by either method, he cannot afterwards hypothecate the cargo to secure repayment of any moneys so borrowed (*k*). Before a loan on the security of the cargo is

(*r*) *The Pontida* (1884), 9 P. D. 177, C. A., *per* BRETT, M.R., at p. 179; compare *The Onward* (1873), L. R. 4 A. & E. 38, *per* Sir R. PHILLIMORE, at p. 58.

(*s*) *The Pontida, supra, per* FRY, L.J., at p. 118.

(*t*) It is not sufficient that the lender *bonâ fide* believed at the time when he made his advance that the full amount advanced was necessary (*The Pontida, supra*, citing *Gunn* v. *Roberts* (1874), L. R. 9 C. P. 331). As to the necessity of the lender making inquiries, see *The Pontida, supra, per* BRETT, M.R., at p. 180, explaining *Soares* v. *Rahn, The Prince of Saxe-Coburg* (1838), 3 Moo. P. C. C. 1, and *The Onward, supra*.

(*a*) *The Pontida, supra; The Glenmanna* (1860), Lush. 115.

(*b*) *The Gratitudine* (1801), 3 Ch. Rob. 240; *Droege* v. *Suart, The Karnak* (1869), L. R. 2 P. C. 505.

(*c*) *Gunn* v. *Roberts, supra*.

(*d*) *Cargo ex Sultan* (1859), 5 Jur. (N. S.) 1060 (where the cargo had been arrested for salvage). As to what payments will be allowed, see *The Glenmanna, supra; Cognac* (1832), 2 Hag. Adm. 377; *Calypso* (1834), 3 Hag. Adm. 162. As to hypothecation of freight, see p. 69, *ante*.

(*e*) *The Osmanli* (1850), 3 Wm. Rob. 198, *per* Dr. LUSHINGTON, at p. 217; compare *The Edmond* (1860), Lush. 57; *The North Star* (1860), Lush. 45. But, if the ship is liable to be arrested in respect of such expenditure, and may thus be prevented from continuing her present voyage, any money raised for the purpose of releasing the ship is expenditure incurred on the present voyage (*Smith* v. *Gould, The Prince George* (1842), 4 Moo. P. C. C. 21).

(*f*) *The Faithful* (1862), 31 L. J. (P. M. & A.) 81.

(*g*) *Gunn* v. *Roberts, supra*.

(*h*) *The Onward, supra; Gunn* v. *Roberts, supra*.

(*i*) *The Onward, supra, per* Sir R. PHILLIMORE, at p. 53; *Kleinwort, Cohen & Co.* v. *Cassa Marittima of Genoa* (1877), 2 App. Cas. 156, P. C.

(*k*) *Droege* v. *Suart, The Karnak, supra; The Empire of Peace* (1869), 3 Mar. L. C. 324.

SECT. 4. The Voyage.

justifiable, all other methods of raising money must have been exhausted; it must be shown that it is impossible to raise the money upon the personal credit of the shipowner, and that the security of the ship and freight is not sufficient for the advances which are, in the circumstances, required (*l*).

Interests of cargo involved.

(3) The expenditure must be necessary in the interests of the cargo as well as of the ship (*m*). It is the duty of the master to bear in mind that he represents both the shipowner and the cargo owner, and that he must sacrifice neither to the other, but must endeavour to hold the balance evenly between them both (*n*). His authority to hypothecate the cargo is based upon the prospect of benefit to the cargo owner (*o*). If the repairs to the ship, or other causes of expenditure, produce neither benefit nor a prospect of benefit to the cargo owner, the master's authority to pledge the credit of the cargo to meet such expenditure does not exist, and a hypothecation of the cargo for the purpose is therefore inoperative (*p*). On the other hand, the expenditure, whether upon repairs or otherwise, may still promote the preservation and conveyance of the cargo, although the prospect of benefit may be more direct and more immediate to the ship, and in this case it must be considered as incurred for the common benefit of both ship and cargo (*q*). The test to be applied in considering whether the hypothecation of the cargo was justifiable, is whether or not the cargo owner would have preferred to pay the full freight at the port of refuge and to reship the cargo at his own expense (*r*).

The master has no authority to hypothecate cargo which has never been put on board (*s*), unless the cargo owner is already under contract to ship it (*t*).

Inability to communicate.

(4) The master must have been unable to communicate with the cargo owner (*a*). His authority to hypothecate the cargo is founded

(*l*) *Kleinwort, Cohen & Co.* v. *Cassa Marittima of Genoa* (1877), 2 App. Cas. 156, P. C.; *The Dowthorpe* (1843), 2 Wm. Rob. 73. Nor must the cargo be hypothecated if the agent of the cargo owner at the port of refuge offers to advance the necessary funds on the personal credit of the cargo owner (*Soares* v. *Rahn, The Prince of Saxe-Coburg* (1838), 3 Moo. P. C. C. 1).

(*m*) *The Gratitudine* (1801), 3 Ch. Rob. 240; *The Jonathan Goodhue* (1859), Sw. 524; *The Onward* (1873), L. R. 4 A. & E. 38; *The Gaetano and Maria* (1882), 7 P. D. 137, C. A.; *Hussey* v. *Christie* (1808), 9 East, 426.

(*n*) *The Onward, supra, per* Sir R. PHILLIMORE, at p. 58; compare p. 249, *post*.

(*o*) *The Onward, supra.*

(*p*) *The Gratitudine, supra, per* Lord STOWELL, at p. 261; *The Onward, supra; Kleinwort, Cohen & Co.* v. *Cassa Marittima of Genoa, supra.*

(*q*) *The Gratitudine, supra.*

(*r*) *The Onward, supra, per* Sir R. PHILLIMORE, at pp. 52, 58; *Kleinwort, Cohen & Co.* v. *Cassa Marittima of Genoa, supra.*

(*s*) *The Jonathan Goodhue, supra;* compare *Busk* v. *Fearon* (1803), 4 East, 319.

(*t*) *The Salacia* (1862), Lush. 578.

(*a*) *The Nuova Loanese* (1852), 17 Jur. 263; *Duranty* v. *Hart, Cargo ex "Hamburg"* (1863), 2 Moo. P. C. C. (N. S.) 289; *The Onward, supra; Kleinwort, Cohen & Co.* v. *Cassa Marittima of Genoa, supra; Cargo ex Sultan* (1859), 5 Jur. (N. S.) 1060. If communication is impossible it is immaterial that the cargo owner resides in the country where the hypothecation takes place (*La Ysabel* (1812), 1 Dods. 273).

upon the impossibility of communication (*b*), and does not therefore arise if there was a reasonable possibility of communicating with the cargo owner or with his representative (*c*). It is not sufficient for the master, in his communication, to give the cargo owner information that the ship has received damage and is in need of repairs, and that the cargo also may be damaged; he must specifically inform the cargo owner that it is necessary to hypothecate the cargo to obtain the requisite funds (*d*), or place before him circumstances from which the obvious and irresistible inference must be drawn that the hypothecation of the cargo is necessary (*e*). If he fails to give the cargo owner full information, the hypothecation cannot be justified on the ground that the master was left without instructions and acted for the best (*f*). If, on the other hand, ample information is placed before the cargo owner, not only as to the injuries to the ship, but also as to the damage to the cargo, and if his instructions are particularly and immediately requested, his failure to reply or to interfere in any way is to be regarded as acquiescence in the master's proceedings, and the master's authority to bind the cargo arises (*g*). Except, however, where it is necessary to act promptly and without delay, the master must not bind the cargo until sufficient time has elapsed to enable its owner to send instructions (*h*). On the other hand, the master has no authority to hypothecate the cargo against the express instructions of its owner (*i*).

Rights of lender.

337. Even where the cargo is properly hypothecated, the lender cannot enforce his claim against the cargo until the ship and freight

(*b*) *Wallace* v. *Fielden, The Oriental* (1851), 7 Moo. P. C. C. 398. In considering whether communication is possible or not, the nature of the cargo must be taken into account (*The Onward* (1873), L. R. 4 A. & E. 38).

(*c*) *Kleinwort, Cohen & Co.* v. *Cassa Marittima of Genoa* (1877), 2 App. Cas. 156, P. C., following *Wilkinson* v. *Wilson, The "Bonaparte"* (1853), 8 Moo. P. C. C. 450, as explained in *Duranty* v. *Hart, Cargo ex "Hamburg"* (1863), 2 Moo. P. C. C. (N. S.) 289, and *Australasian Steam Navigation Co.* v. *Morse* (1872), L. R. 4 P. C. 222; *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A., *per* BRETT, L.J., at p. 286; *The Olivier* (1862), Lush. 484; *The Lizzie* (1868), L. R. 2 A. & E. 254. In the absence of information that any other person is interested, the master performs his duty by communicating with the shipper (*Kleinwort, Cohen & Co.* v. *Cassa Marittima of Genoa, supra*).

(*d*) *Kleinwort, Cohen & Co.* v. *Cassa Marittima of Genoa, supra*, approving *The Onward, supra; Wallace* v. *Fielden, The Oriental, supra; The Nuova Loanese* (1852), 17 Jur. 263.

(*e*) *The Onward, supra, per* Sir R. PHILLIMORE, at p. 55.

(*f*) *Wallace* v. *Fielden, The Oriental, supra; The Onward, supra; Kleinwort, Cohen & Co.* v. *Cassa Marittima of Genoa, supra.*

(*g*) *The Onward, supra*, explaining *The Lord Cochrane* (1844), 2 Wm. Rob. 320, and *Wilkinson* v. *Wilson, The "Bonaparte," supra; Droege* v. *Suart, The Karnak* (1869), L. R. 2 P. C. 505.

(*h*) *Wilkinson* v. *Wilson, The "Bonaparte," supra*, as explained in *Duranty* v. *Hart, Cargo ex "Hamburg," supra.*

(*i*) *Dymond* v. *Scott* (1877), 5 R. (Ct. of Sess.) 196. If the cargo owner insists on the goods being carried to their destination, he cannot claim an injunction restraining the master from hypothecating the cargo for repairs. (*Rayne* v. *Benedict* (1841), 10 L. J. (CH.) 297). The cargo-owner may, however, demand the delivery of the goods, provided that he is willing to pay the full freight (*The Lizzie, supra*); see p. 237, *ante*.

SECT. 4. The Voyage.

are exhausted (*k*); and it is immaterial that his security purports to cover the cargo only (*l*). The same principle applies where there have been several loans on bottomry, the earlier of which are secured on the ship and freight only, whilst the last of them is secured on the cargo also (*m*). The cargo owner is not concerned with the earlier securities (*n*), and there is no equity between him and their holders (*o*). He cannot, therefore, be required to pay anything under the last security, upon which alone he is liable, until after the ship and freight have been exhausted (*p*); nor will the assets be marshalled in favour of the holders of the earlier securities so as to leave a portion at least of the value of the ship or freight available for them (*q*).

The rights of the lender against the cargo are liable to be postponed in favour of claims against the cargo for salvage (*r*), the master's lien over the cargo for general average contributions (*s*), and freight payable in respect of the subsequent transhipment of the cargo (*t*).

Position of shipowner.

338. Though in hypothecating the cargo for the purpose of enabling repairs to be executed or of otherwise furthering the prosecution of the voyage the master is, as regards the lender of the money, the agent of necessity of the cargo owner (*a*), he acts as between the cargo owner and the shipowner exclusively as agent of the shipowner (*b*). He is clearly the shipowner's agent in ordering

(*k*) *La Constancia* (1845), 2 Wm. Rob. 404; *The Priscilla* (1859), 5 Jur. (N. S.) 1421.

(*l*) *La Constancia, supra.* As to the rate of interest enforceable against the cargo, see *The Sophia Cook* (1878), 4 P. D. 30.

(*m*) *The Priscilla, supra.*

(*n*) *Ibid.*

(*o*) *The Chioggia*, [1898] P. 1.

(*p*) *La Constancia, supra; The Priscilla, supra; The Prince Regent* (1824), cited 2 Wm. Rob. 85. The cargo owner has no priority in respect of his own claims against the shipowner in respect of a sale of a portion of the cargo (*The Lord Cochrane* (1842), 1 Wm. Rob. 312; *The Gem of the Nith* (1863), Brown. & Lush. 72; *The Salacia* (1862), Lush. 578).

(*q*) *The Gratitudine* (1801), 3 Ch. Rob. 240, followed in *The Priscilla, supra.* But marshalling is ordered in favour of the master's lien for wages and disbursements (as to which see p. 68, *ante*, p. 617, *post*), since the master would otherwise be deprived of his remedy *in rem* (*The Edward Oliver* (1867), L. R. 1 A. & E. 379; *The Salacia* (1862), Lush. 545; *The Daring* (1868), L. R. 2 A. & E. 260 (where the master was part-owner of the ship); *The Eugènie* (1873), L. R. 4 A. & E. 123; *The Union* (1860), Lush. 128), and a bondholder who pays such charges acquires a lien in respect of such payments (*The Fair Haven* (1866), L. R. 1 A. & E. 67).

(*r*) *Cleary* v. *McAndrew, Cargo ex Galam* (1864), 2 Moo. P. C. C. (N. S.) 216 (where the claim was by the shipowner himself).

(*s*) *Ibid.*

(*t*) *Ibid.* The lender is entitled to require persons claiming priority to prove their right (*The India* (1863), 32 L. J. (P. M. & A.) 185). Where part of the cargo hypothecated is afterwards sold, no deduction is to be made in respect of the value of such part (*The Salacia* (1862), Lush. 578).

(*a*) *The Gratitudine, supra; The Onward* (1873), L. R. 4 A. & E. 38, *per* Sir R. PHILLIMORE, at p. 51.

(*b*) *Benson* v. *Duncan* (1849), 3 Exch. 644, Ex. Ch., the plaintiff in which case was the cargo owner in the case of *The Lord Cochrane* (1844), 2 Wm. Rob. 320.

the repairs to be executed or other necessaries to be procured, since no other person but the shipowner or his agent can have any authority to do so; and the master, therefore, in borrowing the money requisite to pay for them, must necessarily act as agent of the shipowner and not as the agent of anyone else (*c*). The shipowner must, therefore, indemnify the cargo owner against any sums which he may have been compelled to pay to the lender in order to obtain his cargo (*d*), except in so far as the necessity for the loan arises out of a general average loss, and the expenditure is therefore to be apportioned between them (*e*).

Hypothecation on behalf of cargo owner.

339. Where the master incurs expenditure for the sole benefit of the cargo, he may equally have an implied authority to hypothecate it for the purpose of raising the requisite funds (*f*). The foundation of his authority is the necessity of the cargo, as, for instance, where the cargo has been damaged and requires to be dried or otherwise attended to (*g*), or where it is impossible to arrange for its transhipment on behalf of the cargo owner without funds (*h*). The general principles governing the exercise of this authority are the same as when the authority is exercised in the interest of the whole adventure (*i*).

SUB-SECT. 6.—*Sale of the Cargo.*

Effect of wrongful sale.

340. Since it is primarily the master's duty to convey the cargo to its destination, he has no general authority to sell it in the course of the voyage (*k*). If, therefore, he sells it without lawful excuse, he is guilty of a breach of duty, by which the further performance of the contract of carriage is rendered impossible, and in respect of which the cargo owner acquires a right of action both against the master himself (*l*) and against his principal, the shipowner (*m*). In this case the cargo owner is entitled to recover as damages not merely the proceeds of the sale, but the value of the cargo, calculated on the basis of what it would have been worth to him if it had not been sold (*n*). No allowance is to be made for *pro ratâ* freight,

(*c*) *Benson* v. *Duncan* (1849), 3 Exch. 644, Ex. Ch.

(*d*) *Ibid.*; *Anderston Foundry Co.* v. *Law* (1869), 7 Macph. (Ct. of Sess.) 836. It is otherwise where the expenses are incurred through the cargo owner's default (*The Angerona* (1814), 1 Dods. 382).

(*e*) See p. 320, *post.*

(*f*) *Cargo ex Sultan* (1859), 5 Jur. (N. S.) 1060; *The Glenmanna* (1860), Lush. 115; *Hingston* v. *Wendt* (1876), 1 Q. B. D. 367. As to hypothecation of freight, see p. 72, *ante.*

(*g*) *Hingston* v. *Wendt, supra.*

(*h*) *Cargo ex Sultan, supra*; *The Glenmanna, supra.*

(*i*) See pp. 242 *et seq.*, *ante.*

(*k*) *Van Omeron* v. *Dowick* (1809), 2 Camp. 42; *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A., *per* BRETT, L.J., at p. 290; compare Abbott on Shipping, 5th ed., pp. 242 *et seq.*; 14th ed., pp. 529 *et seq.* As to a sale under order of the court, see *The Kathleen* (1874), L. R. 4 A. & E. 269.

(*l*) *Tronson* v. *Dent* (1853), 8 Moo. P. C. C. 419.

(*m*) *Van Omeron* v. *Dowick, supra*; *Cannan* v. *Meaburn* (1823), 1 Bing. 243; *Ewbank* v. *Nutting* (1849), 7 C. B. 797; and see the cases cited in the notes to pp. 248—253, *post.* But a charterer is not responsible for a sale by the master, where the charterparty does not amount to a demise (*Wagstaff* v. *Anderson* (1880), 5 C. P. D. 171, C. A.).

(*n*) *Van Omeron* v. *Dowick, supra*; *Hunter* v. *Prinsep* (1808), 10 East,

SECT. 4. The Voyage.

inasmuch as by the sale of the goods the contract of carriage has been finally broken by the shipowner (*o*); and the amount of any advance freight paid may be taken into account in estimating the damages (*p*).

Position of buyer.

Moreover, the sale, as being made by a person who had no authority from the owner of the cargo to sell, is not binding upon him (*q*). He may therefore claim the return of the cargo or its value from the buyer (*r*), unless by the law of the country in which the sale took place the buyer has in the circumstances acquired a good title against the true owner (*s*). Thus, a sale of the cargo in market overt would in England clearly be valid, notwithstanding the absence of any authority to sell (*t*); and a sale abroad, which by the law of the country in which it took place, is a wrongful disposition of the cargo so far as the master is concerned, may, nevertheless, so far as the buyer is concerned, be recognised by the law of the same country as conferring a good title upon him (*a*).

Master's authority to sell.

341. The authority of the master to dispose of the cargo by way of sale arises out of the necessity of the situation in which he is placed (*b*), and its exercise is governed by the same principles as govern the exercise of his authority to tranship (*c*) or to hypothecate the cargo (*d*). A sale is therefore justifiable in the following cases, namely:—(1) Where funds are required for the purpose of enabling the voyage to be completed, and cannot be raised in any other way (*e*); and (2) where the cargo, owing to its nature or condition, cannot safely be carried to its destination (*f*).

378; *Wagstaff* v. *Anderson* (1880), 5 C. P. D. 171, C. A.; *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A. As to the validity of a bottomry bond given, by order of a foreign court, to cover the damages arising from a sale on a previous voyage, see *The Ida* (1872), L. R. 3 A. & E. 542.

(*o*) *Hunter* v. *Prinsep* (1808), 10 East, 378; *Morris* v. *Robinson* (1824), 3 B. & C. 196; *Acatos* v. *Burns*, *supra*; *Hill* v. *Wilson* (1879), 4 C. P. D. 329. As to *pro ratâ* freight, see pp. 314, 315, *post*.

(*p*) *Wagstaff* v. *Anderson*, *supra*. As to advance freight, see pp. 311 *et seq.*, *post*.

(*q*) *Freeman* v. *East India Co.* (1822), 5 B. & Ald. 617; *Morris* v. *Robinson*, *supra*; Sale of Goods Act, 1893 (56 & 57 Vict. c. 71); see title SALE OF GOODS, Vol. XXV., p. 194.

(*r*) *Morris* v. *Robinson*, *supra*; *Atlantic Mutual Insurance Co.* v. *Huth* (1880), 16 Ch. D. 474, C. A.

(*s*) *Cammell* v. *Sewell* (1860), 5 H. & N. 728, Ex. Ch., disapproving "*Segredo*," otherwise "*Eliza Cornish*" (1853), 1 Ecc. & Ad. 36; compare *Freeman* v. *East India Co.*, *supra*, where the foreign law gave no title; *Morris* v. *Robinson*, *supra*; *The Gratitudine* (1801), 3 Ch. Rob. 240.

(*t*) *Cammell* v. *Sewell*, *supra*, *per* CROMPTON, J., at p. 745. Unless the absence of authority was known to the buyer (*Freeman* v. *East India Co.*, *supra*).

(*a*) *Cammell* v. *Sewell*, *supra*.

(*b*) *Acatos* v. *Burns*, *supra*, *per* BRETT, L.J., at p. 290; *Australasian Steam Navigation Co.* v. *Morse* (1872), L. R. 4 P. C. 222. The extent of his authority is governed by the law of the ship's flag (*The August*, [1891] P. 328).

(*c*) See p. 236, *ante*.

(*d*) *Gunn* v. *Roberts* (1874), L. R. 9 C. P. 331, *per* BRETT, J., at p. 337; *Acatos* v. *Burns*, *supra*. As to hypothecation, see p. 242, *ante*.

(*e*) See p. 249, *post*.

(*f*) See p. 250, *post*.

342. The master has no authority, for the purpose of enabling the voyage to be completed, to sell the whole of the cargo, since such a sale is inconsistent with the due conveyance of the cargo to its destination (*g*), and cannot possibly be of benefit to its owner, who is wholly deprived thereof (*h*). Where, however, the circumstances would justify the hypothecation of the whole of the cargo (*i*), as where the ship was unable to continue her voyage without repairs (*k*), the master may sell a part of the cargo for the purpose of raising the funds necessary to enable him to convey the residue to its destination (*l*), the sale of the part and the hypothecation of the whole being considered as equivalent (*m*). As in the case of hypothecation (*n*), the necessity of the case must justify the actual method of raising funds adopted, and it must be shown that it was impossible for the master to raise funds in any other way (*o*).

For completion of voyage.

343. Except in so far as the sale is to be regarded as a general average sacrifice (*p*), the ultimate loss occasioned by the sale must fall upon the shipowner (*q*). The owner of the goods sold has two alternative remedies open to him (*r*). In the first place, he may treat the proceeds of the sale as a forced loan to the shipowner and claim the amount of the price for which the goods were sold (*s*). In this case no allowance is to be made for freight *pro ratâ* (*t*); though he is entitled to demand immediate repayment, even before the ship arrives at her destination, his receipt of the proceeds is not equivalent to a receipt of the goods themselves at an intermediate port, and therefore no agreement to pay freight *pro ratâ* can be implied (*a*). Neither can the full freight be claimed, since the

Shipowner's responsibility.

(*g*) *Van Omeron* v. *Dowick* (1809), 2 Camp. 42; Abbott on Shipping, 5th ed., p. 242; 14th ed., p. 529; *Wilson* v. *Millar* (1816), 2 Stark. 1.

(*h*) *The Onward* (1873), L. R. 4 A. & E. 38, *per* Sir Robert PHILLIMORE, at p. 57.

(*i*) See pp. 242 *et seq.*, *ante*.

(*k*) *Hopper* v. *Burness* (1876), 1 C. P. D. 137, *per* BRETT, J., at p. 140.

(*l*) *Gunn* v. *Roberts* (1874), L. R. 9 C. P. 331; *Hopper* v. *Burness*, *supra*; compare *Parmeter* v. *Todhunter* (1808), 1 Camp. 541. In a proper case the cargo owner cannot restrain by injunction the sale of a portion of his cargo to pay for repairs, if at the same time he insists on the goods being carried on (*Rayne* v. *Benedict* (1841), 10 L. J. (CH.) 297).

(*m*) *Benson* v. *Duncan* (1849), 3 Exch. 644, Ex. Ch.; Abbott on Shipping, 5th ed., pp. 131, 241; 14th ed., p. 529.

(*n*) See pp. 242, 243, *ante*.

(*o*) *Underwood* v. *Robertson* (1815), 4 Camp. 138, *per* Lord ELLENBOROUGH, C.J., at p. 139.

(*p*) *Benson* v. *Duncan*, *supra*; *Hallett* v. *Wigram* (1850), 9 C. B. 580; *Hopper* v. *Burness*, *supra*; see p. 317, *post*.

(*q*) *Benson* v. *Duncan*, *supra*; *Hallett* v. *Wigram*, *supra*.

(*r*) *Hopper* v. *Burness*, *supra*, *per* BRETT, J., at p. 141.

(*s*) *Richardson* v. *Nourse* (1819), 3 B. & Ald. 237; *Hopper* v. *Burness*, *supra*; compare *Hunter* v. *Prinsep* (1808), 10 East, 378. He may deduct this amount from the freight due on the rest of the goods, even as against an assignee of the freight (*Campbell* v. *Thompson* (1816), 1 Stark. 490).

(*t*) *Hopper* v. *Burness*, *supra*. As to when *pro ratâ* freight is payable, see pp. 314, 315, *post*.

(*a*) *Hopper* v. *Burness*, *supra*, *per* BRETT, J., at p. 141.

SECT. 4 The Voyage.

master has put it out of his power to earn it (*b*). In the second place, the owner of the goods sold has the option of claiming an indemnity from the shipowner against the consequences of the sale (*c*), the indemnity being on the basis that the goods would have fetched more at their port of destination than they actully did when sold (*d*). In this case an allowance must be made for the freight that would have been earned by carrying the goods to their destination, since, if they had arrived, the freight would have become payable, and would therefore have been taken into account in estimating their value (*e*). It is clear that this option will not be exercised if the price for which the goods were sold exceeds their value at their destination, since it is more profitable for their owner to claim the proceeds of the sale (*f*). Where the ship is lost after the sale, but before the completion of the voyage, the owner of the goods is deprived of his right to claim an indemnity (*g*), since the goods, even if they had not been sold, would equally have been lost to him, and the basis upon which his indemnity is to be calculated is consequently gone (*h*).

For preservation of cargo.

344. Where the master sells the cargo on the ground that it cannot safely be carried to its destination, he acts as agent of necessity for the cargo owner (*i*), and, since his authority is derived from the necessity of the case, a sale which is not justified by necessity is unauthorised and does not bind the cargo owner (*k*). To justify a sale (*l*) the following conditions must be fulfilled, namely:—

Necessity for sale.

(1) There must be a necessity for the sale (*m*). A sale is the last thing that the master should think of (*n*), since it is his first duty to carry the cargo to its destination, and is only justified by necessity (*o*). In determining whether a sale is necessary or not, the circumstances of each particular case must be taken into

(*b*) *The Salacia* (1862), Lush. 578.

(*c*) *Hopper* v. *Burness* (1876), 1 C. P. D. 137; *Benson* v. *Duncan* (1849), 3 Exch. 644, Ex. Ch.; *Hallett* v. *Wigram* (1850), 9 C. B. 580; *Alers* v. *Tobin* (1802), cited in Abbott on Shipping, 5th ed., p. 245; 14th ed., p. 551.

(*d*) *Hopper* v. *Burness*, *supra*.

(*e*) *Atkinson* v. *Stephens* (1852), 7 Exch. 567; *Hopper* v. *Burness*, *supra*.

(*f*) *Hopper* v. *Burness*, *supra*.

(*g*) *Atkinson* v. *Stephens*, *supra*; *Hopper* v. *Burness*, *supra*.

(*h*) *Ibid.*; and see Abbott on Shipping, 5th ed., p. 246; 14th ed., p. 552.

(*i*) *Australasian Steam Navigation Co.* v. *Morse* (1872), L. R. 4 P. C. 222, 228; *Atlantic Mutual Insurance Co.* v. *Huth* (1880), 16 Ch. D. 474, C. A.; compare *Sims & Co.* v. *Midland Rail. Co.*, [1913] 1 K. B. 103.

(*k*) *Tronson* v. *Dent* (1853), 8 Moo. P. C. C. 419; *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A.; *Atlantic Mutual Insurance Co.* v. *Huth*, *supra*.

(*l*) The burden of proof lies on the buyer (*Freeman* v. *East India Co.* (1822), 5 B. & Ald. 617; *Atlantic Mutual Insurance Co.* v. *Huth*, *supra*, *per* COTTON, L.J., at p. 481).

(*m*) *Australasian Steam Navigation Co.* v. *Morse*, *supra*; *Acatos* v. *Burns*, *supra*.

(*n*) *Underwood* v. *Robertson* (1815), 4 Camp. 138.

(*o*) *Tronson* v. *Dent*, *supra*; *Atlantic Mutual Insurance Co.* v. *Huth*, *supra*; compare Abbott on Shipping, 5th ed., p. 241; 14th ed., p. 528.

consideration (*p*). The principal circumstances to be considered are the situation of the cargo (*q*), and its nature and condition (*r*). The cargo may be perishable by nature, as in the case of fish or fruit, or it may become perishable through being damaged by sea-water, as in the case of a cargo of hides (*a*), or grain (*b*), or wool (*c*). On the other hand the cargo may not be perishable, as where it is composed of timber (*d*), or iron or other metal (*e*), or, though damaged by sea-water, it may be in no danger of perishing and may remain capable of being carried to its destination (*f*). The wreck of the ship is not necessarily followed by an impossibility of sending forward the cargo, and does not of itself make the sale a measure of necessity or expediency (*g*); nor is the sale necessarily justified by the loss of the season (*h*), nor even by the interdiction of commerce or the outbreak of war (*i*). The master may, by reason of the happening of any of these events, be discharged from his obligation to deliver the cargo at its destination; but it does not therefore follow that he is authorised to sell it (*k*). To justify him in selling the cargo it must be shown that the master has used all reasonable efforts to have the cargo conveyed to its destination, and that he could not, by any means available to him, carry it, or procure it to be carried, to its destination in a merchantable condition (*l*), or that he could not do so without incurring an expenditure clearly exceeding its value at its destination (*m*). It is not, however, essential to prove that the sale was a necessity in the sense that there was no other possible method of dealing with the cargo; a sale may have been obviously necessary, although another course might have been taken (*n*). It is sufficient if the facts of the particular

What amounts to necessity.

(*p*) *Tronson* v. *Dent* (1853), 8 Moo. P. C. C. 419; *Australasian Steam Navigation Co.* v. *Morse* (1872), L. R. 4 P. C. 222; *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A.; compare *Cammell* v. *Sewell* (1860), 5 H. & N. 728, Ex. Ch.

(*q*) *Acatos* v. *Burns*, *supra*.

(*r*) Abbott on Shipping, 5th ed., p. 242; 14th ed., p. 529; and see the cases cited *infra*. It is immaterial whether the goods become perishable through inherent vice or through being damaged by perils of the sea (*Acatos* v. *Burns*, *supra*, *per* BRETT, L.J., at p. 289).

(*a*) *Roux* v. *Salvador* (1836), 3 Bing. (N. C.) 266.

(*b*) *Vlierboom* v. *Chapman* (1844), 13 M. & W. 230; *Acatos* v. *Burns*, *supra*.

(*c*) *Australasian Steam Navigation Co.* v. *Morse*, *supra*.

(*d*) *The Onward* (1873), L. R. 4 A. & E. 38.

(*e*) *Atlantic Mutual Insurance Co.* v. *Huth* (1880), 16 Ch. D. 474, C. A.

(*f*) *Tronson* v. *Dent*, *supra*; compare *Cannan* v. *Meaburn* (1823), 1 Bing. 243, where the goods remained uninjured.

(*g*) *Atlantic Mutual Insurance Co.* v. *Huth*, *supra*.

(*h*) *Van Omeron* v. *Dowick* (1809), 2 Camp. 42; Abbott on Shipping, 5th ed., p. 242; 14th ed., p. 529.

(*i*) *Ibid.*

(*k*) *Ibid.*

(*l*) *Roux* v. *Salvador*, *supra*; *Vlierboom* v. *Chapman*, *supra*; *Tronson* v. *Dent*, *supra*; *Australasian Steam Navigation Co.* v. *Morse*, *supra*; compare *Underwood* v. *Robertson* (1815), 4 Camp. 138.

(*m*) *Atlantic Mutual Insurance Co.* v. *Huth*, *supra*, *per* COTTON, L.J., at p. 481; *Tronson* v. *Dent*, *supra*; compare *Moss* v. *Smith* (1850), 9 C. B. 94, *per* MAULE, J., at p. 103.

(*n*) *Australasian Steam Navigation Co.* v. *Morse*, *supra*, at p. 230.

SECT. 4. The Voyage.

case show a commercial necessity for the sale; if the cost of dealing with the cargo and sending it on is prohibitive, the interests of the cargo owner are better served by an immediate sale than by incurring wasteful expenditure on his behalf (*o*). The sale is then justified as being the course which, in the judgment of a wise and prudent man, is apparently the most conducive to the benefit of the cargo owner (*p*). On the other hand, it is not a sufficient justification for the sale that the master acted as he did in the honest belief that a sale was necessary (*q*); or that, in the circumstances, the sale of the cargo was a prudent measure (*r*); or even that the sale turned out, in fact, to be beneficial to the cargo owner (*s*).

Sale of whole cargo.

Since the justification of the sale is the impossibility of forwarding the cargo to its destination, the authority of the master to sell is not limited to a part of the cargo, as where a sale is necessary for the purpose of raising funds (*t*), but extends, in a proper case, to the whole (*a*). In considering the propriety of a sale of the whole cargo, especially where it belongs to different owners, its composition, as well as its state and situation, must be taken into account (*b*), since it does not follow as a matter of course that because the sale of a part is necessary, the sale of the whole is equally justifiable (*c*). Thus, where the cargo is partly composed of goods which are not perishable, and which are practically uninjured and therefore capable of being sent on in a merchantable state, a sale of the whole is not justifiable (*d*). Even where the ship is a wreck and the cargo is still on board, the sale of the cargo in one mass, or of the ship and cargo as an entirety, cannot be justified as against the owners of the goods which are not perishable, because what is sold is the chance of recovering the cargo; and, since the chances of recovering the perishable and the non-perishable portions are different, they should not be sold in one mass (*e*). Where, on the other hand, the cargo is composed of the same class of goods, and where the whole of it is more or less damaged whilst the specific packages are so intermixed as to render it difficult within

(*o*) *Tronson* v. *Dent* (1853), 8 Moo. P. C. C. 419; *Australasian Steam Navigation Co.* v. *Morse* (1872), L. R. 4 P. C. 222; *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A., *per* BRETT, L.J., at p. 290.

(*p*) *The Gratitudine* (1801), 3 Ch. Rob. 240, *per* Lord STOWELL, at p. 259; *Australasian Steam Navigation Co.* v. *Morse*, *supra*, as explained in *Acatos* v. *Burns*, *supra*, *per* BRETT, L.J., at p. 290; compare Abbott on Shipping, 5th ed., p. 243; 14th ed., p. 530; *Blyth* v. *Smith* (1843), 5 Man. & G. 405.

(*q*) *Tronson* v. *Dent*, *supra*, following *Idle* v. *Royal Exchange Assurance Co.* (1819), 8 Taunt. 755; *Atlantic Mutual Insurance Co.* v. *Huth* (1880), 16 Ch. D. 474, C. A.; compare *Cannan* v. *Meaburn* (1823), 1 Bing. 243, where the sale was ordered by a colonial Vice-Admiralty court, though the court had no authority to do so.

(*r*) *Acatos* v. *Burns*, *supra*.

(*s*) *Tronson* v. *Dent*, *supra*; compare *Robertson* v. *Clarke* (1824), 1 Bing. 445.

(*t*) See p. 249, *ante*.

(*a*) *Australasian Steam Navigation Co.* v. *Morse*, *supra*.

(*b*) *Atlantic Mutual Insurance Co.* v. *Huth*, *supra*; *Australasian Steam Navigation Co.* v. *Morse*, *supra*.

(*c*) *Atlantic Mutual Insurance Co.* v. *Huth*, *supra*.

(*d*) *Ibid.*

(*e*) *Ibid.*

the time at the master's disposal and the resources of the port to deal with them separately, the cargo may be regarded as a whole, and a sale of the whole is therefore justifiable (*f*).

Inability to communicate.

(2) The master must be unable to communicate with the owner of the cargo so as to obtain his instructions (*g*). The sale must be justified by necessity; hence, it must be shown not merely that it was necessary to sell the cargo (*h*), but also that it was necessary to sell it at once, without waiting for instructions (*i*). Whether the cargo is of a perishable nature or not, the master cannot, if it is possible to communicate with the owner before it actually perishes, sell the cargo without communicating with him and obtaining his directions (*k*). The possibility of communicating with the owner depends upon the circumstances of each case, and involves the consideration of the facts which create the urgency for an early sale (*l*), the distance of the place where the cargo lies from its owner, the means of communication which may exist (*m*), and the general position of the master in the particular emergency (*n*). Such a communication need only be made when an answer can be obtained, or there is a reasonable expectation that it can be obtained, before the sale (*o*). After communicating the master must wait a reasonable time for an answer (*p*); if no answer is then received, or if the owner refuses to give him any instructions, he has discharged his duty and may sell the cargo (*q*). If, however, the owner sends him definite instructions, he must obey them; he is not justified in selling the cargo in defiance of his instructions, even though, in the circumstances, a sale would be the most beneficial course to adopt in the interests of the cargo owner (*r*).

Master's duty to sell.

345. Where the circumstances of the case justify a sale, the master is not only empowered to sell the cargo as agent of

(*f*) *Australasian Steam Navigation Co.* v. *Morse* (1872), L. R. 4 P. C. 222.

(*g*) *Ibid.*; *Wilkinson* v. *Wilson, The "Bonaparte"* (1853), 8 Moo. P. C. C. 459, 473; *Duranty* v. *Hart, Cargo ex "Hamburg"* (1863), 2 Moo. P. C. C. (N. S.) 289. If the master can communicate he should allow the owners time to answer before selling, for if it subsequently appears that he neglected to do this, and the sale, though a prudent measure, was not urgently necessary, his owners will be liable for the consequences (*Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A.).

(*h*) See p. 251, *ante*.

(*i*) *Acatos* v. *Burns, supra*.

(*k*) *Ibid.*

(*l*) *Australasian Steam Navigation Co.* v. *Morse, supra*; *Acatos* v. *Burns, supra*.

(*m*) *Australasian Steam Navigation Co.* v. *Morse, supra*; compare *Wallace* v. *Fielden, The Oriental* (1851), 7 Moo. P. C. C. 398.

(*n*) *Australasian Steam Navigation Co.* v. *Morse, supra*; compare *The Onward* (1873), L. R. 4 A. & E. 38.

(*o*) *Australasian Steam Navigation Co.* v. *Morse, supra*; compare *Droege* v. *Suart, The Karnak* (1869), L. R. 2 P. C. 505, 513; and see *Duranty* v. *Hart, Cargo ex "Hamburg," supra*.

(*p*) *Acatos* v. *Burns, supra*. The communication must state or clearly indicate the master's intention to sell (*Kleinwort, Cohen & Co.* v. *Cassa Marittima of Genoa* (1877), 2 App. Cas. 156, P. C.; *The Onward, supra*); compare p. 245, *ante*.

(*q*) *Australasian Steam Navigation Co.* v. *Morse, supra*; *Miles* v. *Haslehurst & Co.* (1906), 12 Com. Cas. 83.

(*r*) *Acatos* v. *Burns, supra, per* BRETT, L.J., at p. 291.

SECT. 4. The Voyage.

necessity; it is also his duty to sell, if possible (*s*), since he must protect the cargo owner's interests by every means in his power (*t*). If, therefore, he fails to sell the cargo in a proper case, he is guilty of a breach of duty, for which the shipowner is responsible (*a*).

Freight payable after sale.

346. Where the cargo is sold by the master at an intermediate port, as agent of necessity for the shipowner, payment of the full freight cannot be claimed as due, since the condition upon which it becomes due has never been performed (*b*), and freight is not payable *pro ratâ itineris* (*c*), unless there is a special contract to that effect, or unless it is shown that the cargo owner had the option of having his cargo sent on or of taking delivery at the place where it lay (*d*).

SECT. 5.—*The Unloading.*

SUB-SECT. 1.—*The Arrival of the Ship.*

When consignee's obligation arises.

347. The shipowner is not entitled to call upon the consignee to take delivery of the cargo until he himself is in a position to deliver it (*e*). For this purpose it is necessary that the ship should have arrived at her destination within the meaning of the contract (*f*), and that she should be ready to discharge her cargo (*g*). It is therefore important, for the purpose of ascertaining when the consignee's obligation to take delivery arises, to consider what constitutes arrival at the port of discharge.

Arrival of ship.

348. The general principles to be applied are the same whether the arrival under consideration is arrival at the port of loading or arrival at the port of discharge (*h*). The position of the shipowner is, however, complicated in the latter case by the presence of the cargo on board his ship (*i*). It is no longer possible for him merely to refuse to allow her to proceed to an unsuitable port, or to treat the contract as at an end, where the circumstances render its performance impossible (*k*), since the cargo must be discharged and disposed of in some way or other (*l*). It will therefore be expedient

(*s*) *The Gratitudine* (1801), 3 Ch. Rob. 240; *Australasian Steam Navigation Co.* v. *Morse*, (1872) L. R. 4 P. C. 222, 228.

(*t*) See pp. 224 *et seq.*, *ante*.

(*a*) *Australasian Steam Navigation Co.* v. *Morse*, *supra*; *Notara* v. *Henderson* (1872), L. R. 7 Q. B. 225, Ex. Ch., *per* WILLES, J., at p. 236.

(*b*) *Vlierboom* v. *Chapman* (1844), 13 M. & W. 230.

(*c*) *Cook* v. *Jennings* (1797), 7 Term Rep. 381; *Vlierboom* v. *Chapman*, *supra*; *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A.; compare *Hunter* v. *Prinsep* (1808), 10 East, 378.

(*d*) *Hill* v. *Wilson* (1879), 4 C. P. D. 329; compare *The Soblomsten* (1866), L. R. 1 A. & E. 293; and p. 315, *post*.

(*e*) *Murphy* v. *Coffin* (1883), 12 Q. B. D. 87; *Postlethwaite* v. *Freeland* (1880), 5 App. Cas. 599, *per* Lord SELBORNE, L.C., at p. 608.

(*f*) *Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38, affirming *Nelson* v. *Dahl* (1879), 12 Ch. D. 568, C. A.; *Metcalfe* v. *Britannia Ironworks Co.* (1877), 2 Q. B. D. 423, C. A.; see the text, *infra*.

(*g*) *Postlethwaite* v. *Freeland*, *supra*; see p. 263, *post*.

(*h*) As to arrival at the port of loading, see pp. 180 *et seq.*, *ante*.

(*i*) *Dahl* v. *Nelson, Donkin & Co.*, *supra*, *per* Lord BLACKBURN, at p. 53.

(*k*) See p. 200, *ante*.

(*l*) *Geipel* v. *Smith* (1872), L. R. 7 Q. B. 404, *per* BLACKBURN, J., at p. 414, citing *Hadley* v. *Clarke* (1799), 8 Term Rep. 259; *Dahl* v. *Nelson, Donkin & Co.*, *supra*, *per* Lord BLACKBURN, at p. 53.

to consider in detail the application of the general principles to arrival at the port of discharge.

Port as ordered.

349. In many cases, the port of discharge is not named in the contract, but it is provided that the ship is to proceed to a port as ordered by the charterer (*m*). The area within which such port must be situated is usually specified, and, in addition, the charterer's freedom of choice is often restricted by the requirement that the port is to be a safe port (*n*), or that it is to be not only a safe port, but also one in which the ship can always lie and discharge afloat (*o*). The failure of the charterer to give any orders as provided in the charterparty, so that no port is named at all, does not necessarily impose any duty on the master to communicate with the charterer and to ask for his instructions (*p*). If there is no such duty and the master acts as a prudent and honest man, he may take the course which he reasonably believes to be best for the advantage of the charterer; and he may therefore proceed to any port within the specified area, and call upon the consignee to take delivery there (*q*). Where the charterer names the place of discharge, he must name a port (*r*) which fulfils the requirements of the contract (*s*); and if he names a port which is unsafe, or which is otherwise not a proper port, the shipowner may refuse to allow his ship to proceed to it, and may discharge the cargo at a port which reasonably falls within the terms of the contract (*t*). In accordance with the same principle, if the port named as a safe port, though safe at the time when the name is received, subsequently becomes unsafe, the shipowner may call upon the charterer to name another port, otherwise he may deliver the cargo at any safe port which may reasonably be substituted for the purpose (*a*).

Safe port

350. A port is not a safe port unless it is a port which the ship can enter as a laden ship (*b*) without undue difficulty or danger (*c*).

(*m*) See p. 97, *ante*.

(*n*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 112. As to the meaning of a "safe port," see the text, *infra*.

(*o*) *The Alhambra* (1881), 6 P. D. 68, C. A.; compare *Allen* v. *Coltart* (1883), 11 Q. B. D. 782; and see Encyclopædia of Forms and Precedents, Vol. XIV., p. 100.

(*p*) *Sieveking* v. *Maass* (1856), 6 E. & B. 670, Ex. Ch.; compare *Rae* v. *Hackett* (1844), 12 M. & W. 724; and pp. 177, 178, *ante*.

(*q*) *Sieveking* v. *Maass*, *supra*.

(*r*) As to what constitutes a port, see *The Alhambra*, *supra*, *per* BRETT, L.J., at p. 72.

(*s*) *The Alhambra*, *supra*. As to the effect of an exception upon the right to order the ship to a particular place, see *Bulman and Dickson* v. *Fenwick & Co.*, [1894] 1 Q. B. 179, C. A.

(*t*) *Ogden* v. *Graham* (1861), 1 B. & S. 773; *Samuel* v. *Royal Exchange Assurance Co.* (1828), 8 B. & C. 119; *Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38, *per* Lord BLACKBURN, at p. 44; *The Alhambra*, *supra*. But he is not entitled to do so if the port is named before the bill of lading is signed (*Capper* v. *Wallace* (1880), 5 Q. B. D. 163).

(*a*) *The Teutonia* (1872), L. R. 4 P. C. 171.

(*b*) *Shield* v. *Wilkins* (1850), 5 Exch. 304, *per* ROLFE, B., at p. 305; followed in *The Alhambra*, *supra*.

(*c*) *The "Norway"* (*Owners*) v. *Ashburner*, *The "Norway"* (1865), 3 Moo. P. C. C. (N. S.) 245, 261; *Johnston Brothers* v. *Saxon Queen Steamship Co.* (1913), 108 L. T. 564.

SECT. 5. The Unloading.

It is, therefore, necessary to consider the physical features of the port named (*d*), and to take into account the size and draught of the ship (*e*). If she cannot enter the port without discharging a portion of her cargo, the shipowner is not bound to lighten her outside (*f*) for the purpose of enabling her to enter (*g*). Any physical obstruction must, however, in order that it may have this effect, be of a permanent character; the existence of a temporary impediment, such as, for instance, a bar, which the ship cannot cross owing to the tides being neap (*h*) or the water in the river being low (*i*), or the presence of ice obstructing entrance to the port (*k*), does not render the port unsafe, and the ship cannot, therefore, refuse to proceed (*l*). The port is not unsafe because the ship must necessarily take the ground at certain states of the tide (*m*), though if the contract provides that the ship is to lie always afloat the shipowner may refuse to proceed to such a port (*n*). It is not, however, sufficient that the port named should be a safe port in the sense that there is no physical danger to the ship (*o*). There must be no danger of capture or seizure from political reasons (*p*). The charterer must not, therefore, name a port in which the unloading of the cargo is by law prohibited (*q*), or which cannot be reached by the ship without running the risk of hostile capture (*r*).

The same principles apply where the destination to which the ship is ordered is not a port in the wide sense of the word, but a dock (*s*).

Consequences of naming unsafe port.

351. The charterer who names an unsafe port must indemnify the

(*d*) *The Alhambra* (1881), 6 P. D. 68, C. A., followed in *Reynolds & Co.* v. *Tomlinson*, [1896] 1 Q. B. 586; *Johnston Brothers* v. *Saxon Queen Steamship Co.* (1913), 108 L. T. 564.

(*e*) *The Alhambra, supra*; compare *Re Goodbody & Co. and Balfour, Williamson & Co.* (1899), 5 Com. Cas. 59, C. A.

(*f*) As to lightening the ship after arrival to enable her to reach her berth, see p. 262, *post*.

(*g*) *The Alhambra, supra*; *Reynolds & Co.* v. *Tomlinson, supra*; compare *Hayton* v. *Irwin* (1879), 5 C. P. D. 130, C. A.

(*h*) *Bastifell* v. *Lloyd* (1862), 1 H. & C. 388; compare *Parker* v. *Winlow* (1857), 7 E. & B. 942; *The Curfew*, [1891] P. 131.

(*i*) *Schilizzi* v. *Derry* (1855), 4 E. & B. 873.

(*k*) *Metcalfe* v. *Britannia Ironworks Co.* (1877), 2 Q. B. D. 423, C. A.; *Schilizzi* v. *Derry, supra, per* Lord CAMPBELL, C.J., at p. 887.

(*l*) It is otherwise where the obstruction is permanent; see pp. 259, 260, *post*.

(*m*) As to the shipowner's position if the ship is damaged through taking the ground, see *The Moorcock* (1889), 14 P. D. 64, C. A.; distinguished in *Parker* v. *Plomesgate Rural Council* (1904), 9 Com. Cas. 107; and see p. 181, *ante*.

(*n*) *The Alhambra, supra*. As to the distinction between "lie afloat" and "deliver, always afloat," compare *Carlton Steamship Co.* v. *Castle Mail Packets Co.*, [1898] A. C. 486, *per* Lord WATSON, at p. 495; see p. 181, *ante*.

(*o*) Compare p. 258, *post*.

(*p*) *The Teutonia* (1872), L. R. 4 P. C. 171.

(*q*) *Ogden* v. *Graham* (1861), 1 B. & S. 773.

(*r*) *The Teutonia, supra*.

(*s*) *Parker* v. *Winlow* (1857), 7 E. & B. 942; *Allen* v. *Coltart* (1883), 11 Q. B. D. 782. The consignee is, apparently, bound to select a dock into which admittance can be procured (*Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38, *per* Lord BLACKBURN, at p. 44, citing *Samuel* v. *Royal Exchange Assurance Co.* (1828), 8 B. & C. 119).

shipowner against the consequences (*t*). He must, therefore, pay any demurrage (*a*) or damages for detention (*b*) which may become payable by reason of delay caused thereby, and, if the ship has had to be shifted to another port, any extra port charges incurred (*c*). He is not, however, liable for any damage which the ship may sustain during the shifting (*d*), nor for the costs of an action improperly brought against the shipowner by the consignee for his failure to deliver the cargo at the named port (*e*).

Shipowner's duty to reach port of discharge.

352. It is the duty of the shipowner to reach the port of discharge, whether specified in the contract or named afterwards, and to deliver his cargo there, unless he has some lawful excuse (*f*). If he is unable to complete the voyage, his inability to do so may be excused by the terms of his contract (*g*); but, as he has not fulfilled the condition upon which freight becomes payable (*h*), he is not entitled, as a general rule, to claim payment even of *pro ratâ* freight, though he has in fact delivered the cargo to the consignee (*i*). If, on the other hand, the cause which prevents him from reaching the port of discharge and delivering the cargo there is not excepted by the contract, he not only loses his right to freight, but, if he lands the cargo, also becomes liable to the consignee for his failure to deliver it at its destination (*k*).

So near thereto as she can safely get.

353. In practice the contract usually provides that the ship is to proceed to the port of discharge or so near thereto as she can safely get (*l*). This provision is intended to benefit the shipowner, and its effect is to substitute an alternative destination to which the ship may proceed (*m*). By proceeding to this alternative destination and delivering the cargo there, the shipowner equally completes the voyage in accordance with the terms of the contract, and thus entitles himself to be paid the full freight (*n*).

The right to proceed to this alternative destination does not arise unless it is unsafe or impossible for the ship to proceed to her original destination (*o*). The safety of the ship herself must be

(*t*) As to the effect of a cesser clause in such a case, see *French* v. *Gerber* (1877), 2 C. P. D. 247, C. A.; and see pp. 133, 134, *ante*.

(*a*) *Evans* v. *Bullock* (1877), 38 L. T. 34.

(*b*) *Ogden* v. *Graham* (1861), 1 B. & S. 773.

(*c*) *Evans* v. *Bullock*, *supra*.

(*d*) *Ibid.*

(*e*) *Ibid.*

(*f*) See p. 220, *ante*.

(*g*) *Metcalfe* v. *Britannia Ironworks Co.* (1877), 2 Q. B. D. 423, C. A., *per* BRAMWELL, L.J., at p. 428.

(*h*) See p. 303, *post*.

(*i*) *Metcalfe* v. *Britannia Ironworks Co.*, *supra*. As to *pro ratâ* freight, see pp. 314, 315, *post*.

(*k*) *Metcalfe* v. *Britannia Ironworks Co.*, *supra*, *per* BRAMWELL, L.J., at p. 428.

(*l*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 100, 106, 113. Sometimes the shipowner is empowered to carry the goods on if they cannot be delivered at their destination without undue delay (*Searle* v. *Lund* (1904), 90 L. T. 529, C. A.).

(*m*) *Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38.

(*n*) *Ibid.*; compare *The Teutonia* (1872), L. R. 4 P. C. 171.

(*o*) *Dahl* v. *Nelson, Donkin & Co.*, *supra*, *per* Lord WATSON, at p. 57; compare *Bastifell* v. *Lloyd* (1862), 1 H. & C. 388.

SECT. 5. The Unloading.

involved (*p*); it is not sufficient to show that, if she were to proceed to her original destination, the cargo would be exposed to danger (*q*). If the cargo alone is exposed to danger, the shipowner may be excused from proceeding further (*r*); but the delivery of the cargo at an intermediate port is not a delivery at its destination, and therefore no freight will be payable (*s*). At the same time, since the object of the contract is the delivery of the cargo, the standard of safety is the safety of the ship as a laden ship (*t*). She is, therefore, not bound to proceed to her original destination if the presence of the cargo renders it unsafe for her to do so (*a*), even where in the absence of the cargo there would be no difficulty or danger (*b*). Thus, if the ship cannot reach her port of discharge without lightening (*c*), the master may call upon the consignee to take delivery of the cargo before reaching the port, since he is not bound to lighten the ship (*d*); and the same principle applies where the port of discharge is rendered unsafe by reason of a blockade (*e*) or embargo (*f*). On the other hand, the master must not stop too soon (*g*); he must proceed as near as he can safely get in the direction of the port of discharge (*h*). He is not entitled to call upon the consignee to accept delivery under the contract until he is unable to go any further without endangering the ship (*i*); and the place of delivery is the place where the ship is stopped through

(*p*) *The Alhambra* (1881), 6 P. D. 68, C. A., following *Shield* v. *Wilkins* (1850), 5 Exch. 304.

(*q*) *Nobel's Explosives Co.* v. *Jenkins & Co.*, [1896] 2 Q. B. 326.

(*r*) *Brunner* v. *Webster* (1900), 5 Com. Cas. 167 (where the shipowner was not excused, there being in fact no danger); and compare p. 228, *ante*.

(*s*) *Liddard* v. *Lopes* (1809), 10 East, 526.

(*t*) *Shield* v. *Wilkins*, *supra*.

(*a*) *The Alhambra*, *supra*; *Reynolds & Co.* v. *Tomlinson*, [1896] 1 Q. B. 586.

(*b*) *Shield* v. *Wilkins*, *supra*.

(*c*) It has been held that if there is a custom to lighten outside the port, the shipowner is bound to do so (*Hillstrom* v. *Gibson and Clark* (1870), 8 Macph. (Ct. of Sess.) 463; followed in *Dickinson* v. *Martini & Co.* (1874), 1 R. (Ct. of Sess.) 1185), provided that the amount of lightening required is not unreasonable (*Capper* v. *Wallace* (1880), 5 Q. B. D. 163, following *Hillstrom* v. *Gibson and Clark*, *supra*). This view is, however, inconsistent with *The Alhambra*, *supra* (which was followed in *Reynolds & Co.* v. *Tomlinson*, *supra*, and *Erasmo Treglia* v. *Smith's Timber Co., Ltd.* (1896), 1 Com. Cas. 360), in which BRETT, L.J., declined to follow *Hillstrom* v. *Gibson and Clark*, *supra*. As to lightening inside the port, see p. 262, *post*.

(*d*) *Erasmo Treglia* v. *Smith's Timber Co., Ltd.*, *supra*; *The Alhambra*, *supra*; *Reynolds & Co.* v. *Tomlinson*, *supra*. The contract may, however, contain a stipulation as to the lightening of the ship outside the port; see *Darling* v. *Raeburn*, [1907] 1 K. B. 846, C. A.

(*e*) *Castel and Latta* v. *Trechman* (1884), Cab. & El. 276.

(*f*) *Geipel* v. *Smith* (1872), L. R. 7 Q. B. 404; *Jackson* v. *Union Marine Insurance Co.* (1874), L. R. 10 C. P. 125, Ex. Ch.; see, *contra*, *Hadley* v. *Clarke* (1799), 8 Term Rep. 259, where a delay of two years caused by the embargo was held not to justify the shipowner in abandoning the voyage.

(*g*) *Castel and Latta* v. *Trechman*, *supra*; *Metcalfe* v. *Britannia Ironworks Co.* (1877), 2 Q. B. D. 423, C. A.; compare *Schilizzi* v. *Derry* (1854), 4 E. & B. 873.

(*h*) *Castel and Latta* v. *Trechman*, *supra*; *Metcalfe* v. *Britannia Ironworks Co.*, *supra*.

(*i*) *Castel and Latta* v. *Trechman*, *supra*. If the ship cannot get at all, it cannot get safely within the meaning of the phrase (*Dahl* v. *Nelson*, *Donkin & Co.* (1881), 6 App. Cas. 38, *per* Lord BLACKBURN, at p. 50).

her inability to proceed (*k*). The delivery of the cargo at any other place cannot be regarded as a delivery at the alternative destination provided in the contract; and, however reasonably the master may have acted, he must be taken to have abandoned the voyage by delivering the cargo short of its destination (*l*). Even a delivery at the nearest safe port is not sufficient to entitle the master to his freight (*m*), unless the ship cannot in fact proceed any further with safety (*n*). The contract may, however, by its terms provide that, if it becomes unsafe for the ship to proceed, through the happening of some specified event (*o*), to her port of discharge, the master is to have the option of landing the goods at some other safe port (*p*). In this case it must be shown that the port of discharge has in fact become unsafe; it is not sufficient that the master exercised his option in the honest belief that he was justified in doing so (*q*).

What amounts to obstruction.

354. It is the duty of the master to proceed on the original voyage until he is prevented from proceeding any further by some permanent obstruction (*r*), which may be either physical (*s*) or political (*t*). A permanent obstruction does not necessarily mean an obstruction that will remain for ever: there must, in every case, be some limit of time within which an obstruction ceasing to exist cannot be regarded as permanent (*a*), and beyond which a continuing obstacle ceases to be temporary (*b*). No impediment arising in the ordinary course of navigation (*c*), or arising in the usual and ordinary course of management of a particular port (*d*), and not lasting beyond what is, in the circumstances of the case, a reasonable time, is to be regarded as a permanent obstruction; and in these cases the ship must wait until the obstruction has ceased to exist (*e*), and must proceed to the port of discharge before the consignee can be required

(*k*) *Schilizzi* v. *Derry* (1855), 4 E. & B. 873; *Metcalfe* v. *Britannia Ironworks Co.* (1877), 2 Q. B. D. 423, C. A.; *Nobel's Explosives Co.* v. *Jenkins & Co.*, [1896] 2 Q. B. 326.

(*l*) *Castel and Latta* v. *Trechman* (1884), Cab. & El. 276.

(*m*) *Metcalfe* v. *Britannia Ironworks Co.*, *supra*; *Castel and Latta* v. *Trechman*, *supra*.

(*n*) *Medeiros* v. *Hill* (1832), 8 Bing. 231; *The Teutonia* (1872), L. R. 4 P. C. 171.

(*o*) It is not sufficient that the event should render the port unsafe at the moment; the port must be unsafe for a period which would involve inordinate delay (*Steamship Knutsford, Ltd.* v. *Tillmanns & Co.*, [1908] A. C. 406).

(*p*) *Nobel's Explosives Co.* v. *Jenkins & Co.*, *supra*; *Steamship Knutsford, Ltd.* v. *Tillmanns & Co.*, *supra*.

(*q*) *Steamship Knutsford, Ltd.* v. *Tillmanns & Co.*, *supra*.

(*r*) *Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38, *per* Lord WATSON, at p. 58.

(*s*) *The Alhambra* (1881), 6 P. D. 68, C. A.; *Reynolds & Co.* v. *Tomlinson*, [1896] 1 Q. B. 586.

(*t*) *The Teutonia*, *supra*; *The Fox, Walker* (*Thomas*) *& Co.* v. *Horlock* (1913), 30 T. L. R. 58 (strike).

(*a*) *Schilizzi* v. *Derry*, *supra*; *Parker* v. *Winlow* (1857), 7 E. & B. 942; *Bastifell* v. *Lloyd* (1862), 1 H. & C. 388.

(*b*) *Dahl* v. *Nelson, Donkin & Co.*, *supra*, *per* Lord WATSON, at p. 59.

(*c*) *Schilizzi* v. *Derry*, *supra*; *Parker* v. *Winlow*, *supra*; *Bastifell* v. *Lloyd*, *supra*; *Metcalfe* v. *Britannia Ironworks Co.*, *supra*.

(*d*) *Dahl* v. *Nelson, Donkin & Co.*, *supra*; *Kell* v. *Anderson* (1842), 10 M. & W. 498; *Tharsis Sulphur and Copper Co.* v. *Morel Brothers & Co.*, [1891] 2 Q. B. 647, C. A.; *Watson* v. *Borner* (*H.*) *& Co., Ltd.* (1900), 5 Com. Cas. 377, C.A.

(*e*) See the cases cited in notes (*a*)—(*d*), *supra*.

SECT. 5. **The Unloading.**

to take delivery of the cargo (*f*). Thus, the ship may be unable to proceed beyond a particular place because, at the time when she arrives there, there is not sufficient water to allow her to proceed further (*g*). Nevertheless if, by waiting until the tide serves, she is able to proceed, she must wait, and cannot deliver her cargo there (*h*). The contract may, however, by its terms provide that the ship is not bound to wait until the tide serves (*i*).

What amounts to arrival.

355. Even when the ship has actually reached the port of discharge, she has not necessarily reached the destination contemplated by the contract (*k*). In the absence of any stipulation (*l*) or custom (*m*) to the contrary, she has reached her destination when she has arrived at that place in the port at which ships about to discharge such a cargo as that which she carries usually lie (*n*), and she need not be in the particular part of the port in which the particular cargo is to be discharged (*o*). The same principle applies where the contract requires the ship to reach a particular dock (*p*); she cannot be considered as having arrived at her destination until she is inside the dock (*q*), in the usual place of discharge (*r*), though she need not have reached her actual discharging berth (*s*).

(*f*) *Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38, *per* Lord WATSON, at p. 61.

(*g*) *Bastifell* v. *Lloyd* (1862), 1 H. & C. 388; *Schilizzi* v. *Derry* (1855), 4 E. & B. 873.

(*h*) *Bastifell* v. *Lloyd, supra*; compare *Parker* v. *Winlow* (1857), 7 E. & B. 942.

(*i*) *Horsley* v. *Price* (1883), 11 Q. B. D. 244; *Allen* v. *Coltart* (1883), 11 Q. B. D. 782.

(*k*) *Brown* v. *Johnson* (1842), 10 M. & W. 331, *per* Lord ABINGER, at p. 334; *Kell* v. *Anderson* (1842), 10 M. & W. 498.

(*l*) *Murphy* v. *Coffin* (1883), 12 Q. B. D. 87. The contract may provide that time is to commence from an arbitrary point, such as the reporting of the ship at the custom house; see *Horsley Line, Ltd.* v. *Roechling Brothers*, [1908] S. C. 866 (where the ship was reported before she arrived in the harbour).

(*m*) *Norden Steam Co.* v. *Dempsey* (1876), 1 C. P. D. 654; *Brereton* v. *Chapman* (1831), 7 Bing. 559; compare *Robertson* v. *Jackson* (1845), 2 C. B. 412, where there was a Government regulation as to the place of discharge.

(*n*) *Nelson* v. *Dahl* (1879), 12 Ch. D. 568, C. A., *per* BRETT, L.J., at p. 583 (affirmed, *sub nom. Dahl* v. *Nelson, Donkin & Co., supra*); *Nielsen* v. *Wait* (1885), 16 Q. B. D. 67, C. A., *per* Lord ESHER, M.R., at p. 69; *Thiis* v. *Byers* (1876), 1 Q. B. D. 244; *Brown* v. *Johnson, supra*; *Kell* v. *Anderson, supra*; *Sanders* v. *Jenkins*, [1897] 1 Q. B. 93; *Leonis Steamship Co., Ltd.* v. *Rank, Ltd.*, [1908] 1 K. B. 499, C. A.; *Anglo-Hellenic Steamship Co.* v. *Dreyfus (Louis) & Co.* (1913), 108 L. T. 36; *Cargo ex Argos, Gaudet* v. *Brown* (1873), L. R. 5 P. C. 134, 160; compare *Brereton* v. *Chapman* (1831), 7 Bing. 559; *La Cour* v. *Donaldson & Son* (1874), 1 R. (Ct. of Sess.) 912; *Bremner* v. *Burrell & Son* (1877), 4 R. (Ct. of Sess.) 934.

(*o*) *Nelson* v. *Dahl, supra*.

(*p*) *Dahl* v. *Nelson, Donkin & Co., supra*; *Brown* v. *Johnson, supra*, followed in *Tapscott* v. *Balfour* (1872), L. R. 8 C. P. 46.

(*q*) *Dahl* v. *Nelson, Donkin & Co., supra* (where, the dock being named in the contract as the destination, it was held that the consignee was not bound to obtain admittance for the ship); *Norden Steam Co.* v. *Dempsey, supra*; *Shadforth* v. *Cory* (1863), 1 Mar. L. C. 363, Ex. Ch.; but see *Ashcroft* v. *Crow Orchard Colliery Co.* (1874), L. R. 9 Q. B. 540; *Davies* v. *McVeagh* (1879), 4 Ex. D. 265, C. A., where, however, the ship was admitted into the dock.

(*r*) *Nelson* v. *Dahl, supra*; affirmed, *sub nom. Dahl* v. *Nelson, Donkin & Co., supra*.

(*s*) *Brown* v. *Johnson, supra*.

356. The contract, however, in naming the destination of the ship, may describe a more limited area, such as a quay or quay berth, or a particular part of a port or dock, and in this case the ship must actually be at the place named before she can be said to have reached her destination (*t*). If, therefore, without any default on the part of the consignee (*a*), the ship is unable to reach her berth at once, as, for instance, where the berth is already occupied (*b*), or where the tides are too low to permit her to proceed for the present (*c*), the risk of delay falls upon the shipowner and not upon the consignee (*d*), and if by the custom of the port it is usual to lighten ships after their arrival in the port to enable them to reach their destination, the shipowner must lighten his ship if necessary (*e*). The same principle applies where the destination of the ship is not a berth specified in the contract, but a berth to be named by the charterer (*f*). Provided that he acts reasonably, he may name any berth which complies with the requirements of the contract (*g*). Unless, therefore, the contract expressly requires him to name a vacant berth (*h*), the berth named, if otherwise in order, need not be vacant at the time when the ship arrives in the port, and the shipowner is bound, if necessary, to wait for a reasonable time until the berth is free (*i*). In this case also the ship has not reached her destination until she has actually reached her berth, the risk of delay in the meanwhile falling upon the shipowner (*k*). Where,

Where arrival at berth necessary.

Naming the berth.

(*t*) *Strahan* v. *Gabriel* (1879), cited in *Nelson* v. *Dahl* (1879), 12 Ch. D. 568, 589, C. A.; *Norden Steam Co.* v. *Dempsey* (1876), 1 C. P. D. 654; *Bastifell* v. *Lloyd* (1862), 1 H. & C. 388; *Leonis Steamship Co., Ltd.* v. *Rank, Ltd.*, [1908] 1 K. B. 499, C. A.

(*a*) *Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38; *Sailing Ship Milverton Co.* v. *Cape Town and District Gas Light and Coke Co.* (1897), 2 Com. Cas. 281; compare *Watson* v. *Borner* (*H.*) *& Co., Ltd.* (1900), 5 Com. Cas. 377, C. A.; *Jaques & Co.* v. *Wilson* (1890), 7 T. L. R. 119, where the charterers failed to give proper directions. As to the effect of the consignee's previous engagements, see p. 278, *post.*

(*b*) *Strahan* v. *Gabriel, supra; The Cordelia*, [1909] P. 27.

(*c*) *Bastifell* v. *Lloyd, supra.*

(*d*) It is immaterial, where the place of arrival is fixed by custom, that the shipowner is a foreigner unacquainted with the custom (*Norden Steam Co.* v. *Dempsey, supra*).

(*e*) *Brereton* v. *Chapman* (1831), 7 Bing. 559.

(*f*) *Murphy* v. *Coffin* (1883), 12 Q. B. D. 87, discussing *Davies* v. *McVeagh* (1879), 4 Ex. D. 265, C. A.; *Parker* v. *Winlow* (1857), 7 E. & B. 942; *Leonis Steamship Co., Ltd.* v. *Rank, Ltd., supra.*

(*g*) *Tharsis Sulphur and Copper Co.* v. *Morel Brothers & Co.*, [1891] 2 Q. B. 647, C. A.; compare *Hull Steam Shipping Co.* v. *Lamport and Holt* (1907), 23 T. L. R. 445; *Jaques & Co.* v. *Wilson, supra.* If he refuses to name any berth at all, the measure of damages is the freight that would have been earned if the cargo had been duly delivered (*Stewart* v. *Rogerson* (1871), L. R. 6 C. P. 424).

(*h*) *Harris* v. *Jacobs* (1885), 15 Q. B. D. 247, C. A.

(*i*) *Murphy* v. *Coffin, supra, per* MATHEW, J., at p. 89, distinguishing *Dahl* v. *Nelson, Donkin & Co., supra, per* Lord BLACKBURN, at p. 44; *Ogmore Steamship Co.* v. *Borner* (*H.*) *& Co. Ltd., The Deerhound* (1901), 6 Com. Cas. 104; see also *Pyman Brothers* v. *Dreyfus Brothers & Co.* (1889), 24 Q. B. D. 152, *per* MATHEW, J.

(*k*) *Murphy* v. *Coffin, supra; Tharsis Sulphur and Copper Co.* v. *Morel Brothers & Co., supra; Bulman and Dickson* v. *Fenwick & Co.*, [1894] 1 Q. B. D. 179, C. A. (where the outbreak of a strike did not affect the position, the contract containing a strike clause); and see *Watson* v. *Borner* (*H.*) *& Co., Ltd., supra.*

SECT. 5. The Unloading.

however, the obstruction which causes the delay is of a permanent and not merely of a temporary nature (*l*), as, for instance, where the berth will not be available until after the lapse of a time which, having regard to the objects of the adventure of both charterer and shipowner, is, as a matter of business, wholly unreasonable (*m*), the shipowner is only bound to proceed as near to the berth, whether specified in the contract (*n*) or named afterwards (*o*), as he can safely get (*p*). When by doing this he has reached a destination which must be deemed as between the parties to be that provided by his contract (*q*), he is entitled to require the consignee to take delivery of the cargo from the ship as she lies (*r*).

Proceeding to discharging berth.

357. Where the destination of the ship, as defined by contract or by custom, is not identical with the place of discharge, the consignee is entitled to select the actual place at which the cargo is to be discharged (*s*), provided that the place selected is a usual place for the purpose (*t*) and is also a safe place for the ship (*a*); and the master may be restrained by injunction from discharging elsewhere (*b*). The master cannot refuse to go to the place selected merely upon the ground that it will be more expensive for the shipowner to discharge the cargo there than would otherwise be the case (*c*). If he has already gone to another berth, he must shift the ship to the place selected by the consignee, and he is not entitled to make it a condition of his doing so that the consignee shall pay any expenses already incurred (*d*). Moreover, if the usual mode of delivering the particular kind of cargo is to unload a portion of the cargo in one part of the port, and then, when the ship is lightened, to go to another part of the port and there finish the unloading, the shipowner is bound to deliver the cargo in that way (*e*). In such a case the risk of delay in reaching the actual place or places of delivery falls upon the consignee and not upon the shipowner, since the ship has *ex hypothesi* already reached her destination, and time has therefore begun to run against the consignee (*f*).

(*l*) Compare p. 259, *ante*.

(*m*) *Nelson* v. *Dahl* (1879), 12 Ch. D. 568, C. A., *per* BRETT, L.J., at p. 593; approved in *Dahl* v. *Nelson, Donkin & Co.* (1881), 7 App. Cas. 38, 60.

(*n*) *Hull Steam Shipping Co.* v. *Lamport and Holt* (1907), 23 T. L. R. 445.

(*o*) *Allen* v. *Coltart* (1883), 11 Q. B. D. 782.

(*p*) As to the meaning of these words, see p. 257, *ante*.

(*q*) See *ibid.*

(*r*) *Cargo ex Argos, Gaudet* v. *Brown* (1873), L. R. 5 P. C. 134, 160; *Hull Steam Shipping Co.* v. *Lamport and Holt, supra*; *Dahl* v. *Nelson, Donkin & Co., supra.*

(*s*) *Holman* v. *Peruvian Nitrate Co.* (1878), 5 R. (Ct. of Sess.) 657; *The Felix* (1868), L. R. 2 A. & E. 273.

(*t*) *Nielsen* v. *Wait* (1885), 16 Q. B. D. 67, C. A., *per* Lord ESHER, M.R., at p. 69.

(*a*) *The "Norway"* (*Owners*) v. *Ashburner, The "Norway"* (1865), 3 Moo. P. C. C. (N. S.) 245, 261.

(*b*) *Wood* v. *Atlantic Transport Co.* (1900), 5 Com. Cas. 121.

(*c*) *Holman* v. *Peruvian Nitrate Co., supra.*

(*d*) *The Felix, supra.*

(*e*) *Nielsen* v. *Wait, supra*; *Caffarini* v. *Walker* (1876), 10 I. R. C. L. 250, Ex. Ch.; *M'Intosh* v. *Sinclair* (1877), 11 I. R. C. L. 456.

(*f*) *Leonis Steamship Co., Ltd.* v. *Rank, Ltd.*, [1908] 1 K. B. 499, C. A.; *Northfield Steamship Co.* v. *Compagnie L'Union des Gaz*, [1912] 1 K. B. 434, C. A.; see pp. 182, 183, *ante*.

Readiness to discharge.

358. To be ready to discharge, the ship must not only have reached her destination, she must also have complied with all the legal formalities necessary to enable the discharge to begin (*g*). The master must therefore have reported the ship and crew, and must have delivered his manifest and other papers to the proper officers (*h*). This rule does not, however, apply where the port authorities have already given the ship permission to begin the discharge of her cargo, and the consignee must then be prepared to take delivery at once (*i*).

In accordance with the same principle, the mere physical presence of the ship at the place named or indicated in the contract as her destination is not an arrival at her destination so as to bind the consignee to take delivery of the cargo, unless she has a legal right to remain there for the purpose of being discharged (*k*).

Consignee's duty to discover arrival.

359. Apart from special contract (*l*) or custom (*m*), it is the duty of the consignee to use due and reasonable diligence to discover when the ship arrives with the cargo on board (*n*); and the master is, therefore, under no obligation in the absence of special contract to give notice of his arrival or readiness to unload, whether the ship is a general ship (*o*) or whether she is working under a charter-party (*p*). In either case time begins to run against the consignee as soon as the ship is ready to unload (*q*), and it is immaterial that he was in fact ignorant of her arrival (*r*). Where, however, his ignorance is attributable to the fault of the shipowner or his agent, any delay occasioned thereby falls upon the shipowner (*s*). The

(*g*) Abbott on Shipping, 5th ed., p. 246; 14th ed., p. 562. If it is at the consignee's request that the master fails to comply with the formalities, the consignee is responsible for the delay (*Furnell* v. *Thomas* (1828), 5 Bing. 188). The extent of the master's duty depends upon the nature of the port (*Balley* v. *D'Arroyave* (1838), 7 Ad. & El. 919, where there was no custom house at the port).

(*h*) Abbott on Shipping, 5th ed., p. 246; 14th ed., p. 562. The contract may provide that time is to count as soon as this is done (*Horsley Line, Ltd.* v. *Roechling Brothers*, [1908] S. C. 866).

(*i*) *Major and Field* v. *Grant* (1902), 7 Com. Cas. 231; *Cardiff Steamship Co.* v. *Jameson* (1903), 88 L. T. 87. The risk of delay arising out of the necessity of complying with customs formalities may, by the terms of the contract, be thrown upon the consignee (*Colridge Steamship Co., Ltd.* v. *Bucknall Steamship Lines, Ltd.* (1909), 14 Com. Cas. 141).

(*k*) *Good & Co.* v. *Isaacs*, [1892] 2 Q. B. 555.

(*l*) *E. Clemens Horst Co.* v. *Norfolk and North American Steam Shipping Co.* (1906), 11 Com. Cas. 141 (where the bill of lading exempted the shipowner from the consequences of failing to give notice); *Forest Steamship Co.* v. *Iberian Iron Ore Co.* (1899), 5 Com. Cas. 83, H. L.; *Northfield Steamship Co.* v. *Compagnie L'Union des Gaz*, [1912] 1 K. B. 434.

(*m*) *Houlder* v. *General Steam Navigation Co.* (1862), 3 F. & F. 170 (where the custom alleged was not proved).

(*n*) *Ibid.*, *per* COCKBURN, J., at p. 174.

(*o*) *Harman* v. *Clarke* (1815), 4 Camp. 159; *Harman* v. *Mant* (1815), 4 Camp. 161; *Houlder* v. *General Steam Navigation Co.*, *supra*; *Major and Field* v. *Grant*, *supra*.

(*p*) *Nelson* v. *Dahl* (1879), 12 Ch. D. 568, C. A., *per* BRETT, L.J., at p. 583; affirmed, *sub nom. Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38.

(*q*) See the cases cited in notes (*g*)—(*m*), *supra*.

(*r*) *Harman* v. *Mant*, *supra*; *Harman* v. *Clarke*, *supra*; *Houlder* v. *General Steam Navigation Co.*, *supra*.

(*s*) *Bradley* v. *Goddard* (1863), 3 F. & F. 638 (where the shipowner failed

SECT. 5. The Unloading.

master must not, therefore, mislead the consignee by entering the ship at the custom house under a name so different from her real name that the consignee could not reasonably have identified her as the ship which he was expecting (*t*).

SUB-SECT. 2.—*The Delivery of the Cargo.*

(i.) *The Person to whom Delivery should be Made.*

Holder of bill of lading.

360. The person who is entitled to claim delivery of the cargo is the holder of the bill of lading, whether as consignee named in it or as assignee of it under a valid indorsement (*a*). If the shipowner delivers the cargo to a person who is not entitled to it, he is responsible to the true owner for the value of the cargo (*b*). He is not, however, bound to make delivery unless the bill of lading is produced (*c*), and any existing liens over the cargo are satisfied (*d*).

Conflicting claims.

361. If conflicting claims are made (*e*) to the cargo the shipowner must interplead (*f*), unless he is prepared to take upon himself the risk of deciding who is the true owner (*g*). He is, however, justified in delivering the cargo to the person who produces a bill of lading, and who appears to be the consignee named in it or the assignee of it, provided that he has no notice or knowledge of any defect in such person's title; and it is immaterial that the

to address the ship, as provided by the charterparty, to the charterer's agents, who would have notified the consignees). But the contract may relieve the shipowner from the consequences of failing to give notice (*E. Clemens Horst Co.* v. *Norfolk and North American Steam Shipping Co.* (1906), 11 Com. Cas. 141).

(*t*) *Harman* v. *Clarke* (1815), 4 Camp. 159.

(*a*) *Glyn Mills & Co.* v. *East and West India Dock Co.* (1882), 7 App. Cas. 591, *per* Lord BLACKBURN, at p. 610; compare *Brown* v. *Hodgson* (1809), 2 Camp. 36; *Gabarron* v. *Kreeft*, *Kreeft* v. *Thompson* (1875), L. R. 10 Exch. 274. As to the holder of the bill of lading, see pp. 157 *et seq.*, *ante*. A shipper who has paid freight in advance may sue the shipowner if the goods are not delivered in accordance with the bill of lading (*Joseph* v. *Knox* (1813), 3 Camp. 320).

(*b*) *Erichsen* v. *Barkworth* (1858), 3 H. & N. 894, Ex. Ch., *per* CROMPTON, J.; *London Joint Stock Bank* v. *British Amsterdam Maritime Agency* (1910), 16 Com. Cas. 102; compare *Anderson* v. *Clark* (1824), 2 Bing. 20.

(*c*) *Jesson* v. *Solly* (1811), 4 Taunt. 52; *Erichsen* v. *Barkworth*, *supra*; *Cargo ex Argos*, *Gaudet* v. *Brown* (1873), L. R. 5 P. C. 134, 159; *The Stettin* (1889), 14 P. D. 142. In this case the consignee is not justified in taking possession of the goods by force (*Lucas* v. *Nockells* (1828), 4 Bing. 729, Ex. Ch., *per* BEST, C.J., at p. 741). As to delivery to a holder of the mate's receipt, see p. 153, *ante*.

(*d*) *Erichsen* v. *Barkworth*, *supra*. As to liens, see pp. 617 *et seq.*, *post*.

(*e*) It is not necessary that an actual claim should be made; it is probably sufficient if the master is aware of circumstances giving rise to a claim (*Glyn Mills & Co.* v. *East and West India Dock Co.*, *supra*, *per* Lord BLACKBURN, at p. 610.)

(*f*) Abbott on Shipping, 5th ed., p. 396; 14th ed., p. 859. The court does not, however, allow him to interplead where bills of lading for the same goods have been given to different persons who claim adversely (*Victor Söhne* v. *British and African Steam Navigation Co.*, [1888] W. N. 84). As to interpleader generally, see title INTERPLEADER, Vol. XVII., pp. 577 *et seq.*

(*g*) *Glyn Mills & Co.* v. *East and West India Dock Co.*, *supra*, *per* Lord BLACKBURN, at p. 610.

bill of lading produced purports to be one of a set (*h*). In this case the delivery under the bill of lading produced relieves the master from further responsibility (*i*); it does not, however, otherwise affect the rights of any other persons who may have a better title to the cargo than the person who took delivery (*k*). On the other hand, a delivery to the person named as consignee in the bill of lading, without requiring production of the bill of lading, cannot be justified if such consignee is not in fact entitled to claim delivery (*l*).

Where shipowner discharged.

362. The shipowner remains liable under his contract until he has made delivery to a person entitled (*m*). A delivery to a wharfinger or to a dock authority is not, in itself, sufficient (*n*), unless the contract provides for such delivery (*o*), or unless there is a custom to that effect (*p*). If, however, no person comes forward to claim the goods, such a delivery may exempt the shipowner from further liability in respect of the goods actually delivered (*q*).

(ii.) *The Method of Discharging the Cargo,*

Discharge a joint act.

363. The discharge of the cargo from the ship is the joint act of the shipowner and the consignee (*r*). The shipowner's duty is to get the cargo out of the holds (*s*) and to deliver it to the consignee (*t*), whilst it is the duty of the consignee to take delivery of

(*h*) *Caldwell* v. *Ball* (1786), 1 Term Rep. 205; *The Tigress* (1863), Brown. & Lush. 38; *Glyn Mills & Co.* v. *East and West India Dock Co.* (1882), 7 App. Cas. 591. As to bills in a set, see p. 152, *ante*.

(*i*) *Glyn Mills & Co.* v. *East and West India Dock Co.*, *supra*.

(*k*) *Barber* v. *Meyerstein* (1870), L. R. 4 H. L. 317.

(*l*) *The Stettin* (1889), 14 P. D. 142; *London Joint Stock Bank* v. *British Amsterdam Maritime Agency* (1910), 16 Com. Cas. 102; *Pirie & Sons* v. *Warden* (1871), 9 Macph. (Ct. of Sess.) 523; compare *Erichsen* v. *Barkworth* (1858), 3 H. & N. 894, Ex. Ch., *per* WILLES, J.

(*m*) Abbott on Shipping, 5th ed., p. 249; 14th ed., p. 564. Hence, a loss occurring during the discharge, but before the delivery to the consignee is complete, falls on the shipowner (*Avon Steamship Co.* v. *Leask & Co.* (1890), 18 R. (Ct. of Sess.) 280). Where, however, the goods are discharged and received into lighters alongside, the master may be bound by custom to take care of the lighters until they are fully laden (*Catley* v. *Winteringham* (1792), Peake, 202 [150]; see title CUSTOM AND USAGES, Vol. X., p. 291), but not afterwards (*Robinson* v. *Turpin* (1805), Peake (3rd ed.), 203, n.).

(*n*) *Bourne* v. *Gatliff* (1844), 11 Cl. & Fin. 45, H. L.; *Wardell* v. *Mourillyan* (1798), 2 Esp. 693.

(*o*) *Oliver* v. *Colven* (1879), 27 W. R. 822; *Borrowman* v. *Wilson* (1891), 7 T. L. R. 416.

(*p*) *Grange & Co.* v. *Taylor* (1904), 9 Com. Cas. 223; *Petrocochino* v. *Bott* (1874), L. R. 9 C. P. 355.

(*q*) *Meyerstein* v. *Barber* (1867), L. R. 2 C. P. 38, 661, Ex. Ch., *per* WILLES, J., at p. 54; affirmed, *sub nom. Barber* v. *Meyerstein* (1870), L. R. 4 H. L. 317; *Hick* v. *Raymond and Reid*, [1893] A. C. 22; *Howard* v. *Shepherd* (1850), 9 C. B. 297; *Chartered Bank of India, Australia and China* v. *British India Steam Navigation Co., Ltd.*, [1909] A. C. 369, P. C.

(*r*) *Petersen* v. *Freebody & Co.*, [1895] 2 Q. B. 294, C. A., *per* Lord ESHER, M.R., at p. 297; *Ford* v. *Cotesworth* (1868), L. R. 4 Q. B. 127, *per* BLACKBURN, J., at p. 134 (affirmed (1870), L. R. 5 Q. B. 544, Ex. Ch.); *Budgett & Co.* v. *Binnington & Co.*, [1891] 1 Q. B. 35, C. A., *per* Lord ESHER, M.R., at p. 38; *Aktieselkab Helios* v. *Ekman & Co.*, [1897] 2 Q. B. 83, C. A., *per* Lord ESHER, M.R., at p. 86; *Langham Steamship Co., Ltd.* v. *Gallagher* (1911), 12 Asp. M. L. C. 109.

(*s*) Compare *The Jaederen*, [1892] P. 351.

(*t*) *Petersen* v. *Freebody & Co.*, *supra*.

SECT. 5. **The Unloading.**

it (*a*). The extent of their respective obligations in any particular case is, in the absence of any special contract (*b*), regulated by the custom, if any, of the port of discharge (*c*).

Duties apart from stipulation.

364. For the purpose of performing his part of the discharge the shipowner must provide suitable tackle and a sufficient number of men (*d*). As a general rule the ship's tackle is used (*e*) and the work is done by the crew of the ship (*f*). The shipowner is not bound to employ any additional men, unless the contract fixes the time within which the cargo is to be discharged and the crew cannot complete the discharge in time (*g*). The delivery takes place from the ship's tackle over the side of the ship (*h*); and the shipowner has performed his obligation when he has put the goods in such a position that the consignee can take delivery of them (*i*). The consignee's part in the joint operation begins when the goods are brought to the rail of the ship and placed within his reach;

(*a*) Bills of Lading Act, 1855 (18 & 19 Vict. c. 111), s. 1; *Fowler* v. *Knoop* (1878), 4 Q. B. D. 299, C. A.; *The Clan Macdonald* (1883), 8 P. D. 178, *per* HANNEN, P., at p. 184; compare *Houlder* v. *General Steam Navigation Co.* (1862), 3 F. & F. 170; and see p. 263, *ante*.

(*b*) *Brenda Steamship Co.* v. *Green*, [1900] 1 Q. B. 518, C. A.; and see p. 267, *post*.

(*c*) *Postlethwaite* v. *Freeland* (1880), 5 App. Cas. 599, *per* Lord BLACKBURN, at p. 613; *Norden Steam Co.* v. *Dempsey* (1876), 1 C. P. D. 654; *Good & Co.* v. *Isaacs*, [1892] 2 Q. B. 555, C. A.; *The Jaederen*, [1892] P. 351, *per* GORELL BARNES, J., at p. 359; *Aktieselkab Helios* v. *Ekman & Co.*, [1897] 2 Q. B. 83, C. A.; see p. 267, *post*. As to the liability to pay quay dues for discharge of cargo, see *Societa Anonima Ungherese di Armamenti Marittimo* v. *Hamburg South American Steamship Co.* (1912), 106 L. T. 957; and compare p. 218, *ante*. As to usages of particular ports, see title CUSTOM AND USAGES, Vol. X., pp. 290 *et seq.*

(*d*) *Hansen* v. *Donaldson* (1874), 1 R. (Ct. of Sess.) 1066; compare Encyclopædia of Forms and Precedents, Vol. XIV., p. 114. The shipowner must therefore bear any expense necessary for the proper discharge of the cargo, such as, for instance, the expense of repairing torn bags to prevent leakage of contents (*Leach & Co.* v. *Royal Mail Steam Packet Co.* (1910), 16 Com. Cas. 143).

(*e*) *Petersen* v. *Freebody & Co.*, [1895] 2 Q. B. 294, C. A.; *Knight Steamship Co.* v. *Fleming, Douglas & Co.* (1898), 25 R. (Ct. of Sess.) 1070; compare Encyclopædia of Forms and Precedents, Vol. XIV., p. 103.

(*f*) *Ford* v. *Cotesworth* (1868), L. R. 4 Q. B. 127, *per* BLACKBURN, J., at p. 137 (affirmed (1870), L. R. 5 Q. B. 544, Ex. Ch.); *Hansen* v. *Donaldson*, *supra*. But the regulations of the port of discharge may provide for the discharge being carried out by the servants of the port or dock authority at the shipowner's expense (*The Emilien Marie* (1875), 2 Asp. M. L. C. 514; *The Jaederen*, *supra*; compare *Dick* v. *Badart* (1883), 10 Q. B. D. 387).

(*g*) *Hansen* v. *Donaldson*, *supra*.

(*h*) *Petersen* v. *Freebody & Co.*, *supra*.

(*i*) *Ibid.*; *British Shipowners' Co.* v. *Grimond* (1876), 3 R. (Ct. of Sess.) 968, followed in *Knight Steamship Co.* v. *Fleming, Douglas & Co.* (1898), 25 R. (Ct. of Sess.) 1070; *Langham Steamship Co., Ltd.* v. *Gallagher* (1911), 12 Asp. M. L. C. 109; compare *Cargo ex Argos*, *Gaudet* v. *Brown* (1873), L. R. 5 P. C. 134, 161; *Waugh* v. *Morris* (1873), L. R. 8 Q. B. 202, *per* BLACKBURN, J., at p. 207. The contract may provide that the whole of the discharge is to be at the consignee's risk (*Smackman* v. *General Steam Navigation Co.* (1908), 13 Com. Cas. 196), or that the shipowner's liability is to cease when the goods are free from the ship's tackle, even though the goods are then handed over to the shipowner's landing agent (*Chartered Bank of India, Australia and China* v. *British India Steam Navigation Co., Ltd.*, [1909] A. C. 369, P. C.).

SECT. 5. The Unloading.

and he, in his turn, must provide the proper appliances and labour for the purpose of performing it (*k*). If, therefore, the ship is discharging her cargo afloat, he must provide the necessary lighters and lightermen (*l*); if she is discharging at a quay, he must employ a sufficient number of labourers (*m*); and any stowing or stacking that may be required must be done by him, and not by the shipowner (*n*).

Special stipulations etc.

365. The position of the parties may be materially modified by the terms of their contract (*o*), or by the custom of the port of discharge (*p*). Thus, by contract or custom goods may be delivered to the consignee on the deck of the ship in board (*q*); he may be required to do the whole of the unloading, including the discharge of the holds (*r*); or, when the cargo is in bulk, such as, for instance, a grain cargo, he may be required to supply sacks and to provide the necessary labour for filling them, the shipowner's ordinary duty of delivering over the ship's side being resumed after the sacks are filled (*s*). On the other hand, the shipowner's duty may not cease at the ship's side; he may be required to place the goods in the lighter alongside the ship (*t*) or to deliver them on to the quay (*a*) without any assistance

(*k*) *Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38, *per* Lord BLACKBURN, at p. 43; *Petersen* v. *Freebody & Co.*, [1895] 2 Q. B. 294, C. A.; *Budgett & Co.* v. *Binnington & Co.*, [1891] 1 Q. B. 35, C. A., *per* Lord ESHER, M.R., at p. 38; *Postlethwaite* v. *Freeland* (1880), 5 App. Cas. 599; *Wright* v. *New Zealand Shipping Co.* (1878), 4 Ex. D. 165, C. A., *per* COTTON, L.J., at p. 169.

(*l*) *Dahl* v. *Nelson, Donkin & Co.*, *supra*; *Petersen* v. *Freebody & Co.*, *supra*; *Aktieselkab Helios* v. *Ekman & Co.*, [1897] 2 Q. B. 83, C. A., *per* Lord ESHER, M.R., at p. 86.

(*m*) *Budgett & Co.* v. *Binnington & Co.*, *supra*. The same principles apply where the ship is unable to reach her destination specified in the contract, and discharges the cargo as near thereto as she can safely get (*Dahl* v. *Nelson, Donkin & Co.*, *supra*, *per* Lord BLACKBURN, at p. 43).

(*n*) Compare *Fletcher* v. *Gillespie* (1826), 3 Bing. 635.

(*o*) *Brenda Steamship Co.* v. *Green*, [1900] 1 Q. B. 518, C. A.; *Northmoor Steamship Co.* v. *Harland and Wolff*, [1903] 2 I. R. 657; *Kearon* v. *Radford & Co.* (1895), 11 T. L. R. 226; *Moore* v. *Harris* (1876), 1 App. Cas. 318, P. C.; *Smackman* v. *General Steam Navigation Co.* (1908), 13 Com. Cas. 196.

(*p*) *Budgett & Co.* v. *Binnington & Co.*, *supra*; *Petrocochino* v. *Bott* (1874), L. R. 9 C. P. 355; *Marzetti* v. *Smith & Son* (1883), 49 L. T. 580, C. A.; *Stephens* v. *Wintringham* (1898), 3 Com. Cas. 169; compare *Petersen* v. *Freebody & Co.*, *supra* (where no custom was proved).

(*q*) *Kearon* v. *Radford & Co.* *supra* (where a custom to that effect was rejected as inconsistent with the contract). In any case he may be given the right to have a representative on board to check the delivery; see Encyclopædia of Forms and Precedents, Vol. XIV., p. 114; and compare *Friedlander* v. *Shaw, Savill and Albion Co.* (1897), 2 Com. Cas. 124.

(*r*) *Ballantine & Co.* v. *Paton and Hendry*, [1912] S. C. 246 (where the cargo was to be discharged free of expense to the steamer, with use of steamer's winch and machinery, if required, and it was held that this provision did not render the charterer responsible for damage caused to the ship during the discharge).

(*s*) *Budgett & Co.* v. *Binnington & Co.*, *supra*; *White* v. *Williams*, [1912] A. C. 814, P. C.; compare *Dunnage* v. *Jolliffe* (1789), cited in Abbott on Shipping, 5th ed., p. 250; 14th ed., p. 565.

(*t*) *Aktieselkab Helios* v. *Ekman & Co.*, *supra*; *Glasgow Navigation Co.* v. *Howard Brothers & Co.* (1910), 15 Com. Cas. 88; *Kearon* v. *Radford & Co.*, *supra*; compare *Thiis* v. *Byers* (1876), 1 Q. B. D. 244.

(*a*) *The Anna* (1901), 18 T. L. R. 25.

SECT. 5. The Unloading.

from the consignee. Where the goods have to be delivered on to the quay, the shipowner must provide, at his own expense, any lighters that may be necessary (*b*); he may also be bound to stack the goods, and is not necessarily discharged by delivering them on to the nearest available part of the quay (*c*).

"Consignee's risk and expense."

366. It is frequently an express term of the contract that the consignee shall take his goods from alongside the ship at his own risk and expense (*d*). This term merely puts into words what would otherwise be implied, namely, that the goods are to be delivered from the ship's tackle at the side of the ship (*e*); but its effect is to exclude any custom of the port which is inconsistent with delivery at the side of the ship (*f*), since the parties have defined their intention in the contract (*g*). Any such inconsistent custom is equally excluded by such an express term, although the contract further provides that the cargo is to be discharged in accordance with the custom of the port (*h*). If, therefore, the ship is to be unloaded afloat, a custom requiring the shipowner to pay for lightering the goods to the shore must be rejected (*i*); and if through lack of water the ship is unable to come right alongside the quay, the shipowner cannot be required, in accordance with the custom of the port in such cases, to provide labourers to carry the goods ashore and deliver them on the quay (*k*). Similarly, he is not bound by a custom which imposes upon shipowners other duties in addition to the delivery; thus, in the case of a timber cargo, where by the custom delivery does not take place when the logs are placed in the water alongside, but after they have been chained together into rafts and officially measured, an express term as to delivery alongside excludes the custom, and the consignee must therefore bear the expense of rafting (*l*). A custom, however, which merely regulates the manner of delivery, and which does not impose upon the shipowner any fresh obligation, but defines the extent of his share in the joint operation of discharging the cargo, binds the shipowner, if it is not

(*b*) *Scrutton* v. *Childs* (1877), 36 L. T. 212. If the goods have to be removed from the quay in lighters, the shipowner may be bound to put them into the lighters (*Marzetti* v. *Smith & Son* (1883), 49 L. T. 580, C. A.). As to the liability of the lighterman, see *Tamvaco & Co.* v. *Timothy and Green* (1882), Cab. & El. 1.

(*c*) *Cardiff Steamship Co.* v. *Jameson* (1903), 88 L. T. 87; *Stephens* v. *Wintringham* (1898), 3 Com. Cas. 169.

(*d*) See Encyclopædia of Forms and Precedents, Vol. XIV., pp. 103, 107, 114.

(*e*) *Cargo ex Argos*, *Gaudet* v. *Brown* (1873), L. R. 5 P. C. 134, 161; *The Nifa*, [1892] P. 411; see p. 266, *ante*.

(*f*) *The Nifa*, *supra*, doubting *Scrutton* v. *Childs*, *supra*; *Northmoor Steamship Co.* v. *Harland and Wolff*, [1903] 2 I. R. 657; *Knight Steamship Co.* v. *Fleming*, *Douglas & Co.* (1898), 25 R. (Ct. of Sess.) 1070. As to usages of particular ports, see title CUSTOM AND USAGES, Vol. X., pp. 290 *et seq.*

(*g*) See p. 140, *ante*.

(*h*) *The Nifa*, *supra*; *Northmoor Steamship Co.* v. *Harland and Wolff*, *supra* (where the charterparty provided that the custom of each port was to be observed in all cases where not specially expressed); see also *Holman* v. *Wade* (1877), *Times*, 11th May.

(*i*) *Hayton* v. *Irwin* (1879), 5 C. P. D. 130, C. A.

(*k*) *The Nifa*, *supra*.

(*l*) *Northmoor Steamship Co.* v. *Harland and Wolff*, *supra*

inconsistent with delivery alongside (*m*). Thus, if the goods have to be delivered into lighters, the shipowner may be bound, by the custom, to place them in the lighters and not merely to put them within reach of the consignee's men (*n*); if the goods have to be delivered on to a quay, he may be bound to place them on the quay and to stack them there (*o*). A custom of this kind does not, however, bind the shipowner where the contract by its terms expressly excludes the customs of the port (*p*).

Alternative methods of delivery.

367. Where alternative methods of delivery are available, such as, for instance, where the goods may either be landed upon a wharf or be delivered into lighters alongside without first landing them on the wharf, the consignee is, apart from custom (*q*), entitled to select whichever method he pleases (*r*), and the shipowner cannot decline to comply with his wishes on the ground that another method of delivery would be less expensive (*s*) or more convenient (*t*) to himself. If, therefore, the consignee asks for his goods to be delivered into lighters, they must be so delivered (*a*). The shipowner is not entitled to require, as a condition of delivering the goods into lighters, that the consignee shall contribute towards the wharfage dues payable by the ship (*b*); and if they are actually landed on the wharf against the wish of the consignee the shipowner must indemnify the consignee against any wharfage dues to which the goods may have become liable in consequence of being so landed (*c*).

Effect of custom.

There may, however, be a custom of the port of discharge by which goods are not directly discharged into lighters, but are first landed on the wharf and thence removed into the lighters (*d*). In this case the custom may require the wharfage dues payable in respect of the goods to be paid by the shipowner (*e*); if, however, the custom requires the consignee to pay them, he cannot claim to be indemnified against them by the shipowner, and it is immaterial

(*m*) *The Nifa*, [1892] P. 411, *per* JEUNE, P., at p. 417; *Aktieselkab Helios* v. *Ekman & Co.*, [1897] 2 Q. B. 83, C. A., *per* Lord ESHER, M.R., at p. 89.

(*n*) *Aktieselkab Helios* v. *Ekman & Co.*, *supra*; *Glasgow Navigation Co.* v. *Howard Brothers & Co.* (1910), 15 Com. Cas. 88.

(*o*) *Stephens* v. *Wintringham* (1898), 3 Com. Cas. 169; compare *Cardiff Steamship Co.* v. *Jameson* (1903), 88 L. T. 87.

(*p*) *Brenda Steamship Co.* v. *Green*, [1900] 1 Q. B. 518, C. A.

(*q*) See p. 278, *post*.

(*r*) Abbott on Shipping, 5th ed., p. 249; 14th ed., p. 564.

(*s*) *Bishop* v. *Ware* (1813), 3 Camp. 360.

(*t*) *Syeds* v. *Hay* (1791), 4 Term Rep. 260.

(*a*) *Bishop* v. *Ware*, *supra*; *Syeds* v. *Hay*, *supra*. As to quay dues and port charges, see *Societa Anonima Ungherese di Armamenti Marittimo* v. *Hamburg South American Steamship Co.* (1912), 106 L. T. 957.

(*b*) *Bishop* v. *Ware*, *supra*.

(*c*) *Syeds* v. *Hay*, *supra*.

(*d*) *Petrocochino* v. *Bott* (1874), L. R. 9 C. P. 355; *Marzetti* v. *Smith & Son* (1883), 49 L. T. 580, C. A.; see title CUSTOM AND USAGES, Vol. X., p. 290.

(*e*) *Petrocochino* v. *Bott*, *supra*. In this case the shipowner may, by the terms of his contract, require the consignee to pay them; see, for instance, the clause known as "the London clause," which was held in *Produce Brokers Co.* v. *Furness, Withy & Co.* (1912), 17 Com. Cas. 165, not to apply when the ship discharged at a riverside wharf and not in dock.

SECT. 5. The Unloading.

that he had insisted upon his goods being discharged direct into lighters (*f*).

Sorting different consignments.

368. Where the cargo is composed of goods consigned to different consignees, it is the duty of the shipowner to deliver to each his proper goods (*g*). Thus, where goods of the same description are shipped under different bills of lading, the shipowner must appropriate the correct quantity to be delivered under each bill of lading (*h*); and if the various consignments are distinguished by different marks, he must sort them accordingly (*i*). Where the marks become obliterated during the voyage, so that it is no longer possible to identify the several consignments, either wholly or in part, the shipowner must deliver to each consignee such portion of the goods as may remain identifiable and therefore specifically deliverable; but he is not entitled, as of right, to apportion the mass which cannot be identified between the different consignees (*j*); and in so far as he is not in a position to deliver to each his proper goods, he is guilty of a breach of contract, for which he is liable in damages unless excused by the terms of his contract (*k*). The consignees may, however, elect to accept delivery, though the goods are incapable of identification; in this case they become tenants in common of the unidentified goods, the share of each being in the proportion that the quantity shipped by his consignor bears to the whole quantity shipped, and the shipowner is relieved *pro tanto* from his liability (*l*). Where, however, the goods are shipped in bulk, and not

(*f*) *Marzetti* v. *Smith & Son* (1883), 49 L. T. 580, C. A.

(*g*) *Grange & Co.* v. *Taylor* (1904), 9 Com. Cas. 223, *per* BIGHAM, J., at p. 228; compare *Hogarth & Sons* v. *Leith Cotton Seed Oil Co.*, [1909] S. C. 955. As to the effect of the description in the bill of lading, see p. 99, *ante*.

(*h*) *Bradley* v. *Dunipace* (1862), 1 H. & C. 521, Ex. Ch.; *The Emilien Marie* (1875), 2 Asp. M. L. C. 514; *Montgomery* v. *Hutchins* (1905), 94 L. T. 207. As to the effect of a statement as to quantity in the bill of lading, see p. 145, *ante*.

(*i*) Compare *Elder, Dempster & Co.* v. *Dunn & Co.* (1909), 101 L. T. 578, H. L. But a delivery of goods wrongly marked is a good delivery, where their identity is clear (*Parsons* v. *New Zealand Shipping Co.*, [1901] 1 K. B. 548, C. A. (where no goods were shipped under the marks described in the bill of lading)).

(*j*) *Sandeman & Sons* v. *Tyzack and Branfoot Steamship Co., Ltd.*, [1913] A. C. 680, distinguishing *Spence* v. *Union Marine Insurance Co.* (1868), L. R. 3 C. P. 427, and *Smurthwaite* v. *Hannay*, [1894] A. C. 494, 505. In *Sandeman & Sons* v. *Tyzack and Branfoot Steamship Co., Ltd.*, the whole of the goods shipped did not arrive, and it was impossible to say whether the goods of any particular consignee were amongst the unidentifiable portion which arrived or amongst those which were lost. Different considerations may perhaps apply when the whole of the goods shipped arrive, since they all clearly belong to one or other of the consignees, though identification is impossible (see *ibid.*, *per* Lord LOREBURN, at p. 689, and *per* Lord SHAW OF DUNFERMLINE, at p. 691). No definite opinion was, however, expressed, except by Lord MOULTON (*ibid.*, at pp. 696, 697), who held that the shipowner does not perform his duty unless he delivers the specific goods to which each consignee is entitled.

(*k*) *Sandeman & Sons* v. *Tyzack and Branfoot Steamship Co., Ltd.*, *supra* (where it was held that a condition exempting the shipowner from responsibility for obliteration of marks did not apply, as the whole of the goods shipped had not arrived).

(*l*) *Sandeman & Sons* v. *Tyzack and Branfoot Steamship Co., Ltd.*, *supra*, explaining *Spence* v. *Union Marine Insurance Co.*, *supra*, and *Smurthwaite* v. *Hannay*, *supra*, *per* Lord RUSSELL OF KILLOWEN, at p. 505. See also title BAILMENT, Vol. I., pp. 542, 543.

in separate parcels, different bills of lading being given for undivided portions of the bulk, the shipowner is not bound, if the cargo arrives in a damaged condition, to apportion the damaged goods between the different bills of lading, so as to deliver to each consignee the correct amount of sound and damaged goods falling to his share (*m*).

Where goods of different kinds are shipped in one parcel under a general description and one bill of lading is given for them all, the shipowner is not bound, in the absence of any custom to that effect at the port of discharge, to sort the various items making up the parcel, but may deliver them in a mass as they come to hand (*n*).

(iii.) *The Time within which the Delivery must Take Place.*

Duties of consignee.

369. The consignee is not entitled to keep the ship waiting for an indefinite period until he chooses to come forward and claim his cargo; he must take delivery within the period fixed by the terms of his contract (*o*), or ascertainable by reference to those terms and the surrounding circumstances (*p*). If the consignee fails or refuses to take delivery within that period, the shipowner is entitled to land and warehouse the cargo, or to deal with it otherwise, as may seem most expedient (*q*); and if, owing to the rate at which the consignee takes delivery, the ship is detained for a further period, the shipowner acquires the right to claim demurrage or damages for detention, as the case may be (*r*). The shipowner, however, must himself be in a position to perform his own part of the obligation, otherwise his rights against the consignee do not arise until he is in a position to do so (*s*).

When time fixed.

370. Where the contract fixes the time within which the discharge of the cargo is to take place (*t*), the consignee's obligation to accept delivery within that time is absolute and unconditional (*a*).

(*m*) *Grange & Co.* v. *Taylor* (1904), 9 Com. Cas. 223, where a provision in the various bills of lading that each bill of lading was to bear its proportion of shortage and damage was held only to regulate the rights of the bill of lading holders *inter se*.

(*n*) *Clacevich* v. *Hutcheson & Co.* (1887), 15 R. (Ct. of Sess.) 11; compare *The "Norway"* (*Owners*) v. *Ashburner, The "Norway"* (1865), 3 Moo. P. C. C. (N. S.) 245; *Hogarth & Sons* v. *Leith Cotton Seed Oil Co.*, [1909] S. C. 955.

(*o*) See the text, *infra*.

(*p*) See p. 274, *post*.

(*q*) See p. 279, *post*.

(*r*) See p. 124, *ante*.

(*s*) *Tharsis Sulphur and Copper Co.* v. *Morel Brothers & Co.*, [1891] 2 Q. B. 647, C. A.; *Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38; and see p. 254, *ante*.

(*t*) The time may be fixed either by express terms or by reference to a given rate of discharge; see p. 120, *ante*. Any such stipulation applies only to the ports to which it relates, and not to any others (*Marshall* v. *De la Torre* (1795), 1 Esp. 367; *Ford* v. *Cotesworth* (1870), L. R. 5 Q. B. 544, Ex. Ch.).

(*a*) *Postlethwaite* v. *Freeland* (1880), 5 App. Cas. 599, *per* Lord SELBORNE, L.C., at p. 608; *Ford* v. *Cotesworth* (1868), L. R. 4 Q. B. 127, *per* BLACKBURN, J., at p. 136, citing *Randall* v. *Lynch* (1810), 12 East, 179, and Abbott on Shipping, 5th ed., p. 181 (14th ed., p. 372); *Porteus* v. *Watney* (1878), 3 Q. B. D. 534, C. A.; *Thiis* v. *Byers* (1876), 1 Q. B. D. 244; *Leer* v. *Yates* (1811), 3 Taunt. 387; *Budgett & Co.* v. *Binnington & Co.*, [1891] 1 Q. B. 35, C. A.; *Bessey* v. *Evans* (1815), 4 Camp. 131; *The Anna* (1901), 18 T. L. R. 25.

SECT. 5. The Unloading.

If, therefore, the unloading of the ship is delayed, he has failed to perform this obligation, and, except where he has some lawful excuse, is liable to pay demurrage or damages for detention in respect of the period during which the ship is thereby delayed (*b*).

Excuses :

371. The consignee is excused for his failure to discharge the ship within the time fixed by the contract in the following cases only, namely :—

(1) ship-owner's default.

(1) Where the delay is attributable to the negligence or default of the shipowner or of persons for whom he is responsible (*c*). Thus, the shipowner has no claim against the consignee where the former wrongfully refuses to deliver the cargo (*d*), or where the delay is occasioned by his failure to provide a sufficient number of men (*e*), and his consequent inability to perform his part of the unloading within the required time (*f*), or by some other cause for which he is responsible (*g*). There must, however, be some default on the part of the shipowner (*h*); if the cause of the delay is beyond the shipowner's control, the consignee is responsible, even though the delay is, in fact, attributable to the shipowner's inability to perform his part of the contract (*i*). The consignee's engagement is absolute, whereas the shipowner's engagement is merely that he will not by his default prevent the consignee from performing his own part of the contract (*k*). It is therefore immaterial whether the shipowner's inability is due to some physical misfortune, such as, for instance, bad weather interrupting the discharge (*l*), or to the act of third persons over whom he has no control, such as, for instance, a strike of dock labourers (*m*). In accordance with the same principle there is no default on the part of a shipowner who lawfully withholds delivery in the rightful exercise of his lien (*n*);

(*b*) See pp. 124 *et seq.*, *ante*.

(*c*) *Shaker* v. *Kidd* (1878), 3 Q. B. D. 223, *per* LUSH, J., at p. 226; *Porteus* v. *Watney* (1878), 3 Q. B. D. 534, C. A., *per* BRETT, L.J., at p. 543; *Budgett & Co.* v. *Binnington & Co.*, [1891] 1 Q. B. 35, C. A., *per* Lord ESHER, M.R., at p. 38.

(*d*) *Budgett & Co.* v. *Binnington & Co.*, *supra*, *per* Lord ESHER, M.R., at p. 38, doubting whether the shipowner would be responsible if the crew refused to work; *Benson* v. *Blunt* (1841), 1 Q. B. 870; compare *Aktieselkab Helios* v. *Ekman & Co.*, [1897] 2 Q. B. 83, C. A.

(*e*) *Petersen* v. *Freebody & Co.*, [1895] 2 Q. B. 294, C. A.

(*f*) *Hansen* v. *Donaldson* (1874), 1 R. (Ct. of Sess.) 1066, where the consignee also was held liable for a portion of the delay.

(*g*) *Bradley* v. *Goddard* (1863), 3 F. & F. 638, where the shipowner failed to address the ship to the charterer's agent, as required by the contract, and the consignee, in consequence, did not receive notice of the ship's arrival.

(*h*) The consignee cannot rely upon any default of the shipowner, if he himself procured it (*Furnell* v. *Thomas* (1828), 5 Bing. 188). Delay caused through the necessity of taking in ballast during the discharge to stiffen the ship is not attributable to the shipowner as a default (*Houlder* v. *Weir*, [1905] 2 K. B. 267).

(*i*) *Thiis* v. *Byers* (1876), 1 Q. B. D. 244; *Budgett & Co.* v. *Binnington & Co.*, *supra*; *Northfield Steamship Co.* v. *Compagnie L'Union des Gaz* [1912] 1 K. B. 434, C. A.

(*k*) *Budgett & Co.* v. *Binnington & Co.*, *supra*, *per* LINDLEY, L.J., at p. 40.

(*l*) *Thiis* v. *Byers*, *supra*.

(*m*) *Budgett & Co.* v. *Binnington & Co.*, *supra*; contrast *Castlegate Steamship Co.* v. *Dempsey*, [1892] 1 Q. B. 854, C. A., where no time was fixed and consequently the consignee was excused.

(*n*) *Lyle Shipping Co.* v. *Cardiff Corporation*, [1900] 2 Q. B. 638, C. A.;

and the consignee is responsible for any delay occasioned thereby (*o*);

(2) excepted cause.

(2) Where the cause of the delay is covered by an exception in the contract (*p*). The effect of an exception is merely to suspend the consignee's obligation whilst the excepted cause is in operation (*q*); it does not protect him against the consequences of his own default (*r*). Thus, where the contract contains a strike clause (*s*), and a strike breaks out during the unloading, the consignee is excused in so far as the unloading is in fact delayed by the strike, but no further (*t*).

Consignee's duty otherwise absolute.

372. Except in these cases, the cause of the delay may be disregarded (*a*), and the consignee is equally liable whether the delay is attributable to his own act or default (*b*) or is attributable wholly to circumstances beyond his control (*c*). He cannot, therefore, escape liability on the ground that he was unable to procure a discharging berth owing to the crowd of shipping already awaiting discharge (*d*); or that he was prevented by a strike from engaging

but see *Thorsen* v. *M'Dowall and Neilson, The "Theodor Korner"* (1892), 19 R. (Ct. of Sess.) 743, where it was held that the cargo might have been landed subject to the lien. As to landing the cargo subject to the lien, see p. 282, *post*; as to lien, see pp. 617 *et seq.*, *post*.

(*o*) *Lyle Shipping Co.* v. *Cardiff Corporation*, [1900] 2 Q. B. 638, C. A.

(*p*) The exception equally applies where it operates only at the particular berth to which the ship is ordered, although she might have been ordered elsewhere (*Bulman and Dickson* v. *Fenwick & Co.*, [1894] 1 Q. B. 179, C. A.).

(*q*) Effect must be given to the exception, though framed in wide terms; it cannot be struck out of the contract as inconsistent with the obligation to discharge within a fixed time (*Aktieselskabet Argentina* v. *Von Laer* (1903), 20 T. L. R. 9, C. A.).

(*r*) *Elswick Steamship Co., Ltd.* v. *Montaldi*, [1907] 1 K. B. 626; *Turnbull, Scott & Co.* v. *Cruickshank & Co.* (1904), 7 F. (Ct. of Sess.) 265; compare *Sailing Ship Milverton Co.* v. *Cape Town and District Gas Light and Coke Co.* (1897), 2 Com. Cas. 281.

(*s*) As to the scope of a strike clause, see *Granite City Steamship Co.* v. *Ireland & Son, "The Linn o'Dee"* (1891), 19 R. (Ct. of Sess.) 124; *Mudie* v. *Strick & Co.* (1909), 14 Com. Cas. 135, 227, C. A.; *Horsley Line, Ltd.* v. *Roechling Brothers*, [1908] S. C. 866; *France, Fenwick & Co., Ltd.* v. *Spackman (Philip) & Sons* (1913), 18 Com. Cas. 52; and pp. 131, 132, *ante*.

(*t*) *Elswick Steamship Co., Ltd.* v. *Montaldi, supra; Moor Line, Ltd.* v. *Distillers Co., Ltd.*, [1912] S. C. 514; *London and Northern Steamship Co., Ltd.* v. *Central Argentine Railway* (1913), 108 L. T. 527. The clause may be so framed as to apply only to strikes arising before the ship has come on demurrage (*Mudie* v. *Strick & Co., supra; London and Northern Steamship Co., Ltd.* v. *Central Argentine Railway, supra*). See also *Northfield Steamship Co.* v. *Compagnie L'Union des Gaz*, [1912] 1 K. B. 434, C. A.; *Brown* v. *Turner, Brightman & Co.*, [1912] A. C. 12. Under the I. S. F. Strike Expenses Clauses (see note (*d*), p. 131, *ante*), clause 1, extensive powers of dealing with the cargo are conferred upon the shipowner in the event of a strike hindering or preventing the unloading or delivery of the cargo.

(*a*) See *Houlder* v. *Weir*, [1905] 2 K. B. 267, where the delay was due to the necessity for stiffening the ship during the discharge.

(*b*) *Aktieselkab Helios* v. *Ekman & Co.*, [1897] 2 Q. B. 83, C. A., *per* Lord ESHER, M.R., at p. 86; compare *Hansen* v. *Donaldson* (1874), 1 R. (Ct. of Sess.) 1066, where the shipowner and the consignee were each held responsible for different periods of delay; *Struck* v. *Tenant* (1806), cited in Abbott on Shipping, 5th ed., p. 181; 14th ed., p. 372.

(*c*) See the cases cited in note (*d*), *infra*, notes (*e*)—(*k*), p. 274, *post*.

(*d*) *Randall* v. *Lynch* (1810), 2 Camp. 352; *Watson Brothers Shipping Co., Ltd.* v. *Mysore Manganese Co., Ltd.* (1910), 26 T. L. R. 221.

SECT. 5. The Unloading.

labourers to discharge the ship (*e*), or from obtaining railway wagons into which to discharge the cargo (*f*); or that it was impossible to unload the cargo in time on account of bad weather (*g*); or that the landing of the cargo was prohibited by the orders, lawful (*h*) or unlawful (*i*), of the port authorities; or that, owing to the manner in which the cargo was stowed, he could not gain access to his goods until other goods stowed above them were removed, and that the delay which under the conditions incorporated in the bill of lading was attributable to him was in fact caused by the failure of the owners of such goods to remove them in time (*k*); nor can the absolute nature of the consignee's engagement be modified in any way by a custom of the port of discharge which is not consistent with the terms in which the obligation is expressed (*l*).

Where no time fixed.

373. Where the contract does not fix any particular time within which the discharge is to take place (*m*), the obligation of the consignee is to take delivery of his cargo within a reasonable time (*n*). In considering the question what is a reasonable time all the circumstances of the particular case, from the arrival of the ship to the completion of the unloading, must be taken into account (*o*); it is not sufficient to ascertain what would be a reasonable time in ordinary circumstances (*p*), since there is no

(*e*) *Hick* v. *Raymond and Reid*, [1893] A. C. 22, *per* Lord HERSCHELL, L.C., at p. 28; *Budgett & Co.* v. *Binnington & Co.*, [1891] 1 Q. B. 35, C. A.; compare *The Fox, Walker (Thomas) & Co.* v. *Horlock* (1913), 30 T. L. R. 58; and see *Hibernian Steamship Co., Ltd.* v. *Suttons, Ltd.* (1912), 47 I. L. T. 39.

(*f*) *Granite City Steamship Co.* v. *Ireland & Son, The "Linn o'Dee"* (1891), 19 R. (Ct. of Sess.) 124.

(*g*) *Thiis* v. *Byers* (1876), 1 Q. B. D. 244; *Holman* v. *Peruvian Nitrate Co.* (1878), 5 R. (Ct. of Sess.) 657.

(*h*) *Waugh* v. *Morris* (1873), L. R. 8 Q. B. 202 (where the cargo was ultimately discharged without a violation of the law); compare *Cargo ex Argos, Gaudet* v. *Brown* (1873), L. R. 5 P. C. 134 (where, however, no demurrage was incurred); *Hill* v. *Idle* (1815), 4 Camp. 327).

(*i*) *Bessey* v. *Evans* (1815), 4 Camp. 131.

(*k*) *Porteus* v. *Watney* (1878), 3 Q. B. D. 534, C. A. (where BRETT, L.J., suggested that the consignee might possibly have an action against the person in default); *Straker* v. *Kidd & Co.* (1878), 3 Q. B. D. 224; *Leer* v. *Yates* (1811), 3 Taunt. 387; *Rogers* v. *Hunter* (1827), Mood. & M. 63; *Harman* v. *Gandolph* (1815), Holt (N. P.), 35; *contra, Dobson* v. *Droop* (1830), Mood. & M. 441; compare *Lamb* v. *Kaselack, Alsen & Co.* (1882), 9 R. (Ct. of Sess.) 482.

(*l*) *Bennetts & Co.* v. *Brown*, [1908] 1 K. B. 490; *Holman* v. *Peruvian Nitrate Co.* (1878), 5 R. (Ct. of Sess.) 657.

(*m*) It is immaterial whether the charterparty is silent (*Hick* v. *Raymond and Reid*, [1893] A. C. 22), or whether it uses some such phrase as "as fast as steamer can deliver" (*Good & Co.* v. *Isaacs*, [1892] 2 Q. B. 555, C. A.; *Hulthen* v. *Stewart & Co.*, [1903] A. C. 389; *Sea Steamship Co., Ltd.* v. *Price, Walker & Co., Ltd.* (1903), 8 Com. Cas. 292). As to discharge "with all dispatch according to the custom of the port," see p. 276, *post*.

(*n*) *Hick* v. *Raymond and Reid, supra*; *Postlethwaite* v. *Freeland* (1880), 5 App. Cas. 599; *Sweeting* v. *Darthez* (1854), 14 C. B. 538; *Fowler* v. *Knoop* (1878), 4 Q. B. D. 299, C. A.; *Zillah Shipping Co.* v. *Midland Rail. Co.* (1902), 19 T. L. R. 63, C. A.

(*o*) *Hick* v. *Raymond and Reid, supra*; *Ford* v. *Cotesworth* (1870), L. R. 5 Q. B. 544, Ex. Ch.; *Budgett & Co.* v. *Binnington & Co.*, [1891] 1 Q. B. 35, C. A.; *Castlegate Steamship Co.* v. *Dempsey*, [1892] 1 Q. B. 854, C. A.; compare *Rodgers* v. *Forresters* (1810), 2 Camp. 483.

(*p*) *Hick* v. *Raymond and Reid, supra*; compare *Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38, *per* Lord WATSON, at p. 59.

such thing as a reasonable time in the abstract, and the answer to the question must necessarily depend upon circumstances (*q*). The extent of the consignee's obligation is, therefore, to be measured not by reference only to the usual time according to the practice of the port (*r*), but by reference to the time which is in fact reasonable in the circumstances which actually exist (*s*), and the consignee fulfils his obligation, however protracted the delay may be, so long as such delay is attributable to causes beyond his control and he has acted neither negligently nor unreasonably (*t*). On the other hand, he is not entitled to detain the ship even for the usual time if by reasonable diligence on his part the cargo might have been taken away sooner (*u*). Thus, where he is bound to discharge at a definite rate per day and has been able to accelerate the rate of discharge beyond that rate, he cannot rely on the fact that he has accomplished the whole discharge with reasonable dispatch at the average rate of discharge if he is responsible for an undue falling off in the rate of discharge towards the end (*v*).

Reasonable time.

374. For the purpose of ascertaining what is a reasonable time in any particular case the principal factors to be taken into consideration are the following, namely:—(1) The natural conditions of the port (*w*); (2) the custom of the port (*a*); (3) the actual state of affairs existing at the port (*b*); and (4) the conduct of the assignee (*c*).

Natural conditions of the port.

(1) The natural conditions of the port. The physical nature of the port may necessarily lead to delay (*d*). Thus, the port may be tidal, and the ship may be compelled through fear of taking the ground at neap tide to leave her berth during the discharge and lie outside until the next spring tides (*e*); or, again, she may be

(*q*) *Hick* v. *Raymond and Reid*, [1893] A. C. 22, *per* Lord HERSCHELL, L.C., at p. 29; *Carlton Steamship Co.* v. *Castle Mail Packet Co.*, [1898] A. C. 486, *per* Lord HERSCHELL, at p. 491.

(*r*) Accordingly the *dicta* in *Burmester* v. *Hodgson* (1810), 2 Camp. 488, and *Wright* v. *New Zealand Shipping Co.* (1878), 4 Ex. D. 165, C. A., are incorrect.

(*s*) *Hick* v. *Raymond and Reid*, *supra*; *Postlethwaite* v. *Freeland* (1880), 5 App. Cas. 599, approving *Ford* v. *Cotesworth* (1868), L. R. 4 Q. B. 127, *per* BLACKBURN, J., at p. 137; *Castlegate Steamship Co.* v. *Dempsey*, [1892] 1 Q. B. 854, C. A.; *Sea Steamship Co., Ltd.* v. *Price, Walker & Co., Ltd.* (1903), 8 Com. Cas. 292.

(*t*) *Dahl* v. *Nelson, Donkin & Co.* (1881) 6 App. Cas. 38; *Hick* v. *Raymond and Reid*, *supra*; compare *Rodgers* v. *Forresters* (1810), 2 Camp. 483. The time during which the discharge is suspended owing to the shipowner's lawful exercise of his lien counts as against the consignee (*Lyle Shipping Co.* v. *Cardiff Corporation*, [1900] 2 Q. B. 638, C. A.).

(*u*) *Ford* v. *Cotesworth*, *supra*, *per* BLACKBURN, J., at p. 134; compare *Carali* v. *Xenos* (1862), 2 F. & F. 740; *Smailes & Son* v. *Hans Dessen & Co.* (1906), 95 L. T. 809, C. A.

(*v*) *Aberdeen Glen Line Steamship Co.* v. *Macken, The S.S. Gairloch*, [1899] 2 I. R. 1, C. A.

(*w*) See the text, *infra*.

(*a*) See p. 276, *post*.

(*b*) See p. 277, *post*.

(*c*) See pp. 278, 279, *post*.

(*d*) *Wright* v. *New Zealand Shipping Co.* (1878), 4 Ex. D. 165, C. A., *per* COTTON, L.J., at p. 169.

(*e*) *Carlton Steamship Co.* v. *Castle Mail Packet Co.*, *supra*.

SECT. 5. The Unloading.

discharging in a roadstead and the lighters may be prevented by bad weather from continuing the discharge (*f*). The causes of delay need not, however, be physical (*g*). Thus, the custom-house authorities and the persons employed at the port may be habitually dilatory so that the ordinary discharge is very slow (*h*). The appliances and facilities for discharge and the methods usually employed at the port must also be taken into consideration (*i*). The means of discharging cargoes at the port may be under the control of one person, who imposes his own terms and conditions upon all ships arriving at the port (*j*); or the port may be scantily furnished with labour or with facilities for discharge (*k*).

Custom of the port.

(2) The custom of the port (*l*). It is not unusual for the contract to provide expressly that the discharge is to be effected according to the custom of the port (*m*). This provision does not, however, appear to be necessary (*n*), since any stipulation as to unloading is always construed as made with reference to the custom of the port of discharge (*o*). Thus, it may be the custom of the port to discharge ships in a certain order (*p*) or subject to certain regulations (*q*) or at a certain rate (*r*), or that work may only be carried

(*f*) *Wright* v. *New Zealand Shipping Co.* (1878), 4 Ex. D. 165, C. A., *per* COTTON, L.J., at p. 169.

(*g*) Compare p. 258, *ante*.

(*h*) *Ford* v. *Cotesworth* (1868), L. R. 4 Q. B. 127, *per* BLACKBURN, J., at p. 132, affirmed (1870), L. R. 5 Q. B. 544, Ex. Ch.; compare *Good & Co.* v. *Isaacs*, [1892] 2 Q. B. 555, C. A.

(*i*) *Sea Steamship Co., Ltd.* v. *Price, Walker & Co., Ltd.* (1903), 8 Com. Cas. 292; *Wright* v. *New Zealand Shipping Co., supra, per* COTTON, L.J., at p. 169.

(*j*) *Castlegate Steamship Co.* v. *Dempsey*, [1892] 1 Q. B. 854; *Weir & Co.* v. *Richardson* (1897), 3 Com. Cas. 20; *Harrowing* v. *Dupré* (1902), 7 Com. Cas. 157 (harbour regulations); *The Kingsland*, [1911] P. 17 (harbour regulations).

(*k*) *Postlethwaite* v. *Freeland* (1880), 5 App. Cas. 599; compare *The Alne Holme*, [1893] P. 173.

(*l*) As to the effect of customs generally, see p. 140, *ante*. So-called "customs of the port" are strictly usages; see title CUSTOM AND USAGES, Vol. X., pp. 249, 290 *et seq.*

(*m*) *Postlethwaite* v. *Freeland, supra; The Alne Holme, supra; Lyle Shipping Co.* v. *Cardiff Corporation*, [1900] 2 Q. B. 638, C. A.; *Hulthen* v. *Stewart & Co.*, [1903] A. C. 389.

(*n*) *Postlethwaite* v. *Freeland, supra, per* Lord BLACKBURN, at p. 613; *The Jaederen*, [1892] P. 351, *per* GORELL BARNES, J., at p. 359; *Lyle Shipping Co.* v. *Cardiff Corporation, supra, per* A. L. SMITH, L.J., at p. 643; *Temple, Thomson and Clarke* v. *Runnalls* (1902), 18 T. L. R. 822, C. A., *per* COLLINS, M.R., at p. 823. See, however, the view expressed in *Hick* v. *Raymond and Reid*, [1893] A. C. 22, *per* Lord HERSCHELL, L.C., at p. 30, that "with all dispatch according to the custom of the port" is not necessarily the same as within a reasonable time.

(*o*) *Petrocochino* v. *Bott* (1874), L. R. 9 C. P. 355; *Marzetti* v. *Smith & Son* (1883), 49 L. T. 580, C. A. As to the effect of a custom in extending the consignee's obligation, see p. 278, *post*.

(*p*) *Postlethwaite* v. *Freeland, supra; The Cordelia*, [1909] P. 27; see, further, p. 127, *ante*.

(*q*) *Good & Co.* v. *Isaacs, supra; The Kingsland, supra.* The contract may throw upon the consignee the risk of delay arising from the necessity of complying with such regulations (*Cobridge Steamship Co., Ltd.* v. *Bucknall Steamship Lines, Ltd.* (1909), 14 Com. Cas. 141).

(*r*) *Clydesdale Shipowners Co., Ltd.* v. *Gallagher*, [1907] 2 I. R. 578, C. A.; affirmed, [1908] 2 I. R. 482, H. L. (where the alleged rate was not proved).

on at certain times (*s*) or in accordance with a particular method (*t*). The ship may be required to discharge a portion of her cargo in one part of the port and to shift to another place for the purpose of discharging the rest; and it may be the custom of the port not to count the time occupied in shifting (*a*). The contract may, however, expressly exclude the custom of the port or any particular custom, which cannot then be taken into account (*b*).

Actual state of affairs.

(3) The actual state of affairs existing at the port. Owing to the port being crowded with shipping awaiting discharge the ship may be compelled to wait for a considerable time until a berth is vacant (*c*); the available means of discharge, such as lighters (*d*) or cranes (*e*), may be insufficient; the railway wagons necessary for the removal of the cargo may not be procurable (*f*); or the warehouses in which the cargo is by the custom of the port to be deposited may already be filled (*g*). There may be a shortage of labour in consequence of a strike (*h*). In addition, the progress of

Such a custom does not bind a shipowner whose ship is, owing to changed circumstances, capable of discharging at a substantially greater rate; *Ropner & Co.* v. *Stoate, Hosegood & Co.* (1905), 10 Com. Cas. 73, following *Sea Steamship Co., Ltd.* v. *Price, Walker & Co., Ltd.* (1903), 8 Com. Cas. 292.

(*s*) *Cochran* v. *Retberg* (1800), 3 Esp. 121; *Wright* v. *New Zealand Shipping Co.* (1878), 4 Ex. D. 165, C. A., *per* COTTON, L.J., at p. 169; *Nielson* v. *Wait* (1885), 16 Q. B. D. 67, C. A.; *Bennetts & Co.* v. *Brown*, [1908] 1 K. B. 490; *British and Mexican Shipping Co., Ltd.* v. *Lockett Brothers & Co., Ltd.*, [1911] 1 K. B. 264, C. A.

(*t*) *Postlethwaite* v. *Freeland* (1880), 5 App. Cas. 599; *Good & Co.* v. *Isaacs*, [1892] 2 Q. B. 555, C. A.; *Lyle Shipping Co.* v. *Cardiff Corporation*, [1900] 2 Q. B. 638, C. A.; *Fawcett & Co.* v. *Baird & Co.* (1900), 16 T. L. R. 198; *Hulthen* v. *Stewart & Co.*, [1903] A. C. 389; *The Kingsland*, [1911] P. 17, following *Weir & Co.* v. *Richardson* (1897), 3 Com. Cas. 20; compare *Rodgers* v. *Forresters* (1810), 2 Camp. 483; *Pollitzer* v. *Steamship Cascapedia* (1886), 2 T. L. R. 413 (where two contradictory customs were alleged by shipowner and consignee respectively, but neither was proved).

(*a*) *Nielsen* v. *Wait* (1885), 16 Q. B. D. 67, C. A.

(*b*) *Maclay* v. *Spillers and Baker* (1902), 6 Com. Cas. 217 (where the delivery had to be continuous notwithstanding any custom of the port); *Crown Steamship Co., Ltd.* v. *Leitch*, [1908] S. C. 506; *Bennetts & Co.* v. *Brown, supra*; *Holman* v. *Peruvian Nitrate Co.* (1878), 5 R. (Ct. of Sess.) 657; compare *Sea Steamship Co., Ltd.* v. *Price, Walker & Co., Ltd., supra.*

(*c*) *Rodgers* v. *Forresters, supra*; *Watson* v. *Borner (H.) & Co., Ltd.* (1900), 5 Com. Cas. 377, C. A.; *Hulthen* v. *Stewart & Co., supra*; *The Jaederen*, [1892] P. 351; compare *Burmester* v. *Hodgson* (1810), 2 Camp. 488, as explained in *Ford* v. *Cotesworth* (1870), L. R. 5 Q. B. 544, Ex. Ch.; but see *Smailes & Son* v. *Hans Dessen & Co.* (1906), 12 Com. Cas. 117 (where the ship was ultimately discharged at an unusual place, and the consignee was held liable for the delay, though in nominal damages only). See also *Northfield Steamship Co.* v. *Compagnie L'Union des Gaz*, [1912] 1 K. B. 434, C. A.

(*d*) *Postlethwaite* v. *Freeland, supra*; *Hulthen* v. *Stewart & Co., supra*; *Reid* v. *Lee & Sons* (1901), 17 T. L. R. 771.

(*e*) *Hulthen* v. *Stewart & Co., supra.*

(*f*) *Wyllie (J. & A.)* v. *Harrison & Co.* (1885), 13 R. (Ct. of Sess.) 92 (distinguished in *Kruuse* v. *Drynan & Co.* (1891), 18 R. (Ct. of Sess.) 1110); *Lyle Shipping Co.* v. *Cardiff Corporation, supra*; *Fawcett & Co.* v. *Baird & Co., supra*; *Turnbull, Scott & Co.* v. *Cruickshank & Co.* (1904), 7 F. (Ct. of Sess.) 265. But if an alternative method of discharge is available the consignee must adopt it (*Rodenacker* v. *May and Hassell, Ltd.* (1901), 6 Com. Cas. 37), though he is excused if all available methods are equally affected (*Hulthen* v. *Stewart & Co., supra*).

(*g*) *Good & Co.* v. *Isaacs, supra.*

(*h*) *Hick* v. *Raymond and Reid*, [1893] A. C. 22; *The Alne Holme*, [1893]

SECT. 5. The Unloading.

the discharge may be interrupted by the port authorities ordering the ship to leave her discharging berth (*i*), or by any other external cause beyond the consignee's control (*k*).

Conduct of the consignee.

(4) The conduct of the consignee. It is the duty of the consignee to use reasonable diligence in receiving the cargo (*l*). It is, therefore, his duty to do everything that he can reasonably be expected to do in the circumstances (*m*). If there is a shortage of lighters (*n*) or railway wagons (*o*), he must procure them if possible; if he is the port authority, he is not excused for delay occasioned by his acts in that capacity (*p*); nor is he excused where the delay is attributable to his own previous engagements (*q*), except in so far as such delay is reasonably incurred in the ordinary course of business within the contemplation of the parties (*r*). In the same way he is responsible for any delay arising in consequence of his failure to discharge a lien lawfully exercised over his cargo (*s*). Moreover, though, in general, where the custom of the port is incorporated in the contract he cannot be required to do more than the custom demands (*t*), the effect of a particular custom may be to render his obligation absolute; he may be required not merely to use his best

P. 173; *Castlegate Steamship Co.* v. *Dempsey*, [1892] 1 Q. B. 854, C. A.; *Reid* v. *Lee & Sons* (1901), 17 T. L. R. 771.

(*i*) *Ford* v. *Cotesworth* (1870), L. R. 5 Q. B. 544, Ex. Ch.

(*k*) Compare *Watson* v. *Borner* (*H.*) *& Co., Ltd.* (1900), 5 Com. Cas. 377, C. A.; *Ogmore Steamship Co., Ltd.* v. *Borner* (*H.*) *& Co., Ltd.*, *The Deerhound* (1901), 6 Com. Cas. 104.

(*l*) *Alexiadi* v. *Robinson* (1861), 2 F. & F. 679; *Ford* v. *Cotesworth*, *supra*.

(*m*) *Hulthen* v. *Stewart & Co.*, [1903] A. C. 389; *Lyle Shipping Co.* v. *Cardiff Corporation*, [1900] 2 Q. B. 638, C. A.; *Hill* v. *Idle* (1815), 4 Camp. 327 (where the consignee had failed to procure the necessary permit); *Sailing Ship Milverton Co.* v. *Cape Town and District Gas Light and Coke Co.* (1897), 2 Com. Cas. 281; compare *Smailes & Son* v. *Hans Dessen & Co.* (1906), 12 Com. Cas. 117, C. A., where, however, he was held liable for nominal damages only.

(*n*) *Wright* v. *New Zealand Shipping Co.* (1878), 4 Ex. D. 165, C. A., as explained in *Hick* v. *Raymond and Reid*, [1893] A. C. 22, *per* Lord HERSCHELL, L.C., at p. 32; *Reid* v. *Lee & Sons*, *supra*; compare *Hulthen* v. *Stewart & Co.*, *supra*.

(*o*) *Turnbull, Scott & Co.* v. *Cruickshank & Co.* (1904), 7 F. (Ct. of Sess.) 265, where no attempt had been made to procure wagons for discharging by night. But he is not bound to procure them elsewhere than from the customary source of supply (*Lyle Shipping Co.* v. *Cardiff Corporation*, *supra*); and contrast *Rodenacker* v. *May and Hassell, Ltd.* (1901), 6 Com. Cas. 37, where an alternative method of discharge was practicable.

(*p*) *Zillah Shipping Co.* v. *Midland Rail. Co.* (1902), 19 T. L. R. 63, C. A.

(*q*) *Wright* v. *New Zealand Shipping Co.*, *supra*, as explained in *Hick* v. *Raymond and Reid*, *supra*, *per* Lord HERSCHELL, L.C., at p. 31. But an exception to the cause of the delay may be applicable, though brought into operation through the consignee's previous engagements (*Letricheux and David* v. *Dunlop & Co.* (1891), 19 R. (Ct. of Sess.) 209). The charterer is not responsible where the delay is caused by the consignee's engagements (*Watson* v. *Borner* (*H.*) *& Co., Ltd.*, *supra*; *Ogmore Steamship Co., Ltd.* v. *Borner* (*H.*) *& Co., Ltd.*, *The Deerhound*, *supra*; *Glasgow Navigation Co., Ltd.* v. *Iron Ore Co., Ltd.*, [1909] S. C. 1414).

(*r*) *Barque Quilpué, Ltd.* v. *Brown*, [1904] 2 K. B. 264, C. A.; *Harrowing* v. *Dupré* (1902), 7 Com. Cas. 157; *The Cordelia*, [1909] P. 27.

(*s*) *Lyle Steamship Co.* v. *Cardiff Corporation* (1899), 5 Com. Cas. 87; *Smailes & Son* v. *Hans Dessen & Co.*, *supra*.

(*t*) See p. 276, *ante*; and compare *Rodgers* v. *Forresters* (1810), 2 Camp. 483.

endeavours to discharge the ship by providing a suitable berth and quay space or other facilities for discharge, but actually to provide them, whatever the existing circumstances of the port may be (*a*).

SUB-SECT. 3.—*The Warehousing of the Cargo.*

Power to land and warehouse cargo.

375. If the consignee fails to come forward to take delivery of his cargo, the master may be expressly empowered, by the terms of the contract (*b*) or by the custom of the port of discharge (*c*), to land and warehouse the cargo at the consignee's risk and expense. This power need not be exercised as soon as the consignee makes default. The master may, if he thinks fit, keep the cargo on board for a reasonable time before landing it; and, provided that he has acted reasonably, he is not precluded from claiming demurrage by the fact that he might without any breach of duty have landed the cargo sooner (*d*). Where the contract is silent on the matter and there is no custom applicable to the case, the master is not entitled to land the cargo at once; he must retain it on board for a reasonable period to give the consignee every opportunity of taking delivery (*e*). Moreover, he has the right to retain the cargo on board as long as may be reasonably necessary for his protection (*f*). It is his duty, however, to deal with the cargo in a reasonable manner, having regard to his lien for freight (*g*), and though he may retain the cargo on demurrage, he must not act vexatiously in so doing (*h*), or detain the ship beyond a reasonable time (*i*). He, therefore, is allowed to take an alternative course, and he may land and warehouse the cargo upon giving notice to the consignee that the cargo is at his disposal on payment of the freight (*k*). If, however, it is impossible for him to land the cargo, either because there is no warehouse accommodation or because the landing is prohibited, he may take any other reasonable course that may be open to him, and if the most prudent course is to bring the cargo back to the port of loading he is entitled to do so, and may in that case claim freight in respect of both the outward and the homeward voyage (*l*).

(*a*) *Aktieselskabet Hekla* v. *Bryson, Jameson & Co.* (1908), 14 Com. Cas. 1.

(*b*) *Alexiadi* v. *Robinson* (1861), 2 F. & F. 679; *Wilson* v. *London, Italian and Adriatic Steam Navigation Co.* (1865), L. R. 1 C. P. 61; *Oliver* v. *Colven* (1879), 27 W. R. 822; *Borrowman* v. *Wilson* (1891), 7 T. L. R. 416; *Major and Field* v. *Grant* (1902), 7 Com. Cas. 231; *The Arne*, [1904] P. 154; *Dennis (W.) & Sons, Ltd.* v. *Cork Steamship Co., Ltd.*, [1913] 2 K. B. 393.

(*c*) *Marzetti* v. *Smith & Son* (1883), 49 L. T. 580, C. A.; *Aste, Son, and Kercheval* v. *Stumore, Weston & Co.* (1884), Cab. & El. 319.

(*d*) *Hick* v. *Rodocanachi*, [1891] 2 Q. B. 626, C. A., *per* LINDLEY, L.J., at p. 632 (affirmed, *sub nom. Hick* v. *Raymond and Reid*, [1893] A. C. 22); *The Arne, supra.*

(*e*) *Howard* v. *Shepherd* (1850), 9 C. B. 297; *Erichsen* v. *Barkworth* (1858), 3 H. & N. 894, Ex. Ch.

(*f*) *Erichsen* v. *Barkworth, supra*; *Meyerstein* v. *Barber* (1867), L. R. 2 C. P. 38, 661, Ex. Ch., *per* WILLES, J., at p. 53 (affirmed, *sub nom. Barber* v. *Meyerstein* (1870), L. R. 4 H. L. 317).

(*g*) *Meyerstein* v. *Barber, supra.*

(*h*) *Erichsen* v. *Barkworth, supra, per* CROMPTON, J., at p. 899.

(*i*) *Meyerstein* v. *Barber, supra.*

(*k*) *Ibid.*; *Mors-le-Blanch* v. *Wilson* (1873), L. R. 8 C. P. 227, *per* BRETT, J., at p. 239; compare Abbott on Shipping, 5th ed., p. 248; 14th ed., pp. 563, 564.

(*l*) *Cargo ex Argos, Gaudet* v. *Brown* (1873), L. R. 5 P. C. 134.

SECT. 5. **The Unloading.**

Consignee subsequently coming forward.

376. If the master begins to land the cargo in the absence of the consignee, and the consignee afterwards comes forward before the discharge is completed and demands his cargo, the master must deliver the portion of the cargo remaining undischarged in accordance with the consignee's instructions, and he is not entitled to continue discharging as before (*m*), unless it would cause expense or loss of time to the shipowner to change the mode of delivery (*n*).

Effect of landing cargo.

377. Apart from contract or special custom, the shipowner's liability does not at common law (*o*) cease on the landing of the cargo; though he is no longer liable as a carrier, he incurs a new liability as a warehouseman (*p*). Moreover, it seems that if he places the cargo not into a warehouse belonging to himself, but into a warehouse belonging to a third person, he does not, apart from statute (*q*), retain his lien (*r*), though he may give a lien to the warehouseman (*s*).

Statutory position.

378. In consequence of the difficulties in which the master is placed, provision has been made by statute for the purpose of enabling him to land his cargo and at the same time to preserve his lien (*t*). The statutory provisions only apply to cargoes imported from foreign parts into the United Kingdom (*a*); moreover, they do not affect the exercise of any powers conferred upon the master by the terms of the contract (*b*) or by custom, whether of the port of discharge (*c*) or of a particular trade (*d*).

When goods may be landed.

379. Where the owner (*e*) of the goods (*f*) fails (*g*) to make

(*m*) *Wilson* v. *London, Italian and Adriatic Steam Navigation Co.* (1865), L. R. 1 C. P. 61.

(*n*) *Ibid.*, *per* WILLES, J., at p. 68.

(*o*) As to his statutory position, see the text, *infra*.

(*p*) *Meyerstein* v. *Barber* (1867), L. R. 2 C. P. 38, 661, Ex. Ch., affirmed, *sub nom. Barber* v. *Meyerstein* (1870), L. R. 4 H. L. 317.

(*q*) See p. 282, *post*.

(*r*) *Mors-le-Blanch* v. *Wilson* (1873), L. R. 8 C. P. 227, *per* BRETT, J., at p. 239: *Meyerstein* v. *Barber*, *supra*; Abbott on Shipping, 5th ed., p. 248; 14th ed., pp. 563, 564.

(*s*) *Mors-le-Blanch* v. *Wilson*, *supra*.

(*t*) M. S. Act, 1894, ss. 492—501. The powers, rights, or remedies given to the various parties by local Acts are not affected by this part of the Act (*ibid.*, s. 501).

(*a*) *Ibid.*, s. 493 (1).

(*b*) See the cases cited in note (*b*), p. 279, *ante*.

(*c*) *Marzetti* v. *Smith & Son* (1883), 49 L. T. 580, C. A.

(*d*) *Aste, Son, and Kercheval* v. *Stumore, Weston & Co.* (1884), Cab. & El. 319; *Alexiadi* v. *Robinson* (1861), 2 F. & F. 679. As to usages of particular trades, see title CUSTOM AND USAGES, Vol. X., pp. 274 *et seq.*

(*e*) This means every person who is for the time entitled, either as owner or agent for the owner, to the possession of the goods, subject in the case of a lien, if any, to that lien (M. S. Act, 1894, s. 492; see *White & Co.* v. *Furness, Withy & Co.* [1895], A. C. 40, followed in *Euterpe Steamship Co., Ltd.* v. *Bath & Son* (1897), 2 Com. Cas. 196).

(*f*) This includes every description of wares and merchandise (M. S. Act, 1894, s, 492).

(*g*) There must be an actual failure on the part of the consignee (*Oliver* v. *Colven* (1879), 27 W. R. 822; *Glyn Mills & Co.* v. *East and West India Dock Co.* (1882), 7 App. Cas. 591, *per* Lord BLACKBURN, at p. 607; *Marzetti* v. *Smith & Son*, *supra*, *per* BRETT, M.R., at p. 583), though it is immaterial whether he is or is not to blame (*Miedbrodt* v. *Fitzsimon, The "Energie"* (1875), L. R. 6 C. P. 306, 316).

entry (*h*) of them, or where he fails, after making entry, to take delivery of them, the shipowner (*i*) is empowered (*k*) to land the goods at any time after the expiration of the time for delivery expressed in the contract, or, if no time is expressed in the contract, after the expiration of seventy-two hours, exclusive of a Sunday or holiday, from the time of the report (*l*) of the ship (*m*). The goods must, if this can conveniently be done, be placed on the wharf (*n*) or in the warehouse (*o*) named in the contract, otherwise the wharf or warehouse where they are placed must be one where similar goods are usually placed, and, if the goods are dutiable, must be duly approved by the Commissioners of Customs for the landing of dutiable goods (*p*).

Offer to take delivery.

The owner of the goods may at any time before they are landed offer to take delivery of them; in this case he must be allowed to do so, and his entry is to be preferred to any entry (*q*) which may have been made by the shipowner (*r*).

Assortment.

If any goods are landed for assortment at the wharf where the ship is discharged, and if their owner at the time of the landing has made entry and is ready to take delivery and to convey them to some other wharf or warehouse, the goods must be assorted at landing, and must, if demanded, be delivered to their owner within twenty-four hours after assortment, the expense of landing and assortment being borne by the shipowner (*s*).

(*h*) This means the entry required by the customs laws to be made for the landing or discharge of goods from an importing ship (M. S. Act, 1894 s. 492; see title REVENUE, Vol. XXIV., pp. 587, 588).

(*i*) This includes the master of the ship and every other person authorised to act as agent for the owner or entitled to receive the freight, demurrage or other charges payable in respect of the ship (M. S. Act, 1894, s. 492).

(*k*) He is not bound to do so as soon as the time has expired, but may wait for a reasonable time on demurrage (*Smailes & Son* v. *Hans Dessen & Co.* (1906), 12 Com. Cas. 117, C. A., where the court expressed no opinion upon the ruling in the court below (S. C. (1905), 11 Com. Cas. 74), that the shipowner could not insist on landing the goods until it was clear that the cargo could not be discharged within the time allowed).

(*l*) This means the report required by the customs laws to be made by the master of an importing ship (M. S. Act, 1894, s. 492); see title REVENUE, Vol. XXIV., p. 587.

(*m*) M. S. Act, 1894, s. 493 (1).

(*n*) This includes all wharves, quays, docks, and premises in or upon which any goods, when landed from ships, may be lawfully placed (*ibid.*, s. 492).

(*o*) This includes all warehouses, buildings, and premises in which goods, when landed from ships, may be lawfully placed (*ibid.*). See *Dennis & Sons, Ltd.* v. *Cork Steamship Co., Ltd.*, [1913] 2 K. B. 393.

(*p*) M. S. Act, 1894, s. 493 (2). A wharfinger or warehouseman is not bound to take charge of any goods which he would not have been liable to take charge of if the M. S. Act, 1894, had not been passed (*ibid.*, s. 500). But if he takes charge of them, he is subject to the same rights and liabilities as the shipowner (*Glyn Mills & Co.* v. *East and West India Docks Co.* (1882), 7 App. Cas. 591, *per* Lord BLACKBURN, at p. 614). If the goods are seized through a wrong entry being made owing to a misdescription in the bill of lading, the loss falls on the consignee (*Shirwell* v. *Shaplock* (1815), 2 Chit. 397). As to dutiable goods, see title REVENUE, Vol. XXIV., pp. 594 *et seq.*

(*q*) See note (*h*), *supra*.

(*r*) M. S. Act, 1894, s. 493 (3); compare *Marzetti* v. *Smith & Son* (1883), 49 L. T. 580, C. A.

(*s*) M. S. Act, 1894, s. 493 (4). It is the duty of the consignee to take delivery of such goods within a reasonable time after he knows that he can receive them (*The Clan Macdonald* (1883), 8 P. D. 178).

SECT. 5. **The Unloading.**

When notice of readiness required.

380. If, before landing, the goods have been entered (*t*) for landing and warehousing at some other wharf or warehouse than that at which the ship is discharging, it is the duty of the shipowner to deliver the goods to their owner upon his offer to take delivery (*u*), or to give him, at the time of his offer, correct information of the time when the goods can be delivered (*w*), otherwise he is not entitled to land the goods under his statutory power without first giving their owner twenty-four hours' notice in writing of his readiness to deliver them, and if he lands them without such notice he must do so at his own risk and expense (*a*).

Lien on goods landed.

381. At the time of landing the goods (*b*) and placing them in the custody of any wharfinger (*c*) or warehouseman (*d*), the shipowner may give the wharfinger or warehouseman notice in writing that the goods are to remain subject to his lien for freight or other charges, the amount of which is to be mentioned in the notice (*e*); in this case the goods remain subject to the lien, and the wharfinger or warehouseman must not deliver them to their owner until the lien is discharged (*f*).

Sale.

382. If the lien is not discharged the wharfinger or warehouseman may, and if required by the shipowner must, sell the goods (*g*) and apply the proceeds in the following order, namely:—(1) in payment, if the goods are sold for home use, of any customs or excise duties that may be owing; (2) in payment of the expenses of the sale; (3) in payment, if there is no agreement between the shipowner and the wharfinger or warehouseman as to priority, of the rent, rates, and other charges (*h*) due to the wharfinger or ware-

(*t*) The owner must be ready at the time of his offer (*Berresford* v. *Montgomerie* (1864), 17 C. B. (N. S.) 379).

(*u*) See note (*h*), p. 281, *ante*.

(*w*) A formal request for information is not necessary (*Berresford* v. *Montgomerie*, *supra*.

(*a*) M. S. Act, 1894, s. 493 (5). The consignee remains bound to take the goods away within a reasonable time (*The Clan Macdonald* (1883), 8 P. D. 178).

(*b*) It has been held that the goods must have been landed under M. S. Act, 1894, s. 493 (see the text, *supra*), otherwise the lien is not preserved (*Smailes & Son* v. *Hans Dessen & Co.* (1905), 11 Com. Cas. 74; varied (1906), 12 Com. Cas. 117, C. A., without expression of opinion on this point).

(*c*) This means the occupier of a wharf as defined in note (*n*), p. 281, *ante* (M. S. Act, 1894, s. 492).

(*d*) This means the occupier of a warehouse as defined in note (*o*), p. 281, *ante* (M. S. Act, 1894, s. 492).

(*e*) As to the effect of wilfully inserting an excessive amount, see *Miedbrodt* v. *Fitzsimon, The "Energie"* (1875), L. R. 6 P. C. 306. For forms of notice, see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 127, 128.

(*f*) M. S. Act, 1894, s. 494. The wharfinger or warehouseman is not bound to inquire into the validity of any lien claimed by the shipowner (*ibid.*, s. 500). As to the modes of discharging the lien, see pp. 287, 288, *post*.

(*g*) M. S. Act. 1894, s. 497 (1).

(*h*) Under *ibid.*, s. 449, the wharfinger or warehouseman is entitled to rent; he is authorised to protect and preserve the goods at their owner's expense, and is given a lien for the rent and expenses. Apart from this provision it does not appear that he has any lien (*Mors-le-Blanch* v. *Wilson* (1873), L. R. 8 C. P. 227, *per* BRETT, J., at p. 239; compare *Somes* v. *British Empire Shipping Co.* (1860), 8 H. L. Cas. 338); nor does it seem that he can claim his expenses from the owner of the goods, since

houseman; (4) in payment of the amount due to the shipowner (*i*). Any surplus is to be paid over to the owner of the goods (*k*).

Time for sale.

383. If the goods are perishable, the wharfinger or warehouseman may sell them when he thinks fit; otherwise his power of sale does not arise until after the expiration of ninety days from the time when the goods were placed in his custody (*l*). The sale must be by public auction (*m*), and must be advertised in two newspapers, and notice must be sent to the owner of the goods, if his address is known (*n*).

SUB-SECT. 4.—*Lien.*

Shipowner's lien.

384. The shipowner is entitled to withhold delivery of the cargo until all existing liens upon it have been discharged (*o*). If in the lawful exercise of a lien the ship is detained beyond the time allowed for discharge, the shipowner is not precluded from recovering demurrage or damages for detention by reason of the fact that the detention is caused by his own act (*p*). A lien may arise either at common law (*q*) or by express contract (*r*).

For freight.

385. At common law there is a lien for freight, if payable contemporaneously with the delivery of the goods (*s*), but not, in the absence of contract, if the freight is payable at any other time, whether before delivery, as in the case of advance freight (*t*), or after

the expenses of enforcing a security do not necessarily fall upon the person liable to pay the original debt (*Somes* v. *British Empire Shipping Co.* (1860), 8 H. L. Cas. 338).

(*i*) M. S. Act, 1894, s. 498. If there is any agreement as to priority, the priority as between the shipowner and the wharfinger or warehouseman will be determined by the terms of the agreement (*ibid.*).

(*k*) *Ibid.* See also, generally, title LIEN, Vol. XIX., pp. 25 *et seq.*

(*l*) M. S Act, 1894, s. 497 (1).

(*m*) *Ibid.*

(*n*) *Ibid.*, s. 497 (2). The title of a *bonâ fide* purchaser is not invalidated by an omission to send the notice, nor is he bound to inquire whether the notice has been sent (*ibid.*, s. 497 (3)).

(*o*) Abbott on Shipping, 5th ed., p. 247; 14th ed., p. 563; *Miedbrodt* v. *Fitzsimon, The "Energie"* (1875), L. R. 6 P. C. 306. As to lien where the shipowner is also an unpaid seller, see *Swan* v. *Barber* (1879), 5 Ex. D. 130, C. A. As to lien, see, further, pp. 617 *et seq.*, *post*; title LIEN, Vol. XIX., pp. 1 *et seq.* A charterer has no lien on the ship for the due performance of his contract (Abbott on Shipping, 5th ed., p. 170; 14th ed., p. 346).

(*p*) *Lyle Steamship Co.* v. *Cardiff Corporation* (1899), 5 Com. Cas. 87; *Smailes & Son* v. *Hans Dessen & Co.* (1906), 12 Com. Cas. 117, C. A.; see p. 278, *ante*.

(*q*) See the text, *infra*.

(*r*) Abbott on Shipping, 5th ed., p. 171; 14th ed., p. 346; *Kirchner* v. *Venus* (1859), 12 Moo. P. C. C. 361, 390; see pp. 284, 285, *post*.

(*s*) See p. 303, *post*. It is immaterial whether the ship is a general ship or whether she is chartered (Abbott on Shipping, 5th ed., p. 247; 14th ed., p. 563; *Anon.* (*Case* 779) (1699), 12 Mod. Rep. 447; *Tate* v. *Meek* (1818), 8 Taunt, 280; *Yates* v. *Meynell* (1818), 8 Taunt. 302; *Black* v. *Rose* (1864), 2 Moo. P. C. C. (N. S.) 277). But the shipowner has no lien for the hire under a charterparty by way of demise (*Hutton* v. *Bragg* (1816), 7 Taunt. 14; *Marquand* v. *Banner* (1856), 6 E. & B. 232). As to when the lien should be exercised, see *Miedbrodt* v. *Fitzsimon, The "Energie," supra*, at p. 314. There is also a lien on the baggage of a passenger for his passage-money (*Wolf* v. *Summers* (1811), 2 Camp. 631).

(*t*) *How* v. *Kirchner* (1857), 11 Moo. P. C. C. 21; *Kirchner* v. *Venus, supra*, dissenting from *Gilkison* v. *Middleton* (1857), 2 C. B. (N. S.) 134; *Neish* v. *Graham* (1857), 8 E. & B. 505; *Re Child, Ex parte Nyholm* (1873), 29 L. T. 634; *Nelson* v. *Association for the Protection of Commercial Interests as respects Wrecked and Damaged Property*

SECT. 5. The Unloading.

delivery (*a*). Moreover, there is no lien if the payment of freight does not depend upon delivery, as, for instance, where it is made payable "lost or not lost" (*b*).

Goods affected.

The lien extends over all goods consigned in the same bottom on the same voyage (*c*) to the same consignee (*d*), and exists as long as any of the freight payable in respect of them remains unpaid (*e*). The shipowner need not, however, retain the whole of the goods; he may deliver them by instalments upon payment of the freight due upon each instalment (*f*); or if he has already delivered some instalments without requiring payment, he may retain the balance until the whole freight is paid (*g*). It is immaterial that the goods are comprised in several bills of lading (*h*), unless the goods are being carried to different destinations (*i*), or unless the bills of lading have been indorsed to different persons (*k*).

For general average etc.

386. The shipowner has also a lien at common law for general average contributions (*l*), and for the expenses incurred on behalf

(1874), 43 L. J. (C. P.) 218, *per* BRETT, J., at p. 221; compare *Tamvaco* v. *Simpson* (1866), L. R. 1 C. P. 363, Ex. Ch., where the shipper had given a bill for the advance freight and became insolvent before it fell due. Nor is there any lien as against *bonâ fide* consignees when the bill of lading represents the freight as paid in advance (*Howard* v. *Tucker* (1831), 1 B. & Ad. 712).

(*a*) *Saville* v. *Campion* (1819), 2 B. & Ald. 503; *Lucas* v. *Nockells* (1828), 4 Bing. 729, Ex. Ch.; *Alsager* v. *St. Katherine's Dock Co.* (1845), 14 M. & W. 794; *Luard* v. *Butcher* (1846), 2 Car. & Kir. 29; *Foster* v. *Colby* (1858), 3 H. & N. 705; *Thorsen* v. *M'Dowall and Neilson, The "Theodor Korner"* (1892), 19 R. (Ct. of Sess.) 743. It is immaterial that the consignee is insolvent (*Alsager* v. *St. Katherine's Dock Co., supra; Thompson* v. *Small* (1845), 1 C. B. 328).

(*b*) *Nelson* v. *Association for the Protection of Commercial Interests as respects Wrecked and Damaged Property* (1874), 43 L. J. (C. P.) 218; *Kirchner* v. *Venus* (1859), 12 Moo. P. C. C. 361. The lien is not lost merely by transhipment (*The Blenheim* (1885), 10 P. D. 167); but it is otherwise if the goods are forwarded by another person (*Nelson* v. *Association for the Protection of Commercial Interests as respects Wrecked and Damaged Property* (1874), 43 L. J. (C. P.) 218).

(*c*) *Bernal* v. *Pim* (1835), 1 Gale, 17 (where different goods were being carried to different destinations); *Matthews* v. *Gibbs* (1860), 3 E. & E. 282 (where, on transhipment, it was held that the first shipowner could not transfer to the second shipowner a lien for the whole freight); contrast *The Hibernian*, [1907] P. 277, C. A. (where such a lien was given by express contract).

(*d*) As to the effect of indorsing the bill of lading, see the text, *infra*.

(*e*) *Sodergren* v. *Flight and Jennings* (1796), cited 6 East, 622; *Bernal* v. *Pim, supra; Perez* v. *Alsop* (1862), 3 F. & F. 188; *The "Norway"* (*Owners*) v. *Ashburner, The "Norway"* (1865), 3 Moo. P. C. C. (N. S.) 245; *Lamb* v. *Kaselack, Alsen & Co.* (1882), 9 R. (Ct. of Sess.) 482. Where a portion of the freight has been paid in advance there is a lien for the balance (*Yates* v. *Railston* (1818), 2 Moore (C. P.), 294). This lien has priority over an unpaid seller's lien (*Oppenheim* v. *Russell* (1802), 3 Bos. & P. 42), and, in the case of transhipment, over a previous *respondentia* bond (*Cleary* v. *McAndrew, Cargo ex "Galam"* (1863), 2 Moo. P. C. C. (N. S.) 216).

(*f*) *Black* v. *Rose* (1864), 2 Moo. P. C. C. (N. S.) 277; *Perez* v. *Alsop, supra.*

(*g*) *Sodergren* v. *Flight and Jennings, supra; Paynter* v. *James* (1867), L. R. 2 C. P. 348.

(*h*) *Sodergren* v. *Flight and Jennings, supra.*

(*i*) *Bernal* v. *Pim, supra.*

(*k*) *Sodegren* v. *Flight and Jennings, supra;* see p. 285, *post.*

(*l*) See p. 323, *post.*

of the cargo owner at a port of refuge in the interests of the cargo (*m*).

387. There is no lien at common law for any other charges (*n*). The shipowner has therefore no lien for freight not payable on delivery (*o*), for dead freight (*p*), for demurrage (*q*), or damages for detention (*r*), for pilotage or any other charges which the shipper has agreed to pay (*s*), for freight due on previous voyages (*t*), or for any other debts due to the shipowner (*a*). Any such lien must be created by special contract (*b*), and is then valid and enforceable (*c*). Thus, there may be a lien by agreement for advance freight (*d*), dead freight (*e*), or demurrage at the port of loading (*f*), or for any other charges (*g*), including unpaid freight due in respect of previous voyages (*h*) and strike expenses (*i*).

By express contract.

388. Where express liens are conferred upon the shipowner by the terms of a charterparty, the holder of the bill of lading, if he is not the charterer (*j*), is not subject to such liens, unless they are incorporated in the bill of lading (*k*). Mere notice of the charterparty is not sufficient (*l*). Moreover, any reference in the bill of lading

How far enforceable against holder of bill of lading.

(*m*) See p. 231, *ante*.

(*n*) The holder of a bill of exchange drawn by the shipper upon the consignee expressly on account of the cargo has no lien upon the cargo as against the consignee, though he has dishonoured the bill (*Robey & Co.'s Perseverance Ironworks* v. *Ollier* (1872), 7 Ch. App. 695; *Phelps, Stokes & Co.* v. *Comber* (1885), 29 Ch. D. 813, C. A.), unless the cargo has been appropriated to meet the bill (*Frith* v. *Forbes* (1862), 4 De G. F. & J. 409, C. A.; doubted in *Phelps, Stokes & Co.* v. *Comber, supra*). See, further, title SALE OF GOODS, Vol. XXV., pp. 255 *et seq.*

(*o*) See p. 283, *ante*.

(*p*) *Phillips* v. *Rodie* (1812), 15 East, 547; *Birley* v. *Gladstone* (1814), 3 M. & S. 205; *Gladstone* v. *Birley* (1817), 2 Mer. 401; compare *Gray* v. *Carr* (1871), L. R. 6 Q. B. 522, Ex. Ch.

(*q*) *Birley* v. *Gladstone, supra*.

(*r*) *Gray* v. *Carr, supra*; *Lockhart* v. *Falk* (1875), L. R. 10 Exch. 132; *Clink* v. *Radford & Co.*, [1891] 1 Q. B. 625, C. A.; *Dunlop & Sons* v. *Balfour, Williamson & Co.*, [1892] 1 Q. B. 507, C. A.

(*s*) *Faith* v. *East India Co.* (1821), 4 B. & Ald. 630; compare *Bishop* v. *Ware* (1813), 3 Camp. 360.

(*t*) Compare *Rushforth* v. *Hadfield* (1806), 7 East, 224.

(*a*) *Oppenheim* v. *Russell* (1802), 3 Bos. & P. 42.

(*b*) *Birley* v. *Gladstone, supra*; *Gladstone* v. *Birley, supra*.

(*c*) *McLean and Hope* v. *Fleming* (1871), L. R. 2 Sc. & Div. 128; followed in *Kish* v. *Taylor*, [1912] A. C. 604.

(*d*) See p. 134, *ante*. There is no lien if the voyage is never begun, even though the goods are put on board (*Re Child, Ex parte Nyholm* (1873), 43 L. J. (BCY.) 21).

(*e*) See p. 134, *ante*.

(*f*) See p. 135, *ante*.

(*g*) *Rederiaktieselskabet "Superior"* v. *Dewar and Webb*, [1909] 2 K. B. 998, C. A.

(*h*) *Moss Steamship Co., Ltd.* v. *Whinney*, [1912] A. C. 254 (where, however, the lien was held not to attach in the circumstances); compare *United States Steel Products Co.* v. *Great Western Rail. Co.*, [1913] 3 K. B. 357.

(*i*) Under the I. S. F. Strike Expenses Clauses, clause 4. As to these clauses, see note (*d*), p. 131, *ante*.

(*j*) As to the effect of a cesser clause, see pp. 133, 134, *ante*.

(*k*) See p. 176, *ante*.

(*l*) *Chappel* v. *Comfort* (1861), 10 C. B. (N. S.) 802; *Turner* v. *Haji Goolam Mahomed Azam*, [1904] A. C. 826, P. C. (where the holder of the bill of lading was a sub-charterer and had, in fact, prescribed the form to be used).

SECT. 5. The Unloading.

to the charterparty is strictly construed (*m*). Unless, therefore, the language used in the bill of lading is wide enough to extend the shipowner's rights, the holder of the bill of lading is entitled to have his goods delivered to him upon payment of the freight reserved by the bill of lading (*n*); as against him there is no lien for freight payable under the charterparty in respect of the same (*o*) or other goods (*p*), or for the difference, if any, between the bill of lading freight and the chartered freight (*q*), or for dead freight (*r*), or for demurrage at the port of loading (*s*). This rule does not apply, however, where the consignee is merely an agent of the charterer (*t*),

(*m*) *The "Norway"* (*Owners*) v. *Ashburner, The "Norway"* (1865), 3 Moo. P. C. C. (N. S.) 245; *Rederiaktieselskabet "Superior"* v. *Dewar and Webb*, [1909] 2 K. B. 998, C. A. (where it was held that the words "all other charges whatsoever" could not be taken to include charges arising outside the charterparty); *Red "R." Steamship Co.* v. *Allatini Brothers* (1910), 15 Com. Cas. 290, H. L.

(*n*) *Mitchell* v. *Scaife* (1815), 4 Camp. 298; *Foster* v. *Colby* (1858), 3 H. & N. 705; *Shand* v. *Sanderson* (1859), 4 H. & N. 381; *Chappel* v. *Comfort* (1861), 10 C. B. (N. S.) 802; *Fry* v. *Chartered Mercantile Bank of India* (1866), L. R. 1 C. P. 689; Abbott on Shipping, 5th ed., p. 178; 14th ed., p. 352; compare *Gilkison* v. *Middleton* (1857), 2 C. B. (N. S.) 134; *Christie* v. *Lewis* (1821), 2 Brod. & Bing. 410.

(*o*) *Mitchell* v. *Scaife, supra*; *Foster* v. *Colby, supra*.

(*p*) *Fry* v. *Chartered Mercantile Bank of India, supra*. The same principle apparently applies where the charterer gives his own bill of lading to the shippers and takes one for the whole cargo from the master (*Paul* v. *Birch* (1743), 2 Atk. 621; *Tharsis Sulphur and Copper Mining Co.* v. *Culliford* (1873), 22 W. R. 46; *The Stornoway* (1882), 4 Asp. M. L. C. 529). The charterparty may, however, give the shipowner a lien over all sub-freights, in which case the lien must be exercised before the sub-freight is paid over to the charterer (*Tagart, Beaton & Co.* v. *Fisher* (*James*) *& Sons*, [1903] 1 K. B. 391, C. A.). As to the extent of the lien, see *Wehner* v. *Dene Steam Shipping Co.*, [1905] 2 K. B. 92; *Samuel, Samuel & Co.* v. *West Hartlepool Steam Navigation Co.* (1906), 11 Com. Cas. 115; and compare *Samuel, Samuel & Co.* v. *West Hartlepool Steam Navigation Co.* (1907), 12 Com. Cas. 203 (equitable assignment of sub-freight).

(*q*) *Gardner* v. *Trechmann* (1884), 15 Q. B. D. 154, C. A.

(*r*) *Red "R." Steamship Co.* v. *Allatini Brothers, supra*; *Rederiaktieselskabet "Superior"* v. *Dewar and Webb, supra*; compare *Kish* v. *Taylor*, [1912] A. C. 604; *Peek* v. *Larsen* (1871), L. R. 12 Eq. 378.

(*s*) *Smith* v. *Sieveking* (1855), 4 E. & B. 945; *Chappel* v. *Comfort, supra*; *Rederiaktieselskabet "Superior"* v. *Dewar and Webb, supra*. Such a lien may be given by the terms of the bill of lading (*Gray* v. *Carr* (1871), L. R. 6 Q. B. 522, Ex. Ch. (where it was held that the lien applied only to demurrage and did not extend to unliquidated damages for the further detention of the ship); but see *McLean and Hope* v. *Fleming* (1871), L. R. 2 Sc. & Div. 128; *Kish* v. *Taylor, supra*). The consignee may also be liable under his own contract with the charterer, in which case his liability is measured by that contract, and not by the charterparty, even though incorporated into the bill of lading (*Houlder Brothers & Co., Ltd.* v. *Public Works Commissioner, Public Works Commissioner* v. *Houlder Brothers & Co., Ltd.*, [1908] A. C. 276, P. C.).

(*t*) *Gledstanes* v. *Allen* (1852), 12 C. B. 202; *Kern* v. *Deslandes* (1861), 10 C. B. (N. S.) 205; *West Hartlepool Steam Navigation Co.* v. *Tagart, Beaton & Co.* (1903), 19 T. L. R. 251, C. A.; compare *Small* v. *Moates* (1833), 9 Bing. 574; *Campion* v. *Colvin* (1836), 3 Bing. (N. C.) 17. If, however, he is holding the bill of lading as security for the price of goods which he has shipped on account of the charterer, he is entitled to receive the goods on payment of the bill of lading freight (*Shand* v. *Sanderson, supra*).

or is his real principal (*a*), or where the shipper was guilty of bad faith (*b*).

Duration of lien.

389. The lien remains as long as the shipowner continues in possession of the goods (*c*). If, however, he lands and warehouses them (*d*), he risks losing his lien (*e*), apart from statute (*f*), although it revives if he resumes possession (*g*).

Discharge of lien.

Statutory provisions.

390. The lien is discharged by payment (*h*) or tender of payment (*i*) of the amount due. Where goods imported from abroad are landed and warehoused under statute (*k*), it is expressly provided that any lien is to be discharged—(1) upon production to the wharfinger or warehouseman of a receipt for the amount claimed, and delivery to him of a copy or of a release from the shipowner; or (2) upon the deposit by the owner of the goods with the wharfinger or warehouseman of the amount claimed, in which case the discharge is without prejudice to any other remedy for the recovery of the freight (*l*). The person making the deposit may within fifteen days give the wharfinger or warehouseman notice in writing to retain it, stating the amount, if any, which he admits to be due (*m*). If no such notice is given, the amount deposited is at the expiration of fifteen days to be paid over to the shipowner (*n*); but, if the notice is given, the wharfinger or warehouseman must at once inform the shipowner and pay or tender the amount, if any, admitted to be due, retaining the balance, or the whole, as the case may be, for thirty days (*o*). At the expiration of this period he is to pay the money in his hands to the owner of the goods, unless legal proceedings have been instituted to determine

(*a*) *McLean and Hope* v. *Fleming* (1871), L. R. 2 Sc. & Div. 128; *Pearson* v. *Göschen* (1864), 17 C. B. (N. S.) 352.

(*b*) *Faith* v. *East India Co.* (1821), 4 B. & Ald. 630; *Mitchell* v. *Scaife* (1815), 4 Camp. 298; *Reynolds* v. *Jex* (1865), 7 B. & S. 86; compare *West Hartlepool Steam Navigation Co.* v. *Tagart, Beaton & Co.* (1903), 19 T. L. R. 251, C. A.; *Small* v. *Moates* (1833), 9 Bing. 574; *The Canada* (1897), 13 T. L. R. 238.

(*c*) Abbott on Shipping, 5th ed., p. 171; 14th ed., p. 347.

(*d*) Unless the warehouse belongs to him or is hired by him (*Mors-le-Blanch* v. *Wilson* (1873), L. R. 8 C. P. 227); see p. 280, *ante*.

(*e*) *Mors-le-Blanch* v. *Wilson*, *supra*, *per* BRETT, J., at p. 239; *Meyerstein* v. *Barber* (1867), L. R. 2 C. P. 38, 661, Ex. Ch., *per* WILLES, J., at p. 54 (affirmed, *sub nom. Barber* v. *Meyerstein* (1870), L. R. 4 H. L. 317); compare *Sweet* v. *Pym* (1800), 1 East, 4; see, however, *Belfast Harbour Commissioners* v. *Lawther*, *The Edward Cardwell* (1865), 12 L. T. 677.

(*f*) *Wilson* v. *Kymer* (1813), 1 M. & S. 157, 163; see p. 280, *ante*.

(*g*) *Levy* v. *Barnard* (1818), 8 Taunt. 149; compare *Re Welfitt*, *Ex parte Cheesman* (1763), 2 Eden, 181 (recapture); *Crawshay* v. *Eades* (1823), 2 Dow. & Ry. (K. B.) 288.

(*h*) *Miedbrodt* v. *Fitzsimon*, *The "Energie"* (1875), L. R. 6 P. C. 306.

(*i*) *Kerford* v. *Mondel* (1849), 28 L. J. (EX.) 303.

(*k*) See p. 282, *ante*.

(*l*) M. S. Act, 1894, s. 495. The consignee is entitled to interest upon any sum deposited in excess of the amount actually due (*Red "R." Steamship Co.* v. *Allatini Brothers* (1909), 14 Com. Cas. 82, *per* BRAY, J., at p. 92, affirmed (1910), 15 Com. Cas. 290, H. L., following *Green* v. *Georgii* (1902), not reported).

(*m*) M. S. Act, 1894, s. 496 (1).

(*n*) *Ibid.*

(*o*) *Ibid.*, s. 496 (2). The statute does not apply where the goods are loaded under a special contract and the shipowner gives express instructions to the warehouseman not to deliver without further instructions (*Dennis (W.) & Sons, Ltd.* v. *Cork Steamship Co., Ltd.*, [1913] 2 K. B. 393).

SECT. 5. The Unloading.

the dispute between the shipowner and the owner of the goods and notice in writing of such proceedings has been served upon him (*p*). Any payment made by the wharfinger or warehouseman in accordance with these provisions discharges him from liability for the amount paid (*q*).

Loss of lien.

391. The shipowner's lien is lost when he parts with the possession of the goods, unless he is induced to do so by fraud (*r*). It is also lost where he agrees to take a bill for the amount (*s*), unless the bill is afterwards dishonoured before the goods are actually delivered (*a*); he is, however, entitled to exercise his lien until the bill is given (*b*).

Agent's lien.

392. An agent to whom the bill of lading is handed for the purpose of enabling him to obtain possession of the goods has an implied authority to bind his principal by agreeing on his behalf to pay any charges in respect of which a lien over the goods exists (*c*), and any such agent has himself a lien over the bill of lading for his charges (*d*).

SUB-SECT. 5.—*The Measure of Damages.*

What constitutes breach of contract.

393. It is the duty of the shipowner to deliver at the port of discharge all the goods entrusted to him (*e*) in accordance with the terms of his contract (*f*). In the absence of any lawful excuse (*g*), he is guilty of a breach of this duty, and becomes liable to pay damages (*h*) to the consignee in the following cases, namely:—(1) where he fails to arrive at the port of discharge within the time contemplated (*i*); (2) where he fails, wholly or in part, to deliver the goods (*j*); and (3) where he delivers the goods, but, owing to some cause for which he is responsible, they are in a damaged condition (*k*).

(*p*) M. S. Act, 1894, s. 496 (3).

(*q*) *Ibid.*, s. 496 (4). When the deposit is made by an agent employed by the owner of the cargo to take delivery, the shipowner may sue the agent alone for a declaration that he is entitled to a lien (*Euterpe Steamship Co., Ltd.* v. *Bath & Son* (1897), 2 Com. Cas. 196, following *White & Co.* v. *Furness, Withy & Co.*, [1895] A. C. 40). The owner of the cargo may be added as a defendant, under R. S. C., Ord. 16, r. 11, for the purpose of counterclaiming (*Montgomery* v. *Foy, Morgan & Co.*, [1895] 2 Q. B. 321, C. A.); see titles PRACTICE AND PROCEDURE, Vol. XXIII., p. 105; SET-OFF AND COUNTERCLAIM, Vol. XXV., p. 481.

(*r*) See title LIEN, Vol. XIX., p. 29.

(*s*) *Horncastle* v. *Farran* (1820), 3 B. & Ald. 497; *Tamvaco* v. *Simpson* (1866), L. R. 1 C. P. 363, Ex. Ch. Where the agreement is for "approved" bills," the shipowner cannot object to a bill after he has negotiated it (*Horncastle* v. *Farran, supra*).

(*a*) *Tamvaco* v. *Simpson, supra, per* BLACKBURN, J., at p. 372; *Gunn* v. *Bolckow, Vaughan & Co.* (1875), 10 Ch. App. 491; compare *Gilkison* v. *Middleton* (1857), 2 C. B. (N. S.) 134.

(*b*) *Yates* v. *Railston* (1818), 2 Moore (C. P.), 294; *Tate* v. *Meek* (1818), 2 Moore (C. P.), 278.

(*c*) *Hingston* v. *Wendt* (1876), 1 Q. B. D. 367.

(*d*) *Edwards* v. *Southgate* (1862), 10 W. R. 528.

(*e*) As to the conclusiveness of the bill of lading, see pp. 145, 146, *ante*.

(*f*) As to the extent of a shipowner's liability, see p. 325, *post*; as to the effect of exceptions, see pp. 107 *et seq.*, *ante*.

(*g*) As to when the shipowner is excused, see pp. 107 *et seq.*, 220 *et seq.*, 232, *ante*.

(*h*) As to damages generally, see title DAMAGES, Vol. X., pp. 301 *et seq.*

(*i*) See p. 289, *post*.

(*j*) *Ibid.*

(*k*) See p. 291, *post*.

Delay on voyage.

394. Where, though the goods are ultimately delivered undamaged (*l*), the ship is unreasonably delayed on her voyage to the port of discharge, the measure of damages is in general the interest on the value of the goods during the period of delay (*m*). The consignee is not, as a general rule, entitled to include in his damages any loss due to an accidental fall in prices (*n*); and, since the principles applicable to carriage by land (*o*) do not apply to carriage by sea (*p*), he cannot recover the difference between the value of his goods at the time when they ought to have arrived and their value at the time when they did arrive (*q*). If, however, the circumstances permit the arrival of the ship to be calculated with the same degree of probability as in the case of carriage by land, the consignee may, where the goods are sent to be sold at a particular market (*r*), or in a particular season (*s*), or where it is known that the price will vary according to the time of their arrival (*t*), or where the delay must necessarily affect their value (*a*), recover the difference, as being part of the damages within the contemplation of the parties (*b*).

Non-delivery of cargo.

395. Where the goods are not delivered at all, owing to their loss on the way (*c*), the measure of damages is the value of the goods at the port of destination at the time when they should have been delivered (*d*). If there is an available market, their market value at that time must be taken; but a deduction must be made for the freight and other charges which the consignee would, if the goods had arrived safely, have had to pay in order to obtain them (*e*). Since, however, the damages are measured by the difference between the consignee's position according as the goods are safely delivered or lost, no deduction is to be made for any advance freight already paid; in respect of such freight his position is the same whether the goods are delivered or not, and it cannot

(*l*) As to deterioration during the delay, see p. 291, *post*.

(*m*) *The Parana* (1877), 2 P. D. 118, C. A., approved in *The Notting Hill* (1884), 9 P. D. 105, C. A.

(*n*) *The Parana, supra, per* MELLISH, L.J., at p. 121; *Dunn* v. *Bucknall Brothers, Dunn* v. *Donald Currie & Co.*, [1902] 2 K. B. 614, C. A., *per* COLLINS, M.R., at p. 622.

(*o*) See title CARRIERS, Vol. IV., pp. 59, 60.

(*p*) *The Parana, supra, per* MELLISH, L.J., at p. 121.

(*q*) *Ibid.*; *The Notting Hill, supra*.

(*r*) *The Parana, supra, per* MELLISH, L.J., at p. 121; *Dunn* v. *Bucknall Brothers, Dunn* v. *Donald Currie & Co., supra, per* COLLINS, M.R., at p. 623; compare *Christie* v. *Trott* (1854), 2 W. R. 15.

(*s*) *The Parana, supra, per* MELLISH, L.J., at p. 121.

(*t*) *Ibid.*

(*a*) *Dunn* v. *Bucknall Brothers, Dunn* v. *Donald Currie & Co., supra*.

(*b*) See title DAMAGES, Vol. X., p. 311.

(*c*) The same principles apply whether the whole or only part of the cargo is lost.

(*d*) *Rodocanachi* v. *Milburn* (1886), 18 Q. B. D. 67, C. A. Where the action is brought in the Probate, Divorce, and Admiralty Division interest at 4 per cent. from the date of the loss is, by the practice of that Division, allowed on the amount awarded (*The Gertrude, The Baron Aberdare* (1888), 13 P. D. 105, C. A.). As to the jurisdiction of that Division over claims for damage to cargo, see title ADMIRALTY, Vol. I., p. 73.

(*e*) *Rodocanachi* v. *Milburn, supra, per* Lord ESHER, M.R., at p. 76; *Smith* v. *Tregarthen* (1887), 6 Asp. M. L. C. 137.

SECT. 5. The Unloading.

therefore be taken into account (*f*). If there is no available market, the value of the goods to the consignee at the port of discharge must be arrived at by an estimate; and the consignee will be allowed to recover the cost price of the goods, together with any advance freight or other charges already paid in connexion with the transport of the goods (*g*), and the estimated profit which would have been made if they had arrived safely at their destination (*h*).

Special damage.

396. In either case the value of the goods is to be taken independently of any circumstances peculiar to the consignee (*i*). If, therefore, he has already contracted to sell the goods, the contract price is to be disregarded, whether it is higher (*k*) or lower (*l*) than the market price or estimated value, as the case may be. Similarly, where the loss of the goods prevents him from making use of other property, as, for instance, where the loss of a piece of machinery delays the erection of a mill, he is not entitled to add to his damages the loss of the profit which he would otherwise have earned (*m*). The shipowner may, however, by his contract undertake liability for damage arising from the peculiar circumstances of the case (*n*).

Damage limited by contract.

397. The contract may by its terms define the basis upon which the damages are to be measured, as, for instance, where it provides that the shipowner is not to be liable beyond the net invoice cost of the goods (*o*). In addition, his liability may be limited to a specified sum (*p*). This limitation of liability does not apply where the loss is attributable to the original unseaworthiness of the ship (*q*), or where the loss occurs after an unjustifiable deviation (*r*), in either of which cases he is liable for the full amount of the loss. It applies, however, to loss occasioned by any other cause, including negligence (*s*), and,

(*f*) *Rodocanachi* v. *Milburn* (1886), 18 Q. B. D. 67, C. A.

(*g*) *Great Indian Peninsula Rail. Co.* v. *Turnbull* (1885), 53 L. T. 325; *Dufourcet* v. *Bishop* (1886), 18 Q. B. D. 373; *Ewbank* v. *Nutting* (1849), 7 C. B. 797 (where there had been a wrongful sale at an intermediate port); compare *The Thyatira* (1883), 8 P. D. 155.

(*h*) *O'Hanlan* v. *Great Western Rail. Co.* (1865), 6 B. & S. 484, *per* BLACKBURN, J., at p. 491; *Rodocanachi* v. *Milburn, supra, per* Lord ESHER, M.R., at p. 76.

(*i*) *Rodocanachi* v. *Milburn, supra, per* Lord ESHER, M.R., at p. 77.

(*k*) *The St. Cloud* (1863), 8 L. T. 54; compare *Scaramanga, Manoussin & Co.* v. *English & Co.* (1895), 1 Com. Cas. 99.

(*l*) *Rodocanachi* v. *Milburn, supra, per* Lord ESHER, M.R., at p. 77.

(*m*) *British Columbia Saw-Mill Co.* v. *Nettleship* (1868), L. R. 3 C. P. 499; compare *Hadley* v. *Baxendale* (1854), 9 Exch. 341; title CARRIERS, Vol. IV., p. 19; and see title DAMAGES, Vol. X., pp. 313 *et seq.*

(*n*) *British Columbia Saw-Mill Co.* v. *Nettleship, supra, per* WILLES, J., at p. 509.

(*o*) For a form of contract to this effect, see *Nelson (James) & Sons, Ltd.* v. *Nelson Line (Liverpool), Ltd.* (No. 2), [1906] 2 K. B. 804.

(*p*) For examples, see the cases cited in notes (*q*)—(*s*), *infra*. This must be distinguished from the statutory limitation of liability, as to which see p. 614, *post*.

(*q*) *Tattersall* v. *National Steamship Co.* (1884), 12 Q. B. D. 297.

(*r*) *Balian & Sons* v. *Joly, Victoria & Co.* (1890), 6 T. L. R. 345, C. A.; *Thorley (Joseph), Ltd.* v. *Orchis Steamship Co.*, [1907] 1 K. B. 660, 668, C. A.; compare *Kish* v. *Taylor*, [1912] A. C. 604, *per* Lord ATKINSON, at p. 618.

(*s*) *Baxter's Leather Co.* v. *Royal Mail Steam Packet Co.*, [1908] 2 K. B. 626, C. A.

where such is the intention of the parties, may extend even to loss occasioned by unseaworthiness (*t*). The contract may also entitle the consignee in the case of short delivery to deduct the value of the goods short delivered from the freight payable on delivery of the balance (*a*); but in the absence of any provision to that effect he is not entitled to do so (*b*).

Indemnification *aliunde*.

398. Upon whatever basis the damages are calculated, the consignee is not entitled to recover more than he has actually lost (*c*); he must, therefore, give the shipowner credit for all sums received from other persons by way of indemnification for his loss (*d*). This principle does not, however, apply to sums received by the consignee from insurers (*e*). The shipowner is not entitled to have the existence of any insurance upon the goods taken into account; and the insurers, if they have already paid the consignee, succeed by subrogation to his rights against the shipowner (*f*).

Delivery of goods damaged.

399. Where the goods are delivered in a damaged condition the measure of damages is, in the absence of any stipulation to the contrary (*g*), the difference between the value which the goods would have had if they had been delivered undamaged (*h*) and the price for which they were or could have been sold on the day of arrival in their actual condition (*i*). The shipowner is not, as a general rule, responsible for such deterioration as necessarily follows from the nature of the goods and the duration of the transit (*k*); where, however, the voyage is unreasonably delayed he may be responsible for the deterioration during the period of delay (*l*).

In the case of damaged goods the contract frequently provides that all claims against the shipowner must be made within a specified time (*m*).

SECT. 6.—*The Payment of Freight.*

SUB-SECT. 1.—*The Person by whom Payment is to be Made.*

Primary liability of shipper.

400. The person who is primarily liable for the payment of

(*t*) *Morris and Morris* v. *Oceanic Steam Navigation Co.* (1900), 16 T. L. R. 533; *Wiener* v. *Wilsons and Furness-Leyland Line* (1910), 15 Com. Cas. 294, C. A.

(*a*) *Sailing Ship "Garston" Co.* v. *Hickie, Borman & Co.* (1886), 18 Q. B. D. 17, C. A. (where it was held that the deduction could be made, though the shipowner was not in default); compare *S.S. Den of Airlie Co., Ltd.* v. *Mitsui & Co., Ltd.* (1912), 17 Com. Cas. 116.

(*b*) *Meyer* v. *Dresser* (1864), 16 C. B. (N. S.) 646.

(*c*) See title DAMAGES, Vol. X., pp. 325, 326; and compare *Rodocanachi* v. *Milburn* (1886), 18 Q. B. D. 67, C. A., *per* LINDLEY, L.J., at p. 78.

(*d*) *Montgomery* v. *Hutchins* (1905), 94 L. T. 207.

(*e*) *Yates* v. *Whyte* (1838), 4 Bing. (N. C.) 272; compare *Scaramanga* v. *Marquand & Co.* (1885), 53 L. T. 810, C. A.

(*f*) See title INSURANCE, Vol. XVII., pp. 490 *et seq.*

(*g*) See p. 290, *ante*.

(*h*) As to the calculation of such value, see p. 289, *ante*.

(*i*) Compare Marine Insurance Act, 1906 (6 Edw. 7, c. 41), s. 71 (3).

(*k*) *Martineaus, Ltd.* v. *Royal Mail Steam Packet Co.* (1912), 17 Com. Cas. 176; compare *Bull* v. *Robison* (1854), 10 Exch. 342.

(*l*) *Internationale Guano en Superphosphaatwerken* v. *Macandrew* (*Robert*) *& Co.*, [1909] 2 K. B. 360.

(*m*) *Wiener* v. *Wilsons and Furness-Leyland Line, supra*, at p. 302.

SECT. 6. **The Payment of Freight.**

freight is the shipper of the goods (*n*). His liability exists independently of any charterparty (*o*) or bill of lading (*p*), since in the absence of anything to show the contrary (*q*) a contract to pay freight is to be implied from the mere fact that he has placed the goods upon another person's ship for the purpose of being carried to their destination (*r*). It is therefore unnecessary to take into consideration the actual ownership of the goods (*s*). The shipper is equally liable to pay freight, although he never owned the goods at all, but shipped them solely on behalf of a third person (*t*), unless the facts of the case show that he acted to the knowledge of the shipowner as agent only, in which case the person on whose behalf he acted is in reality the shipper and liable for the freight accordingly (*a*). Similarly, where the shipper is, at the time of shipment, the owner of the goods, he cannot, by subsequently transferring the ownership of them before any freight has become payable, discharge himself from the liability to pay it when due (*b*).

Shipment on own ship.

Where a person ships goods upon his own ship no contract to pay freight can be implied (*c*), since he is at the same time both shipowner and shipper (*d*). A person, therefore, to whom he has, as shipowner, transferred the ship during the course of the voyage cannot call upon him, in his capacity as shipper (*e*), to pay freight when his goods have reached their destination (*f*).

Effect of charterparty.

The existence of a charterparty, by which an obligation to pay freight is imposed on the charterer (*g*), does not, where the shipper is not the charterer, take away the shipper's liability in respect of

(*n*) *Domett* v. *Beckford* (1833), 5 B. & Ad. 521, following *Shepard* v. *De Bernales* (1811), 13 East, 565, and disapproving *Drew* v. *Bird* (1828), Mood. & M. 156; *Fox* v. *Nott* (1861), 6 H. & N. 630, 637; *Dickenson* v. *Lano* (1860), 2 F. & F. 188; *Sewell* v. *Burdick* (1884), 10 App. Cas. 74, *per* Lord BLACKBURN, at p. 91; compare Bills of Lading Act, 1855 (18 & 19 Vict. c. 111).

(*o*) See p. 293, *post*.

(*p*) See *ibid*.

(*q*) See, for instance, *Dickenson* v. *Lano*, *supra*.

(*r*) *Fox* v. *Nott*, *supra*; *Domett* v. *Beckford*, *supra*. But the liability of the shipper may be modified by the terms of the charterparty (see pp. 131, 132, *ante*), or of the bill of lading (*Lewis* v. *M'Kee* (1868), L. R. 4 Exch. 58, Ex. Ch., where, however, an indorsement of a bill of lading "without recourse" was held not to be sufficient, such an indorsement being unusual and not having been brought to the master's attention).

(*s*) *Lidgett* v. *Perrin* (1862), 2 F. & F. 763.

(*t*) *Fox* v. *Nott*, *supra* (where the shipper was described as agent in the bill of lading); *Kennedy* v. *Gouveia* (1823), 3 Dow. & Ry. (K. B.) 503 (where the agent was not so described). The real owner is also liable as undisclosed principal (*Sewell* v. *Burdick*, *supra*, *per* Lord BLACKBURN, at p. 91).

(*a*) *Dickenson* v. *Lano*, *supra*.

(*b*) Bills of Lading Act, 1855 (18 & 19 Vict. c. 111).

(*c*) But freight may be reserved by the bill of lading (*Weguelin* v. *Cellier* (1873), L. R. 6 H. L. 286).

(*d*) It is immaterial that he is not the owner of the goods (*Mercantile Bank* v. *Gladstone* (1868), L. R. 3 Exch. 233).

(*e*) *Miller* v. *Woodfall* (1858), 8 E. & B. 493.

(*f*) *Mercantile Bank* v. *Gladstone*, *supra*.

(*g*) See p. 103, *ante*, pp. 293, 294, *post*.

freight (*h*), unless, from the circumstances of the case, it is clear that the shipper has contracted solely with the charterer (*i*).

Effect of bill of lading.

401. The liability of the shipper is not affected by the issue of a bill of lading unless it contains a cesser clause (*k*). It is immaterial whether under the bill of lading the goods are made deliverable to the shipper himself (*l*) or to a third person (*m*), since in both cases the contract of carriage is made with the shipper alone (*n*). The shipper cannot, therefore, by any subsequent dealings with the bill of lading, defeat the shipowner's right as against himself to demand payment of the freight (*o*). The effect of such dealings may be to give the shipowner an additional right to demand payment from a third person (*p*), but the shipper's liability remains unchanged (*q*); nor is his liability taken away by the insertion of a term in the bill of lading expressly providing for payment of the freight by the person who takes delivery of the goods (*r*). Such a term is inserted for the benefit of the shipowner, who is thereby entitled to withhold delivery until payment; it is not intended to exonerate the shipper from liability. Its effect is merely to give the shipowner an option to demand payment from the person to whom he delivers the goods (*a*). He is not, as against the shipper, bound to exercise his option, and the shipper remains liable, notwithstanding that the shipowner has delivered the goods without demanding payment of the freight from the consignee (*b*). Payment of the freight by the consignee, however, discharges the shipper from any further liability (*c*); and he is equally discharged where the shipowner indicates his intention to discharge him by his conduct in giving exclusive credit to the consignee (*d*) or otherwise (*e*).

Liability of charterer.

402. Where the ship on which the goods are carried is working under a charterparty, the liability to pay the freight reserved by

(*h*) But the shipper is only liable for the freight due under his own contract, unless the charterparty is incorporated; see p. 171, *ante*.

(*i*) *Smidt* v. *Tiden* (1874), L. R. 9 Q. B. 446, where the defendant had paid freight to the charterer in ignorance of the plaintiff's rights.

(*k*) As to the effect of a cesser clause, see pp. 133, 134, *ante*.

(*l*) *Penrose* v. *Wilks* (1790), cited in Abbott on Shipping, 5th ed., p. 281; 14th ed., p. 683; *Fox* v. *Nott* (1861), 6 H. & N. 630, 637.

(*m*) *Shepard* v. *De Bernales* (1811), 13 East, 565; *Sanders* v. *Vanzeller* (1843), 4 Q. B. 260, 277, Ex. Ch., *per* PARKE, B., at p. 288, disapproving *Drew* v. *Bird* (1828), Mood. & M. 156, and *Moorsom* v. *Kymer* (1814), 2 M. & S. 303; compare *Tapley* v. *Martens* (1800), 8 Term Rep. 451; *Christy* v. *Row* (1808), 1 Taunt. 300.

(*n*) *Domett* v. *Beckford* (1833), 5 B. & Ad. 521.

(*o*) *Fox* v. *Nott*, *supra*.

(*p*) See p. 295, *post*.

(*q*) *Fox* v. *Nott*, *supra*.

(*r*) *Domett* v. *Beckford*, following *Shepard* v. *De Bernales*, *supra*, and disapproving *Drew* v. *Bird*, *supra*.

(*a*) *Domett* v. *Beckford*, *supra*.

(*b*) *Shepard* v. *De Bernales*, *supra*; *Domett* v. *Beckford*, *supra*.

(*c*) *Anderson* v. *Hillies* (1852), 12 C. B. 499.

(*d*) *Tobin* v. *Crawford* (1842), 9 M. & W. 716, Ex. Ch.

(*e*) *Strong* v. *Hart* (1827), 6 B. & C. 160 (where the master took a bill from the consignee); *Marsh* v. *Pedder* (1815), 4 Camp. 257.

SECT. 6. The Payment of Freight.

the charterparty (*f*) falls, in the first instance, upon the charterer (*g*). This liability depends upon the special contract contained in the charterparty, by the terms of which it is regulated (*h*), and is personal to the charterer (*i*). An assignment of the benefit of a charterparty to a third person (*k*) does not of itself, therefore, defeat the shipowner's right to claim payment of the chartered freight from the charterer (*l*). To have this effect the assignment must be assented to by the shipowner (*m*); and, in addition, it must be manifest, from the terms of his assent, that he has accepted the substitution of liability, and not merely agreed to the performance of the charterer's obligations by the assignee (*n*).

Ownership of goods immaterial.

In accordance with the same principles the charterer's liability to pay the chartered freight does not depend upon his relation to the goods in respect of which it is claimed (*o*). The fact that he shipped them as agent only on behalf of their owner is immaterial (*p*), if his liability under the charterparty is otherwise clear (*q*). It is equally immaterial that the goods were shipped by a third person and not by the charterer himself (*r*). It therefore follows that the existence of an alternative liability in a third person to pay freight equivalent to that reserved by the charterparty, as, for instance, where such person is the actual shipper (*s*) or holder of the bill of lading (*t*), is to be disregarded. The charterer is not entitled to insist upon the shipowner enforcing such alternative liability against another rather than against him (*a*), and is not discharged by the shipowner's failure to do so (*b*). He is, however, entitled to the benefit of any payment made to the shipowner by any other person liable to pay for the carriage of the goods (*c*).

Cesser clause.

403. Where the charterparty contains a cesser clause (*d*) the liability of the charterer to pay chartered freight is intended to

(*f*) As to the liability of the shipper, see p. 292, *ante*.
(*g*) *Shepard* v. *De Bernales* (1811), 13 East, 565; *Christy* v. *Row* (1808), 1 Taunt. 300; and see p. 103, *ante*.
(*h*) As to the effect of a cesser clause, see *Hansen* v. *Harrold Brothers*, [1894] 1 Q. B. 612, C. A.; and pp. 133, 134, *ante*.
(*i*) As to when the holder of the bill of lading is to pay freight as per charterparty, see p. 176, *ante*; and the text, *infra*.
(*k*) As to assignments of charterparties, see *Dimech* v. *Corlett* (1858), 12 Moo. P. C. C. 199.
(*l*) *Ibid.*, at p. 223.
(*m*) *Ibid.*
(*n*) See title CONTRACT, Vol. VII., p. 495.
(*o*) See the cases in which it is contemplated that the ship is to be sub-let, such as, for instance, *London Transport Co.* v. *Trechmann Brothers*, [1904] 1 K. B. 635, C. A.; *Ralli Brothers* v. *Paddington Steamship Co.* (1900), 5 Com. Cas. 124.
(*p*) Compare *Cooke* v. *Wilson* (1856), 1 C. B. (N. S.) 153.
(*q*) As to agents entering into charterparties, see, further, p. 89, *ante*.
(*r*) *Christy* v. *Row*, *supra*.
(*s*) *Penrose* v. *Wilks* (1790), cited in Abbott on Shipping, 5th ed., p. 281; 14th ed., p. 683.
(*t*) *Shepard* v. *De Bernales*, *supra*.
(*a*) *Ibid.*
(*b*) *Domett* v. *Beckford*, *supra*.
(*c*) *Tapley* v. *Martens* (1800), 8 Term Rep. 451.
(*d*) See pp. 133, 134, *ante*.

cease when the prescribed cargo has been shipped (*e*). He is not necessarily, however, discharged wholly from his liability, since the extent of his discharge depends upon the scope of the cesser clause and the manner in which its stipulations have been discharged (*f*). Moreover, the effect of a cesser clause, when fully operative, is only to discharge the charterer from his liability as such. If at the same time he is liable in another capacity, as, for instance, where he holds the bill of lading, his liability in that capacity remains unchanged (*g*).

Where consignee liable.

404. The consignee is not, as such, liable to pay freight, since he is not a party to the contract of carriage (*h*). Where there is a bill of lading in which he is named as consignee, or which has been indorsed to him, he is by statute expressly made liable to pay freight as if he were a party to the contract contained in the bill of lading, provided that the property in the goods carried has passed to him (*i*). His statutory liability, however, depends upon his ownership of the goods, and does not arise where, though he is named as consignee in the bill of lading, or where he becomes indorsee thereof, the property in the goods does not pass to him thereby (*k*). Such a consignee is an agent only, whose duty it is to take delivery on behalf of the owner of the goods (*l*). Since, however, the shipowner has a right to withhold delivery until the freight has been paid (*m*), the receipt of the goods by the consignee in such a case, though it does not of itself create any obligation to pay freight (*n*), may amount to evidence of a new contract, distinct from the contract of carriage, whereby the consignee, in consideration of the shipowner giving up his lien, agrees to pay him the freight (*o*). Whether this new contract exists or not is a question of fact, to be determined by reference to the circumstances of the particular

(*e*) See p. 133, *ante*.

(*f*) See p. 133, *ante*.

(*g*) Compare *Gullischen* v. *Stewart Brothers* (1884), 13 Q. B. D. 317, C. A.

(*h*) *Sanders* v. *Vanzeller* (1843), 4 Q. B. 260, Ex. Ch. But he may make himself liable by express contract (*Kennedy* v. *Gouveia* (1823), 3 Dow. & Ry. (K. B.) 503), or he may be liable as undisclosed principal of the shipper (*Sewell* v. *Burdick* (1884), 10 App. Cas. 74, *per* Lord BLACKBURN, at p. 91).

(*i*) Bills of Lading Act, 1855 (18 & 19 Vict. c. 111), s. 1; see, further, p. 164, *ante*. He is no longer liable if he has indorsed the bill of lading with the intention of passing the property in the goods; see pp. 165, 166, *ante*.

(*k*) *Sewell* v. *Burdick*, *supra*, where the bill of lading had been pledged.

(*l*) *Ward* v. *Felton* (1801), 1 East, 507; *Amos* v. *Temperley* (1841), 8 M. & W. 798.

(*m*) See p. 283, *ante*.

(*n*) *Moorsom* v. *Kymer* (1814), 2 M. & S. 303; *Pinder* v. *Wilks* (1814), 5 Taunt. 612; *White & Co.* v. *Furness, Withy & Co.*, [1895] A. C. 40.

(*o*) *Cock* v. *Taylor* (1811), 13 East, 399; *Dobbin* v. *Thornton* (1806), 6 Esp. 16; *Dougal* v. *Kemble* (1826), 3 Bing. 383; *Renteria* v. *Ruding* (1830), Mood. & M. 511; *Sanders* v. *Vanzeller*, *supra*, followed in *Young* v. *Moeller* (1855), 5 E. & B. 755, Ex. Ch.; *Kemp* v. *Clark* (1848), 12 Q. B. 647; *Allen* v. *Coltart* (1883), 11 Q. B. D. 782; compare *Roberts* v. *Holt* (1685), 2 Show. 443; *Artaza* v. *Smallpiece* (1793), 1 Esp. 23; *Smurthwaite* v. *Wilkins* (1862), 11 C. B. (N. S.) 842, *per* ERLE, C.J., at pp. 847, 849. The same principle applies to demurrage (*Stindt* v. *Roberts* (1848), 5 Dow. & L. 460); compare *Scotson* v. *Pegg* (1861), 6 H. & N. 295.

SECT. 6. The Payment of Freight.

case (*p*). The conduct of the consignee, and in particular his previous dealings with the shipowner (*q*), and, perhaps, his usual course of business (*r*), must be such as to lead to the inference that his receipt of the goods was in pursuance of the new contract, and not merely in discharge of his duty to his principal (*s*). Though the receipt of the goods may, in the absence of any explanation, be sufficient (*t*), no such inference is to be drawn where, at the time when the consignee received the goods, he was known by the shipowner to be acting as agent for their owner and the delivery was made to him in that capacity (*a*).

The statute does not apply where there is no bill of lading (*b*). In such a case, however, the conduct of the consignee in taking delivery of the goods may lead to the inference that, in consideration of the delivery, the consignee has contracted to pay the freight (*c*).

Indorsee of bill of lading.

405. A person to whom the bill of lading is indorsed and who takes delivery under it (*d*) is, by statute, liable to pay freight to the shipowner, provided that the effect of the indorsement (*e*) is to pass the property in the goods carried (*f*). If the property in the goods does not pass to him he incurs no liability merely by reason of the indorsement (*g*), though, by reason of the circumstances attendant upon his receipt of the goods, he may render himself liable under a new contract in the same way as the consignee (*h*).

SUB-SECT. 2.—*The Person to whom Payment should be Made.*

Shipowner primarily entitled.

406. The shipowner is the person who is primarily entitled to receive the freight, since the goods have been carried upon his ship (*i*),

(*p*) *Allen* v. *Coltart* (1883), 11 Q. B. D. 782; *Palmer* v. *Zarifi Brothers* (1877), 3 Asp. M. L. C. 540. As to the effect of delivery of the goods being taken, not under the bill of lading, but under an order addressed to the shipowner, see *Wilson* v. *Kymer* (1813), 1 M. & S. 157.

(*q*) *Wilson* v. *Kymer, supra*; *Coleman* v. *Lambert* (1839), 5 M. & W. 502.

(*r*) *Dickenson* v. *Lano* (1860), 2 F. & F. 188.

(*s*) *White & Co.* v. *Furness, Withy & Co.*, [1895] A. C. 40. In this case the liability for freight continues though the agent has paid over the proceeds of the goods to the principal (*Bell* v. *Kymer* (1814), 5 Taunt. 477).

(*t*) *Sanders* v. *Vanzeller* (1843), 4 Q. B. 260, Ex. Ch.

(*a*) *Ward* v. *Felton* (1801), 1 East, 507; *Amos* v. *Temperley* (1841) 8 M. & W. 798; compare *White & Co.* v. *Furness, Withy & Co.*, *supra*.

(*b*) The Bills of Lading Act, 1855 (18 & 19 Vict. c. 111), deals only with bills of lading.

(*c*) Compare *Wilson* v. *Kymer, supra*.

(*d*) He is not liable if he indorses the bill of lading to another indorsee; see pp. 165, 166, *ante*.

(*e*) See p. 158, *ante*.

(*f*) Bills of Lading Act, 1855 (18 & 19 Vict. c. 111), s. 1.

(*g*) *Sewell* v. *Burdick* (1884), 10 App. Cas. 74.

(*h*) See p. 164, *ante*.

(*i*) *Atkinson* v. *Cotesworth* (1825), 3 B. & C. 647; *Walshe* v. *Provan* (1853), 8 Exch. 843. If the freight is expressly made payable to a third person, and not to the shipowner, in an action to recover it brought in the name of the shipowner payment to the shipowner or master is no defence (*Kirchner* v. *Venus* (1859), 12 Moo. P. C. C. 361, 399). The receipt of freight by the obligee of a bottomry bond is in law a receipt by the shipowner (*Benson* v. *Chapman* (1849), 2 H. L. Cas. 696).

SECT. 6. The Payment of Freight.

and the right to receive freight is one of the incidents of ownership (*k*). Payment need not be made to the shipowner himself; it is sufficient if it is made to an agent authorised to receive it (*l*). The master has an implied authority to receive payment of the freight (*m*), and, when the contract under which it is payable is contained in a bill of lading signed by him (*n*), he may, as being a party to the contract (*o*), sue the person liable to pay it (*p*); he cannot, however, claim to receive it as against the shipowner (*q*), who may at any time revoke his authority to receive it, either expressly (*r*) or impliedly, by appointing another person as his agent in that behalf (*s*).

Where ship is chartered.

407. Where the ship on which the goods are carried has been chartered from the shipowner, there are two classes of freight which call for consideration, namely, the freight reserved under the charterparty and the freight payable under the bill of lading (*t*). As regards the shipowner's right to receive from the charterer the chartered freight, no question arises (*a*). Where, however, the bill of lading is in the hands of a third person, who is liable, as holder, to pay freight (*b*), payment of the bill of lading freight may be claimed both by the charterer and by the shipowner. As against the charterer the right of the shipowner depends upon whether he can establish the existence of a contract between himself and the holder of the bill of lading, under which he is entitled to receive the bill of lading freight (*c*). If the charterparty amounts to a demise (*d*), the contract under the bill of lading is made with the charterer, and the shipowner cannot therefore claim the freight (*e*).

(*k*) A part-owner may sue for the freight on behalf of himself and the other part-owners (*De Hart* v. *Stephenson* (1876), 1 Q. B. D. 313). But a part-owner who objects to a particular voyage is not entitled as against the others to any of the freight earned on that voyage (*Boson* v. *Sandford* (1689), Carth. 58).

(*l*) *The Edmond* (1860), Lush. 211. As against the shipowner a ship's husband who is authorised to receive freight may deduct his disbursements (*Harris* v. *Reynolds* (1856), 4 W. R. 278); but an agent of the ship's husband cannot as against the shipowner deduct a debt due to himself from the ship's husband (*Walshe* v. *Provan* (1853), 8 Exch. 843).

(*m*) *Shields* v. *Davis* (1815), 6 Taunt. 65.

(*n*) As to the master signing bills of lading, see pp. 153 *et seq.*, *ante*.

(*o*) It is otherwise where he signs the bill of lading in pursuance of a stipulation in the charterparty, since he is in the position of an agent only (*Repetto* v. *Millar's Karri and Jarrah Forests, Ltd.*, [1901] 2 K. B. 306; compare *Zwilchenbart* v. *Henderson* (1854), 9 Exch. 722).

(*p*) *Brouncker* v. *Scott* (1811), 4 Taunt. 1; *Isberg* v. *Bowden* (1853), 8 Exch. 852; *Seeger* v. *Duthie* (1860), 8 C. B. (N. S.) 45, 72, Ex. Ch.; compare *Shepard* v. *De Bernales* (1811), 13 East, 565.

(*q*) *Atkinson* v. *Cotesworth* (1825), 3 B. & C. 647. As to the master's right of lien against the freight, see p. 620, *post*.

(*r*) *Atkinson* v. *Cotesworth*, *supra*; *Wilkins* v. *Mure* (1784), 1 Cox, Eq. Cas. 150 (where the notice was given by the shipowner's assignees in bankruptcy).

(*s*) *The Edmond*, *supra*.

(*t*) See p. 171, *ante*.

(*a*) See p. 103, *ante*.

(*b*) See p. 164, *ante*.

(*c*) See p. 170, *ante*.

(*d*) See pp. 169, 170, *ante*.

(*e*) *Marquand* v. *Banner* (1856), 6 E. & B. 232, as explained in *Gilkison*

SECT. 6. **The Payment of Freight.**

In any other case the bill of lading is usually sufficient evidence of a contract with the shipowner, since, notwithstanding the existence of the charterparty, the contract of carriage is, as a general rule, to be regarded, so far as the holder of the bill of lading is concerned, as made between the shipowner and himself (*f*). At the same time, as between the shipowner and the charterer, their respective rights depend upon the terms of the charterparty (*g*). The shipowner, therefore, may, according to the circumstances of the case, be entitled to retain the whole of the bill of lading freight for his own benefit (*h*), or he may be bound to account to the charterer for at least some portion of it (*i*). In the latter case, the charterer may give notice to the holder of the bill of lading not to pay the shipowner the portion due to himself, and thus deprive the shipowner of his right to claim the whole (*k*).

Rights of charterer against consignee.

408. Where goods are carried on a chartered ship under a bill of lading, the charterer is not entitled to claim payment of the freight due under the bill of lading from the person who may be liable to pay it as consignee or holder of the bill of lading (*l*), unless the charterparty is a complete demise, or it appears from the form of the bill of lading that the contract of carriage contained therein was made with the charterer and not with the shipowner (*m*), or unless the existence of a special contract to pay the freight to the charterer is established (*n*).

Sale of ship.

409. Where, after entering into a contract of carriage, the shipowner sells the ship upon which the goods are being carried, the purchaser becomes, in the absence of express contract, entitled,

v. *Middleton* (1857), 2 C. B. (N. S.) 134, and *Wehner* v. *Dene Steam Shipping Co.*, [1905] 2 K. B. 92.

(*f*) *Wastwater Steamship Co.* v. *Neale* (*T. B.*) *& Co.* (1902), 86 L. T. 266; see p. 170, *ante*. As to when the bill of lading is a contract with the charterer, see the text, *infra*. As to the amount of freight payable by the holder of the bill of lading in case of a difference between the bill of lading freight and chartered freight, see p. 171, *ante*.

(*g*) Contrast *Marquand* v. *Banner* (1856), 6 E. & B. 232, and *Janentzky* v. *Langridge* (*Henry*) *& Co.* (1895), 1 Com. Cas. 90, with *Christie* v. *Lewis* (1821), 2 Brod. & Bing. 410, and *The Canada* (1897), 13 T. L. R. 238.

(*h*) *Broadhead* v. *Yule* (1871), 9 Macph. (Ct. of Sess.) 921.

(*i*) *Marquand* v. *Banner, supra*. Where the charterparty does not apply to goods carried on deck, the freight due in respect of such goods belongs to the shipowner and not to the charterer (*Neill* v. *Ridley* (1854), 9 Exch. 677). See also *Hoyland & Co.* v. *Graham & Co.* (1896), 1 Com. Cas. 274, where the shipowner and shipper entered into a new contract at a higher rate of freight than that agreed between charterer and shipper, and it was held that the shipowner was bound to account only for the difference between the chartered freight and the freight originally agreed upon between the charterer and the shipper.

(*k*) *Michenson* v. *Begbie* (1829), 6 Bing. 190.

(*l*) See note (*f*), *supra*.

(*m*) *Michenson* v. *Begbie, supra; Zwilchenbart* v. *Henderson* (1854), 9 Exch. 722; *Marquand* v. *Banner, supra; Mitchell* v. *Burn* (1874), 1 R. (Ct. of Sess.) 900.

(*n*) *Samuel, Samuel & Co.* v *West Hartlepool Steam Navigation Co* (1906), 11 Com. Cas. 115; *Harrison* v. *Huddersfield Steamship Co.* (1903), 19 T. L. R. 386.

as from the date of the sale (*o*), to receive all freight which is then in course of being earned by the ship and which does not become payable till afterwards (*p*). At the time when the freight falls due the purchaser is in fact the owner of the ship, and takes the freight as being incidental to the property in the ship (*q*). Payment of the freight to the purchaser by the person liable is therefore a valid payment (*r*), though the contract under which it is payable does not, strictly speaking, pass with the property in the ship (*s*), but requires to be expressly assigned (*t*).

Mortgage of ship.

410. A transfer of the ship by way of mortgage (*a*) does not of itself entitle the mortgagee, as against the mortgagor, to claim the freight earned by the employment of the ship (*b*). The mortgagor, so long as he remains in possession, is not divested of his rights as owner, and his right to control the employment of the ship and to receive the freight to be earned thereby therefore continues (*c*). By the mortgage, however, the mortgagee is empowered to take possession (*d*). Upon taking possession he becomes owner of the ship to the exclusion of the mortgagor, and is entitled as such to claim payment of the freight (*e*). His right to the freight depends, not upon the existence of the mortgage (*f*), but solely upon the fact that he is in possession as owner at the time when the freight becomes payable (*g*). Any payment of freight made to the mortgagor by the person liable to pay it is valid as against the mortgagee, if made before the mortgagee takes possession (*h*). It is therefore necessary, for the purpose of acquiring a right to the freight, that the mortgagee should actually take possession (*i*), or,

Mortgagee in possession.

(*o*) *Lindsay* v. *Gibbs* (1856), 22 Beav. 522.

(*p*) *Morrison* v. *Parsons* (1810), 2 Taunt. 407. As to the case of a person shipping goods on his own ship and transferring the ship in the course of the voyage, see p. 292, *ante*.

(*q*) *Case* v. *Davidson* (1816), 5 M. & S. 79, *per* Lord ELLENBOROUGH, at p. 82.

(*r*) *Morrison* v. *Parsons*, *supra*.

(*s*) *Splidt* v. *Bowles* (1808), 10 East, 279.

(*t*) Under the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (6); see title CHOSES IN ACTION, Vol. IV., pp. 367 *et seq.*

(*a*) As to mortgages of ships, see p. 23, *ante*. A mortgagee of shares in a ship has no right to freight, but only to his mortgagor's share of the profit (*Alexander* v. *Simms* (1854), 5 De G. M. & G. 57, C. A.).

(*b*) See the cases cited in notes (*c*)—(*h*), *infra*.

(*c*) *Keith* v. *Burrows* (1877), 2 App. Cas. 636; *Wilson* v. *Wilson* (1872), L. R. 14 Eq. 32.

(*d*) See pp. 24, 25, *ante*. As to the right to repudiate a charterparty which impairs his security, see *Law Guarantee and Trust Society* v. *Russian Bank for Foreign Trade*, [1905] 1 K. B. 815, C. A.

(*e*) *Gumm* v. *Tyrie* (1865), 6 B. & S. 298, Ex. Ch.; *Japp* v. *Campbell* (1887), 57 L. J. (Q. B.) 79; *Gibson* v. *Ingo* (1847), 6 Hare, 112; compare *Dean* v. *M'Ghie* (1826), 4 Bing. 45; *Kerswill* v. *Bishop* (1832), 2 Cr. & J. 529.

(*f*) *Willis* v. *Palmer* (1859), 7 C. B. (N. S.) 340.

(*g*) *Keith* v. *Burrows*, *supra*, *per* Lord CAIRNS, L.C., at p. 646.

(*h*) *Willis* v. *Palmer supra*; *Essarts* v. *Whinney* (1903), 88 L. T. 191, C. A.; *Wilson* v. *Wilson*, *supra*; *The Benwell Tower* (1895), 72 L. T. 664; compare *Belfast Harbour Commissioners* v. *Lawther* (1865), 17 I. Ch. R. 54.

(*i*) As to what is meant by taking possession, see p. 25, *ante*.

SECT. 6. **The Payment of Freight.**

at least, that he should do some act equivalent thereto (*k*). Where the ship is at sea, notice to the consignee, as holder of the bill of lading, that the mortgagee intends to take possession and to collect the freight himself is sufficient, provided that the mortgagee completes his right by taking possession as soon as possible (*l*).

What freight passes to mortgagee.

The freight to which the mortgagee becomes entitled is the freight which is payable in respect of the goods on board the ship at the time when he takes possession (*m*). He does not succeed to the contractual rights of the mortgagor, but only to his rights as shipowner (*n*). Any freight, therefore, which may still be owing in respect of goods carried on a former voyage does not pass to the mortgagee in possession (*o*). Even the freight which has been earned on the voyage in the course of which he takes possession does not pass to him if before he does so the goods have been delivered to the consignee (*p*). Where, however, he takes possession before the delivery is complete, he may be entitled to receive the whole freight, including the freight for the portion already delivered, if, on the construction of the charterparty or bill of lading, the court is of opinion that no freight is payable until the whole of the goods has been delivered (*q*).

Amount payable.

Though the mortgagee cannot, on taking possession, avail himself of the contractual rights of the mortgagor against the consignee, but must rely upon his lien over the goods, he is nevertheless bound, as against the consignee, by the terms of the contract of carriage (*r*). He cannot, therefore, claim to be paid freight at a higher rate than that which the consignee agreed to pay (*s*), and must allow the consignee credit for all payments made on account of freight, whether by way of advance freight (*t*) or otherwise (*a*). Such payments must, however, have been made in accordance with the terms of the contract of carriage; no credit need be given for payments which fall outside its terms and are made in pursuance of a separate arrangement with the mortgagor (*b*).

Subsequent mortgages.

411. The right of a mortgagee to take possession of the ship

(*k*) *Gardner* v. *Cazenove* (1856), 1 H. & N. 423; *Beynon* v. *Godden* (1878), 3 Ex. D. 263, C. A. (where the mortgagor, who was part-owner and ship's husband, was removed from his office as ship's husband by the mortgagee and the other part-owners in concurrence).

(*l*) *Rusden* v. *Pope* (1868), L. R. 3 Exch. 269; *Wilson* v. *Wilson* (1872), L. R. 14 Eq. 32.

(*m*) *Chinnery* v. *Blackburne* (1784), 1 Hy. Bl. 117, n.; *Gumm* v. *Tyrie* (1865), 6 B. & S. 298, Ex. Ch. The mortgagee has priority over a creditor for necessaries (*Johnson* v. *Black, The "Two Ellens"* (1872), L. R. 4 P. C. 161). As to priorities, see pp. 301, 302, 303, *post*.

(*n*) *Keith* v. *Burrows* (1877), 2 App. Cas. 636.

(*o*) *Shillito* v. *Biggart*, [1903] 1 K. B. 683.

(*p*) *Chinnery* v. *Blackburne*, *supra*.

(*q*) *Brown* v. *Tanner* (1868), 3 Ch. App. 597.

(*r*) *Keith* v. *Burrows*, *supra*.

(*s*) *Ibid.* (where the rate of freight was nominal); *Brown* v. *North* (1852), 8 Exch. 1.

(*t*) *Tanner* v. *Phillips* (1872), 1 Asp. M. L. C. 448.

(*a*) *The Salacia* (1862), Lush. 545.

(*b*) *Tanner* v. *Phillips*, *supra* (where the charterer advanced a greater sum than that allowed by the charterparty, and was held entitled to deduct from freight the amount allowed by the charterparty and no more).

and claim payment of the freight is not restricted to the case of the first mortgagee (*c*). The right of the first mortgagee is paramount (*d*); but, subject thereto and to the rights of any prior incumbrancers (*e*), any subsequent mortgagee has, as against all other persons, a right to take possession, which right he may enforce, if necessary, by obtaining the appointment of a receiver (*f*).

When insurers entitled to freight.

412. Where during the course of the voyage the ship on which the goods are being carried suffers a constructive total loss and is abandoned to the insurers on ship (*g*), any freight which may become payable by reason of the ship being able to carry the goods to their destination (*h*) belongs to the insurers (*i*), since the effect of the abandonment is to place them, to this extent at least, in the position of the shipowner (*k*). If, however, the freight cannot be earned owing to the extent to which the ship is damaged, the rights of the shipowner against the persons who may be responsible for the loss of freight do not pass to the insurers on ship (*l*), but to the insurers on freight, if any (*m*); nor can the insurers on ship claim the freight if it is earned by the shipowner exercising his right of transhipment and forwarding the goods by another ship to their destination (*n*).

The insurers are, like other transferees of the ship, bound, as regards their claim for freight, by the contracts of the shipowner (*o*). Where, however, the goods which are being carried on the ship belong to the shipowner, and after the abandonment are carried to their destination on the same ship, the insurers, though they cannot claim freight on the whole voyage, are entitled to be paid at the usual rate for the use of the ship from the place where she was abandoned to her destination (*p*).

Assignment of freight.

413. Where the freight has been legally assigned by the shipowner it is payable to the assignee (*q*). The shipowner is entitled to assign the freight at any time during the subsistence of

(*c*) As to mortgagees of ships, see p. 26, *ante*.

(*d*) *Liverpool Marine Credit Co.* v. *Wilson* (1872), 7 Ch. App. 507, *per* JAMES, L.J., at p. 511.

(*e*) *Liverpool Marine Credit Co.* v. *Wilson, supra.*

(*f*) *Ibid.*; *Burn* v. *Herlofson and Siemensen, The Faust* (1887), 56 L. T. 722, C. A.

(*g*) As to abandonment, see title INSURANCE, Vol. XVII., pp. 486 *et seq.*

(*h*) As to the position if the ship is unable to proceed, see p. 236, *ante*.

(*i*) *Case* v. *Davidson* (1816), 5 M. & S. 79; *Stewart* v. *Greenock Marine Insurance Co.* (1848), 2 H. L. Cas. 159; see *Keith* v. *Burrows* (1877), 2 App. Cas. 636, *per* Lord BLACKBURN, at p. 657.

(*k*) As to the position of the insurers on abandonment, see Marine Insurance Act, 1906 (6 Edw. 7, c. 41), s. 79 (1); *Elgood* v. *Harris*, [1896] 2 Q. B. 491, *per* COLLINS, J., at p. 494.

(*l*) *Sea Insurance Co.* v. *Hadden* (1884), 13 Q. B. D. 706, C. A.

(*m*) *Ibid.*

(*n*) *Hickie* v. *Rodocanachi* (1859), 4 H. & N. 455.

(*o*) An abandonment is equivalent to the sale of the ship (*Case* v. *Davidson, supra, per* ABBOTT, J., at p. 87).

(*p*) *Miller* v. *Woodfall* (1859), 8 E. & B. 493.

(*q*) *Boyd* v. *Mangles* (1849), 3 Exch. 387. As to the rights of assignor and assignee *inter se*, see *Curtis* v. *Auber* (1820), 1 Jac. & W. 526. For forms of assignment of freight, see Encyclopædia of Forms and Precedents, Vol. XIV., pp. 121, 675.

SECT. 6. The Payment of Freight.

the contract under which it is payable, whether before (*r*) or after (*s*) it has become due. He may also assign future freight, that is to say, the freight which the ship may earn on future voyages as to which no contracts have been made at the date of the assignment (*t*).

Set-off.

Since the assignment is subject to equities (*a*), the assignee takes the freight subject to the right of the person liable to pay it to set off any debts due from the shipowner to himself at the time when notice of the assignment was given (*b*). Where, however, the assignee is in a position to exercise a lien for the freight (*c*), the set-off cannot be made available (*d*); nor is it available where the debt in respect of which it is claimed did not accrue till after the date of the notice (*e*).

Equitable assignment.

If the assignment is equitable only, the assignee, though entitled to call upon the shipowner to account for any freight which he may have received (*f*), cannot claim payment of the freight from the holder of the bill of lading, unless he has given him notice of the assignment (*g*). By thus giving notice the assignee will defeat the claim of any prior equitable assignee who has failed to do so (*h*). Such notice is, however, ineffectual against a subsequent legal assignee (*i*), or against a person who claims the freight by notice of a subsequent sale (*k*) or legal mortgage (*l*) of the ship. As against a second mortgagee of the ship, on the other hand, an equitable assignee of the freight, who has perfected his title by notice before

(*r*) *Douglas* v. *Russell* (1831), 4 Sim. 524; (1833), 1 My. & K. 488 (where it was held that the subsequent bankruptcy of the shipowner did not affect the position of an assignee who had perfected his assignment by notice); *Liverpool Marine Credit Co.* v. *Wilson* (1872), 7 Ch. App. 507.

(*s*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (6); see title CHOSES IN ACTION, Vol. IV., pp. 367 *et seq.*

(*t*) *Leslie* v. *Guthrie* (1835), 1 Bing. (N. C.) 697; *Lindsay* v. *Gibbs* (1856), 22 Beav. 522; see, *contra*, *Robinson* v. *Macdonnell* (1816), 5 M. & S. 228.

(*a*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (6); see title CHOSES IN ACTION, Vol. IV., pp. 367 *et seq.*

(*b*) *Wilson* v. *Gabriel* (1863), 4 B. & S. 243; compare *The Salacia* (1863), Lush. 545; *The Standard* (1857), Sw. 267; but see *Boyd* v. *Mangles* (1849), 3 Exch. 387, where the freight was payable in full, the agreement between the shipowner and the cargo owner as to sharing of profits and losses not coming into operation till after payment of freight. As to set-off generally, see title SET-OFF AND COUNTERCLAIM, Vol. XXV., pp. 484 *et seq.*

(*c*) See p. 283, *ante*.

(*d*) *Wequelin* v. *Cellier* (1873), L. R. 6 H. L. 286.

(*e*) Compare *De Pothonier* v. *De Mattos* (1858), E. B. & E. 461.

(*f*) *Willis* v. *Palmer* (1859), 7 C. B. (N. S.) 340.

(*g*) The action must, strictly speaking, be brought in the name of the assignor (*De Pothonier* v. *De Mattos*, *supra*); but see title CHOSES IN ACTION, Vol. IV., pp. 391 *et seq.*

(*h*) Compare *Re Pride of Wales and Annie Lisle* (*Mortgagees*) (1867), 15 L. T. 606.

(*i*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (6).

(*k*) *Lindsay* v. *Gibbs* (1856), 22 Beav. 522.

(*l*) *Brown* v. *Tanner* (1868), 3 Ch. App. 597; *Wilson* v. *Wilson* (1872), L. R. 14 Eq. 32; *Liverpool Marine Credit Co.* v. *Wilson*, *supra* (where the legal mortgagee was given priority in respect of further advances made after the assignee of freight had given notice). But the mortgagee must have taken possession; see *The Benwell Tower* (1895), 72 L. T. 664 (where the first mortgagee became assignee of the freight after the second mortgage, and was held entitled to retain the freight paid to him under the assignment, neither mortgagee having taken possession).

the second mortgagee has done so, takes priority, since the interests of both are equitable (*m*).

A legal assignee of the freight, though he is not deprived of his right to receive the freight by a subsequent sale or mortgage of the ship (*n*), cannot claim it when the assignment was made after the sale of the ship, since the assignor has no right to receive the freight, and therefore nothing passes by the assignment (*o*). If, however, the ship only is mortgaged, a subsequent legal assignment is not wholly inoperative, since it entitles the assignee to the freight, unless the mortgagee takes possession (*p*). As soon as the mortgagee takes possession any freight remaining due becomes payable to him (*q*), and the assignment is therefore to that extent defeated (*r*).

Effect of sale or mortgage of ship.

414. A person who has a maritime lien against a ship, such as, for instance, a lien for damage arising out of collision (*s*) or for wages (*a*), has the same lien against the freight. Similarly, the obligee of a bottomry bond which includes the freight has a lien against the freight, and payment to him discharges the person liable as against the shipowner (*b*).

Maritime lien.

SUB-SECT. 3.—*When the Freight is Payable.*

415. The bill of lading usually provides that the freight is to be paid on delivery of the goods to which it relates (*c*). This provision is unnecessary, as, in the absence of any stipulation to the contrary (*d*), freight is by law payable on delivery (*e*). The shipowner

Payable on delivery.

(*m*) *Liverpool Marine Credit Co.* v. *Wilson* (1872), 7 Ch. App. 507, *per* JAMES, L.J., at p. 511; compare *Lindsay* v. *Gibbs* (1856), 22 Beav. 522, where twenty-four shares in the ship were sold to one person and the remaining forty to another person before the date when the freight was assigned, and it was held that the assignee of freight, though postponed to the transferee of the twenty-four shares, who had registered before the assignment of freight, had priority over the transferee of the forty shares, who did not register till afterwards.

(*n*) *The Benwell Tower* (1895), 72 L. T. 664.

(*o*) *Morrison* v. *Parsons* (1810), 2 Taunt. 407.

(*p*) See p. 299, *ante*.

(*q*) *Liverpool Marine Credit Co.* v. *Wilson*, *supra*.

(*r*) *Ibid.*

(*s*) *The Leo* (1862), Lush. 444; *The Flora* (1866), L. R. 1 A. & E. 45; *The Orpheus* (1871), L. R. 3 A. & E. 308 (where the cargo was not on board at the time of the collision, though it had already been contracted for); compare *The Roecliffe* (1869), L. R. 2 A. & E. 363.

(*a*) *The Andalina* (1886), 12 P. D. 1, where it was held that a maritime lien for wages extended to freight payable not to the shipowner, but to the charterer.

(*b*) *Benson* v. *Chapman* (1849), 2 H. L. Cas. 696. Payment of freight into court by direction of the court in an action brought by the obligee against the ship and freight has the same effect (*Place* v. *Potts* (1855), 5 H. L. Cas. 383). As to maritime lien generally, see pp. 617 *et seq.*, *post*; as to bottomry bonds, see p. 241, *ante*.

(*c*) See p. 150, *ante*.

(*d*) See p. 311, *post*.

(*e*) Abbott on Shipping, 5th ed., p. 274; 14th ed., p. 658; *Kirchner* v. *Venus* (1859), 12 Moo. P. C. C. 361, 390; *Allison* v. *Bristol Marine Insurance Co.* (1876), 1 App. Cas. 209, *per* BLACKBURN, J., at p. 228; *London Transport Co.* v. *Trechmann Brothers*, [1904] 1 K. B. 635, C. A.; compare *Blakey* v. *Dixon* (1880), 2 Bos. & P. 321. There may, however, be a usage of a particular

SECT. 6. **The Payment of Freight.**

is not, however, bound to deliver before payment, since payment and delivery are concurrent acts (*f*). The consignee must therefore be prepared to pay the freight, if the shipowner so requires, at the time of delivery (*g*), and is not entitled to insist on delivery without tendering the freight (*h*). A delivery of a portion of the goods comprised in the bill of lading without requiring payment of the freight does not preclude the shipowner from refusing to deliver the balance until the freight is paid (*i*), if, at least, the goods are of such a nature that there must be a series of deliveries (*k*).

Arrival of goods necessary.

416. In accordance with the same principle, the shipowner is not entitled to insist on the payment of freight unless he is in a position to deliver the goods (*l*). Freight is not earned unless and until the shipowner's contract is substantially performed by the carriage and arrival of the goods ready to be delivered to the consignee (*m*). It is therefore necessary that the goods should have been carried by the shipowner (*n*) to their destination, that is, to the port of discharge specified in the contract (*o*), or to some other port at which, under the contract, the consignee is bound to take delivery (*p*).

Ability to deliver.

417. The shipowner must remain in a position to deliver the goods until the expiration of the time within which the consignee is bound to take delivery (*q*). If the consignee fails to take delivery within such time, the shipowner is entitled to claim freight notwithstanding the non-delivery (*r*). Moreover, a refusal on the part of the shipowner to deliver the goods until any liens which he may

port to give credit (*Somes* v. *Jenkins* (1866), 2 Mar. L. C. 330); compare *Luard* v. *Butcher* (1846), 2 Car. & Kir. 29, where the usage was to pay partly in cash and partly by bills of exchange.

(*f*) *Paynter* v. *James* (1866), L. R. 2 C. P. 348; *Miedbrodt* v. *Fitzsimon, The "Energie"* (1875), L. R. 6 P. C. 306, 314; *Vogeman* v. *Bisley* (*H. & G.*) (1897), 2 Com. Cas. 81.

(*g*) *Black* v. *Rose* (1864), 2 Moo. P. C. C. (N. S.) 277; *Paynter* v. *James, supra, per* BOVILL, C.J., at p. 355. As against the shipper, the shipowner is not bound to require payment of the freight before delivery (*Shepard* v. *De Bernales* (1811), 13 East, 565).

(*h*) *Yates* v. *Railston* (1818), 8 Taunt. 293.

(*i*) *Paynter* v. *James, supra.*

(*k*) Compare *Brown* v. *Tanner* (1868), 3 Ch. App. 597.

(*l*) *Duthie* v. *Hilton* (1868), L. R. 4 C. P. 138; *Sandeman & Sons* v. *Tyzack and Branfoot Steamship Co., Ltd.*, [1913] A. C. 680.

(*m*) *Dakin* v. *Oxley* (1864), 15 C. B. (N. S.) 646, approved in *Cargo ex Argos, Gaudet* v. *Brown* (1873), L. R. 5 P. C. 134, 155; *Kirchner* v. *Venus* (1859), 12 Moo. P. C. C. 361.

(*n*) As to the position where the shipowner abandons the voyage, see p. 305, *post.*

(*o*) *Hunter* v. *Prinsep* (1808), 10 East, 378, *per* Lord ELLENBOROUGH, C.J., at p. 394; *Osgood* v. *Groning* (1810), 2 Camp. 466; *Shipton* v. *Thornton* (1838), 9 Ad. & El. 314, *per* Lord DENMAN, C.J., at p. 383; *Metcalfe* v. *Britannia Ironworks Co.* (1877), 2 Q. B. D. 423, C. A.

(*p*) *The Teutonia* (1872), L. R. 4 P. C. 171; *Fenwick* v. *Boyd* (1846), 15 M. & W. 632. The master need not deliver the goods at an intermediate port unless the full freight is tendered (*The Patria* (1871), L. R. 3 A. & E. 436).

(*q*) *Duthie* v. *Hilton, supra.*

(*r*) *Ibid., per* BRETT, J., at p. 144; *Cargo ex Argos, Gaudet* v. *Brown, supra.*

have over them are discharged (*s*) is not a breach of the contract of carriage, and does not, therefore, preclude him from claiming freight (*t*), though it may discharge the consignee from the obligation of tendering it (*a*).

Failure to deliver.

418. Where the shipowner fails to carry the goods to their destination, he has not fulfilled the condition which entitles him to be paid freight (*b*). He cannot, therefore, in the absence of a contract to that effect (*c*), claim the whole or any portion of the freight (*d*). The cause of his failure is immaterial, whether it is the loss of the goods (*e*) or the loss of the ship, and his consequent inability to complete the voyage (*f*). The ship or goods may have been lost by perils of the seas (*g*); the goods may have been sold by the master at an intermediate port (*h*); the ship or goods may have been captured by the enemy (*i*), or seized under an embargo (*k*). In all these cases, as also where the goods perish through an inherent

(*s*) As to the shipowner's lien, see p. 283, *ante*.

(*t*) *Paynter* v. *James* (1867), L. R. 2 C. P. 348; *Black* v. *Rose* (1864), 2 Moo. P. C. C. (N. S.) 277. But the contract may entitle the consignee, before payment, to ascertain the quantity of goods deliverable to him (*Vogeman* v. *Bisley* (*H. & G.*) (1897), 2 Com. Cas. 81).

(*a*) *The "Norway"* (*Owners*) v. *Ashburner, The "Norway"* (1865), 3 Moo. P. C. C. (N. S.) 245.

(*b*) *Hunter* v. *Prinsep* (1808), 10 East, 378; *Liddard* v. *Lopes* (1809), 10 East, 526; *Osgood* v. *Groning* (1810), 2 Camp. 466; *Hopper* v. *Burness* (1876), 1 C. P. D. 137; *Metcalfe* v. *Britannia Ironworks Co.* (1877), 2 Q. B. D. 423, C. A.; *The Cito* (1881), 7 P. D. 5, C. A.; *Castel and Latta* v. *Trechman* (1884), Cab. & El. 276. But as to lump sum freight, see p. 310, *post*.

(*c*) *Cullen and Andrews* v. *Mico* (1665), 1 Keb. 831. As to *pro ratâ* freight, see pp. 314, 315, *post*.

(*d*) *Liddard* v. *Lopes, supra; The Cito, supra*.

(*e*) *Duthie* v. *Hilton* (1868), L. R. 4 C. P. 138; *Aitken, Lilburn & Co.* v. *Ernsthausen & Co.*, [1894] 1 Q. B. 773, C. A.; *Weir* v. *Girvin, Roper & Co.*, [1900] 1 Q. B. 45, C. A.; compare *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A.; *Hill* v. *Wilson* (1879), 4 C. P. D. 329.

(*f*) *Mackrell* v. *Simond* (1776), 2 Chit. 666; *Gibbon* v. *Mendez* (1818), 2 B. & Ald. 17; compare *Metcalfe* v. *Britannia Ironworks Co.*, *supra* (where the ship was prevented from reaching her destination by ice).

(*g*) *Bright* v. *Cowper* (1611), 1 Brownl. 21.

(*h*) *Liddard* v. *Lopes, supra; Hunter* v. *Prinsep, supra; Vlierboom* v. *Chapman* (1844), 13 M. & W. 230; *Hopper* v. *Burness, supra; Hill* v. *Wilson, supra*.

(*i*) *Byrne* v. *Pattinson* (1797), cited in Abbott on Shipping, 5th ed., p. 336; 14th ed., p. 745. A captor taking goods belonging to an enemy laden on a neutral ship must pay the full freight (*The Copenhagen* (1799), 1 Ch. Rob. 289; *The Wilhelmina* (1799), 2 Ch. Rob. 101, n.), unless the goods are contraband of war, in which case no freight is payable by the captor (*The Mercurius* (1799), 1 Ch. Rob. 288; *The Rebecca* (1799), 2 Ch. Rob. 101; *The Emanuel* (1799), 1 Ch. Rob. 296; *The Rose* (1799), 2 Ch. Rob. 206). The owners of the goods must pay the full freight to the shipowner if the ship is recaptured (*The Racehorse* (1800), 3 Ch. Rob. 101), or to the captor, if he takes the ship and goods to their destination and delivers them to their owner (*The Fortuna* (1802), 4 Ch. Rob. 278), but not if he delivers them to their owner at a different port (*The Vrow Anna Catharina* (1806), 6 Ch. Rob. 269). As to prize law generally, see title PRIZE LAW AND JURISDICTION, Vol. XXIII., pp. 275 *et seq*.

(*k*) *Storer* v. *Gordon* (1814), 3 M. & S. 308; *Touteng* v. *Hubbard* (1802), 3 Bos. & P. 291; *The Werldsborgaren* (1801), 4 Ch. Rob. 17; compare *Castel and Latta* v. *Trechman*, *supra*.

SECT. 6. The Payment of Freight.

defect (*l*), no freight can be earned, and the shipowner is not entitled to be remunerated even for the portion of the voyage for which the goods have in fact been carried (*m*). Similarly, the loss of the goods after their arrival, but before their delivery to the consignee, precludes the shipowner from claiming freight (*n*), unless the consignee is already in default by failing to take delivery within the proper time (*o*).

Part delivery.

419. If part only of the goods are lost, the shipowner is entitled to be paid freight on such of the goods as are delivered (*p*). Moreover, the fact that the goods which arrive do so in a damaged condition does not necessarily deprive the shipowner of his right to claim freight on them (*q*). It is immaterial that their condition is attributable to the default of the master or crew (*r*), or that, in consequence of the damage, they are worth less than the freight (*s*). They must, however, arrive *in specie* (*t*); the cargo contracted to be carried must substantially have arrived (*a*). If the nature of the cargo is altered and it is no longer merchantable under its original description (*b*), there is, in effect, a total loss of the cargo (*c*), and, therefore, no freight is payable.

Goods forwarded.

420. Where, in the course of the voyage, the ship in which the goods are being carried is lost, but the goods are saved, the shipowner is entitled to forward them by some other means to their destination (*d*), and thus earn the freight (*e*). If, however, he does

(*l*) Compare *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A.

(*m*) *Liddard* v. *Lopes* (1809), 10 East, 526; *Metcalfe* v. *Britannia Ironworks Co.* (1877), 2 Q. B. D. 423, C. A.; *Hopper* v. *Burness* (1876), 1 C. P. D. 137; *The Cito* (1881), 7 P. D. 5, C. A.

(*n*) *Duthie* v. *Hilton* (1868), L. R. 4 C. P. 138; and contrast *Asfar & Co.* v. *Blundell*, [1896] 1 Q. B. 123, C. A.

(*o*) *Duthie* v. *Hilton*, *supra*.

(*p*) *Ritchie* v. *Atkinson* (1808), 10 East, 295; *Spaight* v. *Farnworth* (1880), 5 Q. B. D. 115; *Christy* v. *Row* (1808), 1 Taunt 300. But payment of freight may, by the terms of the contract, be expressly made conditional on delivery of the whole of the cargo (*Dakin* v. *Oxley* (1864), 15 C. B. (N. S.) 646, *per* WILLES, J., at p. 665).

(*q*) *Hotham* v. *East India Co.* (1779), 1 Doug. (K. B.) 272; *Lutwidge* v. *Grey* (1733), cited in *Luke* v. *Lyde* (1759), 2 Burr. 882, H. L., and noted in Abbott on Shipping, 5th ed., p. 307; 14th ed., p. 717; *Dakin* v. *Oxley*, *supra*.

(*r*) But the cargo owner has a right of action against the shipowner (*Mills* v. *Bainbridge* (1804), cited in Abbott on Shipping, 5th ed., p. 293; 14th ed., p. 702; *Davidson* v. *Gywnne* (1810), 12 East, 381; *Dakin* v. *Oxley*, *supra*, *per* WILLES, J., at p. 663: compare *Sheels* v. *Davies* (1814), 4 Camp. 119).

(*s*) *Dakin* v. *Oxley*, *supra*.

(*t*) *Garrett* v. *Melhuish* (1858), 4 Jur. (N. S.) 943; *Duthie* v. *Hilton*, *supra*; and they must not be so mixed with goods of other consignees as to be undistinguishable (*Sandeman & Sons* v. *Tyzack and Branfoot Steamship Co., Ltd.*, [1913] A. C. 680).

(*a*) *Dakin* v. *Oxley*, *supra*; compare *Moorsom* v. *Page* (1814), 4 Camp. 103. In this case the cargo owner cannot escape liability for freight by abandoning the cargo to the shipowner (*Dakin* v. *Oxley*, *supra*).

(*b*) *Duthie* v. *Hilton*, *supra*; *Asfar & Co.* v. *Blundell*, *supra*.

(*c*) *Dakin* v. *Oxley*, *supra*, *per* WILLES, J., at p. 667; *Dickson* v. *Buchanan* (1876), 13 Sc. L. R. 401.

(*d*) He is not entitled to do so where the ship is abandoned at sea and is afterwards salved and brought to port (*The Arno* (1895), 72 L. T. 621, C. A.; *The Cito*, *supra*; compare *The Kathleen* (1874), L. R. 4 A. & E. 269); and see pp. 236, 237, *ante*.

(*e*) *Hunter* v. *Prinsep* (1808), 10 East, 378; *Shipton* v. *Thornton*

not do so within a reasonable time (*f*), he is deemed to have abandoned the voyage, and the consignee is entitled to have them without paying any freight at all (*g*), unless there is a new contract to that effect (*h*), or unless the shipowner has been prevented from forwarding the goods by the act of their owner (*i*).

Unlawful contract.

421. Even where the goods have been delivered to the consignee no freight is payable if the contract under which it was earned is unlawful (*k*).

SUB-SECT. 4.—*The Amount Payable.*

Payable on goods delivered.

422. Freight being, as a general rule (*l*), payable only on delivery (*m*), the amount to be paid (*n*) is necessarily governed by

(1838), 9 Ad. & El. 314; *The Cito* (1881), 7 P. D. 5, C. A.; *The Bahia* (1864), 12 L. T. 145 (where the cargo owner wrongfully took possession of the cargo and thus prevented it from being forwarded). The shipowner is entitled to the full freight, even though he tranships the goods at a lower rate of freight (*Shipton* v. *Thornton* (1838), 9 Ad. & El. 314, where the court declined to express an opinion as to the position if the shipowner had been compelled to pay a higher rate of freight, but suggested that it might be the master's duty in such a case to contract as agent for the cargo owner; see p. 238, *ante*).

(*f*) *Cleary* v. *McAndrew, Cargo ex Galam* (1863), 2 Moo. P. C. C. (N. S.) 216, cited in *The Bahia, supra*; *The Soblomsten* (1866), L. R. 1 A. & E. 293.

(*g*) *Hunter* v. *Prinsep* (1808), 10 East, 378; *Cook* v. *Jennings* (1797), 7 Term Rep. 381; *Christy* v. *Row* (1808), 1 Taunt. 200; *Blasco* v. *Fletcher* (1863), 14 C. B. (N. S.) 147; *Hocquard* v. *R.*, *The Newport* (1858), 6 W. R. 310, P. C.; *The Soblomsten, supra*. Where the ship is chartered for a round voyage, and is lost on the homeward voyage, the obligation of the charterer to pay freight depends upon whether the outward and homeward voyages are distinct, or whether, by the terms of the charterparty, there is only one voyage (Abbott on Shipping, 5th ed., pp. 332, 333; 14th ed., pp. 742 *et seq.*; Malyne, Lex Mercatoria, 98; *Mackrell* v. *Simond* (1776), 2 Chit. 666).

(*h*) *Thornton* v. *Fairlie* (1818), 8 Taunt. 354; *Hocquard* v. *R.*, *The Newport, supra*; *The Soblomsten, supra*: compare *Mitchell* v. *Darthez* (1836), 2 Bing. (N. C.) 555. As to *pro ratâ* freight, see pp. 314, 315, *post*.

(*i*) *Cleary* v. *McAndrew, Cargo ex Galam, supra*, followed in *The Soblomsten, supra*; *The Bahia, supra*; compare *The Teutonia* (1872), L. R. 4 P. C. 171.

(*k*) *Muller* v. *Gernon* (1811), 3 Taunt 394 (where goods which had been imported from France without a licence were landed and re-exported by permission of the Government); *Blanck* v. *Solly* (1817), 8 Taunt. 89; contrast *Waugh* v. *Morris* (1873), L. R. 8 Q. B. 202, where the contract was performed without a violation of the law.

(*l*) As to advance freight, see pp. 311 *et seq.*, *post*; as to *pro ratâ* freight, see pp. 314, 315, *post*; and as to dead freight, see p. 209, *ante*.

(*m*) See p. 303, *ante*.

(*n*) Where a bill of exchange is given for the freight and is afterwards dishonoured, the person liable to pay freight is not discharged (*Tapley* v. *Martens* (1800), 8 Term Rep. 451), even though the bill of exchange was given by his agent, whom he had provided with the proper amount of the freight, unless the bill of exchange was taken in preference to money (*Marsh* v. *Pedder* (1815), 4 Camp. 257; *Strong* v. *Hart* (1827), 6 B. & C. 160); if, however, the bill of exchange is duly honoured, it is a good payment (*Anderson* v. *Hillies* (1852), 12 C. B. 499). Interest on unpaid freight is not payable (*Merchant Shipping Co.* v. *Armitage* (1873), L. R. 9 Q. B. 99, 114, Ex. Ch.), but there may be a special agreement to pay it (*E. Clemens Horst & Co.* v. *Norfolk and North-Western American Steam Shipping Co.* (1906), 11 Com. Cas. 141). Payment of freight may be

SECT. 6. **The Payment of Freight.**

the amount of goods delivered to the consignee (*o*). So long as the goods contracted to be carried have been delivered, no deduction can be made from the freight because they have been delivered in a damaged condition (*p*), though, if sued for the freight, the consignee may counterclaim in respect of the damage (*q*). The contract may, however, expressly provide for deductions to be made, in which case the consignee's right to make such deductions may depend upon the shipowner's conduct, and upon the question whether the damage is attributable to an excepted peril (*r*).

Rate of payment.

423. The contract under which the goods are carried usually provides for payment of the freight at a specified rate per unit of weight or measurement (*s*). If no rate is specified, freight must nevertheless be paid at the ordinary rate in force at the time when the goods are put on board (*t*). Where, however, the bill of lading expressly provides that the goods are to be carried freight free (*a*), as, for instance, where they are shipped on the shipowner's account (*b*), no freight is payable in any circumstances, notwithstanding that the

subject to discount by the custom of a particular port (*Browne* v. *Byrne* (1854), 3 E. & B. 703; followed in *Falkner* v. *Earle* (1863), 3 B. & S. 360).

(*o*) *Immanuel* (*Owners*) v. *Denholm & Co.* (1887), 15 R. (Ct. of Sess.) 152; compare *British and South American Steamship Co., Ltd.* v. *Anglo-Argentine Live Stock and Produce Agency, Ltd.* (1902), 18 T. L. R. 382. As to the difference between chartered freight and bill of lading freight, see p. 171, *ante*.

(*p*) *Hotham* v. *East India Co.* (1779), 1 Doug. (K. B.) 272; *Shields* v. *Davis* (1815), 6 Taunt. 65; *Dakin* v. *Oxley* (1864), 15 C. B. (N. S.) 646; *Meyer* v. *Dresser* (1864), 16 C. B. (N. S.) 646. But the goods must arrive *in specie* (*Dakin* v. *Oxley*, *supra*); see p. 306, *ante*.

(*q*) *The "Norway"* (*Owners*) v. *Ashburner, The "Norway"* (1865), 3 Moo. P. C. C. (N. S.) 245; *Garrett* v. *Melhuish* (1858), 6 W. R. 491.

(*r*) *Sailing Ship "Garston" Co.* v. *Hickie, Borman & Co.* (1886), 18 Q. B. D. 17, C. A.; *The Barcore*, [1896] P. 294.

(*s*) Where a ship is chartered to carry particular goods at a specified rate, and other goods are shipped, the charterer must pay the same freight as if the ship had been loaded in accordance with the charterparty (*Capper* v. *Forster* (1837), 3 Bing. (N. C.) 938; *Cockburn* v. *Alexander* (1848), 6 C. B. 791). As to alternative methods of calculating the freight in certain events, see *Gibbens* v. *Buisson* (1834), 1 Bing. (N. C.) 283; *Fenwick* v. *Boyd* (1846), 15 M. & W. 632. For the effect of a stipulation to pay the highest freight paid on the same voyage, see *Gether* v. *Capper* (1856), 18 C. B. 866. There may be a special agreement to pay a higher freight than that reserved by the bill of lading (*Hedley* v. *Lapage* (1816), Holt (N. P.), 392 (where the goods were to be smuggled into Russia)). The rate of freight specified is not affected by an authorised variation of the charterparty by an agent of the charterer, even though such variation is prejudicial to the charterer (*Wiggins* v. *Johnston* (1845), 14 M. & W. 609).

(*t*) *Gumm* v. *Tyrie* (1865), 6 B. & S. 298, Ex. Ch.; *Keith* v. *Burrows* (1877), 2 App. Cas. 636, *per* Lord CAIRNS, L.C., at p. 646.

(*a*) *Mercantile Bank* v. *Gladstone* (1868), L. R. 3 Exch. 233; compare *Sweeting* v. *Darthez* (1854), 14 C. B. 538, where the charterparty provided for payment of a certain freight in full for the voyage, and it was held that no extra freight was payable in respect of cargoes carried between intermediate ports.

(*b*) But if the bill of lading specifies a substantial rate of freight, the fact that the goods are shipped on account of the shipowner does not preclude an assignee of the freight from recovering the full amount (*Weguelin* v. *Cellier* (1873), L. R. 6 H. L. 286, where the shipper was held not to be

goods have been sold and the bill of lading transferred to the buyer (*c*). A purchaser of the ship (*d*), therefore, or a mortgagee who takes possession (*e*), cannot refuse to deliver the goods to the holder of the bill of lading until freight is paid, since each is bound by the contract made by the shipowner (*f*). It is immaterial that the contract under which the goods are sold and the bill of lading transferred provide for the payment to the shipowner of a specified sum under the name of freight in addition to the specified price, since such sum is not in reality freight, but must be considered as a portion of the price (*g*).

When measurement to be taken.

424. For the purpose of ascertaining the freight to be paid upon such goods as are delivered, it is necessary for their weight or measurement to be taken (*h*). Wherever there is a difference between the weight or measurement at the port of loading and at the port of discharge, whether such difference is due to mistake (*i*) or to the expansion or wasting of the goods during the voyage, or to the method of calculation adopted, the question arises as to which weight or measurement is to be the basis of calculating the freight. In the absence of any provision in the contract, freight is, as a general rule (*k*), payable on that amount alone which is put on board, carried throughout the whole voyage, and delivered at the end to the consignee (*l*). If, therefore, the goods have increased in weight or bulk, the freight is to be calculated upon the quantities put on board the ship at the port of loading (*m*); if, on the other hand, they have decreased, it is to be calculated upon the quantities delivered at the port of discharge (*n*). If, however, the terms of the contract are explicit (*o*) the general rule is disregarded, and the quantities, either at the port of loading (*p*) or at the port of

entitled to set off the price of the goods which he had bought on the shipowner's account).

(*c*) But the shipowner may, in effect, recover freight by exercising his lien as unpaid seller for the balance of the unpaid price which has been allocated as between himself and the buyer as freight (*Swan* v. *Barber* (1879), 5 Ex. D. 130, C. A.).

(*d*) *Mercantile Bank* v. *Gladstone* (1868), L. R. 3 Exch. 233.

(*e*) *Keith* v. *Burrows* (1877), 2 App. Cas. 636; *Brown* v. *North* (1852), 8 Exch. 1.

(*f*) See pp. 298 *et seq.*, *ante*.

(*g*) *Keith* v. *Burrows*, *supra*.

(*h*) If there is a usage as to weight or measurement in a particular trade, the weight or measurement will be taken accordingly (*Young* v. *Canning Jarrah Timber Co.* (1899), 4 Com. Cas. 96).

(*i*) As to the conclusiveness or otherwise of the quantities stated in the bill of lading, see p. 145, *ante*.

(*k*) As to the position where a lump freight is payable, see p. 310, *post*.

(*l*) *Gibson* v. *Sturge* (1855), 10 Exch. 622; followed in *Buckle* v. *Knoop* (1867), L. R. 2 Exch. 333, Ex. Ch.

(*m*) *Gibson* v. *Sturge*, *supra*.

(*n*) *Dakin* v. *Oxley* (1864), 15 C. B. (N. S.) 646, *per* WILLES, J., at p. 665.

(*o*) *Buckle* v. *Knoop*, *supra* (where a stipulation that freight was to be payable at the rate of so much per ton delivered was held not to be sufficient to take the case out of the general rule); contrast *Coulthurst* v. *Sweet* (1866), L. R. 1 C. P. 649 (where the stipulation referred to net weight delivered).

(*p*) *Spaight* v. *Farnworth* (1880), 5 Q. B. D. 115; *Mediterranean and*

SECT. 6. **The Payment of Freight.**

discharge (*q*), as the case may be, are taken as the basis of calculation, whether or not they have increased or diminished during the voyage. Where different methods of weighing or measuring prevail at the ports of loading and discharge, freight is calculated upon the method followed at the port of loading (*r*), unless, by the custom of a particular trade (*s*), or by special contract (*t*), some other method is to be adopted.

Expense of measuring.

In the absence of any express agreement (*a*) or custom (*b*) to the contrary, the expense of any weighing or measuring which may be necessary for the purpose of calculating the amount of freight payable (*c*) falls upon the shipowner and not upon the consignee (*d*).

Lump freight.

425. If the contract provides for the payment of a lump sum as freight (*e*), the shipowner need not deliver the whole of the goods contracted to be carried in order to entitle him to his freight. The delivery of any portion of the goods entitles him to the full freight payable under the contract, since he earns it by delivering that which is to be delivered, not that which was originally shipped (*f*). It is, therefore, immaterial whether his failure to deliver the balance is due to the fact that owing to the fault of the shipowner it was never taken on board (*g*), or that it was lost by perils of the

New York Steamship Co. v. *Mackay* (*A. F. & D.*), [1903] 1 K. B. 297, C. A.; *London Transport Co.* v. *Trechmann Brothers*, [1904] 1 K. B. 635, C. A. If, however, it is not proved that the quantities were taken there, freight is payable on the quantities as delivered (*New Line Steamship Co., Ltd.* v. *Bryson & Co.*, [1910] S. C. 409). As to a special form of stipulation giving the master an option in the case of grain cargoes, see *Tully* v. *Terry* (1873), L. R. 8 C. P. 679; as to an option given to a consignee, see *The Hollinside*, [1898] P. 131. The consignee need not exercise his option until the time for payment arises, unless called upon earlier (*The Dowlais* (1902), 18 T. L. R. 683, C. A.). See also *Dillon* (*H. W.*) *and Aldgate Steamship Co., Ltd.* v. *Livingston, Briggs, & Co. and Peninsular and Oriental Steam Navigation Co.* (1895), 11 T. L. R. 312, where the consignee had an option to dispense with weighing.

(*q*) *Coulthurst* v. *Sweet* (1866), L. R. 1 C. P. 649.

(*r*) *Pust* v. *Dowie* (1865), 5 B. & S. 20, 33, Ex. Ch.; *The Skandinav* (1881), 51 L. J. (P. M. & A.) 93, C. A.; *Fullagsen* v. *Walford* (1883), Cab. & El. 198.

(*s*) *Geraldes* v. *Donison* (1816), Holt (N. P.), 346; *Nielsen & Son* v. *Neame & Co.* (1884), Cab. & El. 288; Abbott on Shipping, 5th ed., p. 296; 14th ed., p. 705. As to trade usages, see title CUSTOM AND USAGES, Vol. X., pp. 274 *et seq.*

(*t*) *Moller* v. *Living* (1811), 4 Taunt. 102; compare *Bottomley* v. *Forbes* (1838), 5 Bing. (N. C.) 121.

(*a*) *The Hollinside, supra.*

(*b*) *Marwood* v. *Taylor* (1901), 6 Com. Cas. 178, C. A.; *Gulf Line* v. *Laycock* (1901), 7 Com. Cas. 1; compare *Watts, Ward & Co.* v. *Grant & Co.* (1889), 26 Sc. L. R. 660.

(*c*) It would be otherwise if the weighing or measuring were for the convenience of the consignee (*Marwood* v. *Taylor, supra*).

(*d*) *Coulthurst* v. *Sweet, supra, per* WILLES, J., at p. 654.

(*e*) See p. 103, *ante.*

(*f*) *Merchant Shipping Co.* v. *Armitage* (1873), L. R. 9 Q. B. 99, Ex. Ch., *per* BRAMWELL, B., at p. 110; *The "Norway"* (*Owners*) v. *Ashburner, The "Norway"* (1865), 3 Moo. P. C. C. (N. S.) 245.

(*g*) *Seeger* v. *Duthie* (1860), 8 C. B. (N. S.) 45, 72, Ex. Ch.; *Blanchet* v. *Powell's Llantivit Collieries Co.* (1874), L. R. 9 Exch. 74; compare *Ritchie* v. *Atkinson* (1808), 10 East, 295.

sea (*h*), or even that it was lost by circumstances for which the shipowner is responsible (*i*). Where, however, the goods are shipped and no portion of them is delivered at their destination, no freight is payable (*k*). If, on the other hand, the charterer fails to put any goods on board, he must nevertheless pay the lump freight, provided that the ship has been duly placed at his disposal (*l*).

Primage.

426. In addition to the freight, the bill of lading may provide for the payment of primage and average accustomed. Primage is, strictly speaking, payable to the master as his remuneration for looking after the cargo (*m*), and may therefore be recovered by him from the consignee (*n*). A contract between the shipowner and the consignor, by which no primage is payable, binds the master if brought to his knowledge (*o*). In practice, the master agrees with the shipowner to forgo primage in return for a regular salary (*p*), and in this case any primage which may have been reserved belongs to the shipowner (*q*).

Average.

The term "average" includes certain charges which are to be borne partly by the ship and partly by the cargo, such as, for instance, the expense of towing or beaconage (*r*).

SUB-SECT. 5.—*Advance Freight.*

When payable.

427. Since freight is in the ordinary course payable only on delivery (*s*) it is a not infrequent practice for the shipowner to stipulate for the payment of at least a portion of the freight in advance (*t*). Advance freight is usually made payable on the signing

(*h*) *The "Norway" (Owners)* v. *Ashburner, The "Norway"* (1865), 3 Moo. P. C. C. (N. S.) 245; *Robinson* v. *Knights* (1873), L. R. 8 C. P. 465: *Merchant Shipping Co.* v. *Armitage* (1873), L. R. 9 Q. B. 99, Ex. Ch.; *Harrowing Steamship Co.* v. *Thomas*, [1913] 2 K. B. 171, C. A. (where part of the cargo was delivered though the ship was wrecked); compare *Carr* v. *Wallachian Petroleum Co., Ltd.* (1867), L. R. 2 C. P. 468, Ex. Ch.

(*i*) *The "Norway" (Owners)* v. *Ashburner, The "Norway," supra.* The consignee's remedy would be by counterclaim (*ibid.*). As to counterclaim, see title SET-OFF AND COUNTERCLAIM, Vol. XXV., pp. 504 *et seq.*

(*k*) *The "Norway" (Owners)* v. *Ashburner, The "Norway," supra;* compare *Mitchell* v. *Darthez* (1836), 2 Bing. (N. C.) 555. The charterer may, however, bind himself to pay the lump freight although no cargo is ever shipped (*Bell* v. *Puller* (1810), 2 Taunt. 285).

(*l*) *Robinson* v. *Knights, supra, per* BRETT, J., at p. 468.

(*m*) Abbott on Shipping, 5th ed., p. 272; 14th ed., p. 655.

(*n*) *Best* v. *Saunders* (1828), Mood. & M. 208; compare *Seeger* v. *Duthie* (1860), 8 C. B. (N. S.) 45, 57. If the consignee has already paid it to the shipowner, the master may sue the shipowner (*Charleton* v. *Cotesworth* (1825), Russ. & M. 175). Sometimes the charterparty provides for the payment of a gratuity to the master "on good delivery of the cargo": this gratuity is also payable by the consignee (*Howitt* v. *Paul, Sword & Co.* (1877), 5 R. (Ct. of Sess.) 321, where it was held to be payable though the goods were delivered damaged).

(*o*) *Best* v. *Saunders, supra; Caughey* v. *Gordon & Co.* (1878), 3 C. P. D. 419.

(*p*) *Caughey* v. *Gordon & Co., supra;* compare *Scott* v. *Miller* (1837), 3 Bing. (N. C.) 811.

(*q*) *Caughey* v. *Gordon & Co., supra.*

(*r*) Abbott on Shipping, 5th ed. p. 272; 14th ed., p. 655.

(*s*) See p. 303, *ante.*

(*t*) On the other hand, payment of a portion of the freight may be

SECT. 6. The Payment of Freight.

of the bills of lading (*a*), or at the expiration of a given number of days after sailing (*b*). The right of the shipowner to advance freight is not affected by the loss of the goods during the voyage and their consequent failure to reach their destination (*c*). He is therefore entitled to retain any advance freight which may already have been paid (*d*); or, if it has already become due in the ordinary course of business (*e*), but has not been paid at the time of the loss, he may recover it from the consignor (*f*). Where, however, the goods are lost before the advance freight has become due he cannot claim it (*g*). Nor can he claim it if, though the goods have been put on board, the voyage is abandoned before it has been begun; and it is immaterial that the abandonment of the voyage is attributable to the consignor's failure to pay the advance freight (*h*). On the other hand, the shipowner's failure to fulfil the stipulations of the charterparty does not preclude him from claiming advance freight if the goods are put on board and the voyage proceeded with (*i*).

postponed until after delivery of the goods (*Foster* v. *Colby* (1858), 3 H. & N. 705).

(*a*) Where the difference between chartered freight and bill of lading freight is payable at the port of loading, any sum which becomes payable is to all intents and purposes advance freight (*Byrne* v. *Schiller* (1871), L. R. 6 Exch. 319, Ex. Ch.; *Carr* v. *Wallachian Petroleum Co., Ltd.* (1867), L. R. 2 C. P. 468, Ex. Ch.; compare *Santos* v. *Brice* (1861), 6 H. & N. 290).

(*b*) As to the meaning of "sailing," see pp. 219, 220, *ante*.

(*c*) *Andrew* v. *Moorhouse* (1814), 5 Taunt. 435; *Lidgett* v. *Perrin* (1861), 11 C. B. (N. S.) 362; *Hicks* v. *Shield* (1857), 7 E. & B. 633; *Carr* v. *Wallachian Petroleum Co., Ltd., supra*. The ship must, however, have been seaworthy when she began her voyage (*Thompson* v. *Gillespy* (1855), 5 E. & B. 209). If the loss of the goods is attributable to the shipowner's default, the measure of damages includes any advance freight paid (*Dufourcet* v. *Bishop* (1886), 18 Q. B. D. 373; *Rodocanachi* v. *Milburn* (1886), 18 Q. B. D. 67, C. A.; *Turnbull* v. *Great Eastern and Peninsular Navigation Co.* (1885), Cab. & El. 595); and see p. 290, *ante*.

(*d*) *De Silvale* v. *Kendall* (1815), 4 M. & S. 37; *Saunders* v. *Drew* (1832), 3 B. & Ad. 445 (where a clause providing for cesser of hire if the ship was lost was held not to entitle the charterer to a return of hire paid in advance); *Watson & Co.* v. *Shankland* (1873), L. R. 2 Sc. & Div. 304; compare *Civil Service Co-operative Society* v. *General Steam Navigation Co.*, [1903] 2 K. B. 756, C. A.

(*e*) *Oriental Steamship Co.* v. *Tylor*, [1893] 2 Q. B. 518, C. A. (where advance freight was payable on signing bills of lading, and the charterers unsuccessfully attempted to escape liability by failing to present the bills of lading); contrast *Smith, Hill & Co.* v. *Pyman, Bell & Co.*, [1891] 1 Q. B. 742, C. A.

(*f*) *Greeves* v. *West India and Pacific Steamship Co.* (1870), 22 L. T. 615, Ex. Ch.; *Byrne* v. *Schiller, supra*. The shipowner has no lien for advance freight (*Kirchner* v. *Venus* (1859), 12 Moo. P. C. C. 361, disapproving *Gilkison* v. *Middleton* (1857), 2 C. B. (N. S.) 134, and *Neish* v. *Graham* (1857), 8 E. & B. 505; *Tamvaco* v. *Simpson* (1866), L. R. 1 C. P. 363, Ex. Ch.; *Re Child, Ex parte Nyholm* (1873), 29 L. T. 634, C. A.; *Gardner* v. *Trechmann* (1884), 15 Q. B. D. 154, C. A.), unless it is conferred by express agreement (*Wehner* v. *Dene Steam Shipping Co.*, [1905] 2 K. B. 92).

(*g*) *Smith, Hill & Co.* v. *Pyman, Bell & Co., supra; Weir & Co.* v. *Girvin & Co.*, [1900] 1 Q. B. 45, C. A.; compare *Hudson* v. *Bilton* (1856), 6 E. & B. 565.

(*h*) *Re Child, Ex parte Nyholm* (1873), 43 L. J. (BCY.) 21, C. A.

(*i*) *Seeger* v. *Duthie* (1860), 8 C. B. (N. S.) 45, 72, Ex. Ch.

Effect on balance of freight.

428. In calculating the balance of the freight to be paid on the completion of the voyage, the advance freight already paid must be taken into account (*k*). If, therefore, a portion of the goods is lost on the voyage, the advance freight is not to be treated as apportionable over the whole, including that portion which is lost, but as a payment on account of such freight as, in the circumstances, is shown to have been in fact earned (*l*).

What constitutes advance freight.

429. Freight is not payable in advance unless the intention of the parties is clear. A mere stipulation that the freight is to be paid at the port of loading and not at the port of discharge is not sufficient (*m*). Where, however, the consignor is given an option between paying freight at a lower rate at the port of loading and paying it at a higher rate at the port of discharge, it may be inferred, if he elects to pay freight at the lower rate, that such freight was to be paid in advance, and is therefore payable notwithstanding the loss of the goods on the voyage (*n*). Nor are advances in cash made to the master at the port of loading for the purpose of defraying the expenses of the ship (*o*) necessarily to be regarded as payments made in advance on account of freight. They may be nothing more than loans, having no reference to the freight, in which case they are repayable by the shipowner whether the goods arrive or not (*p*). The contract may, however, expressly provide that such advances are to be treated as part of the freight (*q*), or it may indicate that such is the intention of the parties (*r*). Thus, the existence of a stipulation providing for the insurance (*s*) of the advances by the consignor (*t*) shows that the

(*k*) *Allison* v. *Bristol Marine Insurance Co.* (1876), 1 App. Cas. 209.

(*l*) *Ibid.*

(*m*) *Mashiter* v. *Buller* (1807), 1 Camp. 84.

(*n*) *Andrew* v. *Moorhouse* (1814), 5 Taunt. 435.

(*o*) See p. 104, *ante*.

(*p*) *Manfield* v. *Maitland* (1821), 4 B. & Ald. 582; *Gibbs* v. *Charleton* (1857), 26 L. J. (EX.) 321; compare *Roberts* v. *Shaw* (1863), 4 B. & S. 44. Since the master has authority to pledge the shipowner's credit, an express stipulation is unnecessary, and the charterer may recover the amount advanced, though he has not complied with the stipulation (*Weston* v. *Wright* (1841), 7 M. & W. 396, where the charterer failed to take bills for the amount drawn by the master on the owner, as provided by the stipulation). But the shipowner is not liable to a person who, at the request of the charterer, advances the requisite amount and takes a bill drawn by the master on the charterer, which is dishonoured (*Harder* v. *Brotherstone* (1815), 4 Camp. 254).

(*q*) *De Silvale* v. *Kendall* (1815), 4 M. & S. 37; *Byrne* v. *Schiller* (1871), L. R. 6 Exch. 319, Ex. Ch. In this case the shipowner has the option whether he will take the advance or not, and the charterer cannot insist on advancing the whole or any part of the sum named in the charter-party (*The Primula*, [1894] P. 128).

(*r*) Abbott on Shipping, 5th ed., p. 276; 14th ed., pp. 664, 665.

(*s*) As to insurance of advances, see title INSURANCE, Vol. XVII., p. 370. Where advance freight is payable "subject to insurance," the charterer is allowed to deduct the cost of insurance, and thus the shipowner in effect pays for the insurance of the advance freight. He is not, however, under any obligation to insure the advance freight himself on behalf of the charterer (*Watson & Co.* v. *Shankland* (1873), L. R. 2 Sc. & Div. 304;

(*t*) For note (*t*) see p. 314, *post*.

SECT. 6. **The Payment of Freight.**

advances are a payment on account of freight and not a mere loan (*a*), since a loan would not be endangered by the perils of the voyage (*b*).

In the absence of any reference in the contract, the intention of the parties to treat an advance as made on account of freight may be inferred from their conduct (*c*).

SUB-SECT. 6.—*Pro Ratâ Freight.*

Pro ratâ itineris peracti.

430. Where the goods are delivered to the consignee short of the destination prescribed by the contract, the shipowner is not entitled, as a general rule, to be paid freight in proportion to the distance traversed (*d*). Such freight, which is usually known as freight *pro ratâ itineris peracti*, or, shortly, as *pro ratâ* freight, is only payable by virtue of a contract to that effect (*e*). The question whether such a contract exists usually arises where the ship is unable to complete the voyage, and the goods are accordingly landed short of their destination. No contract to pay *pro ratâ* freight is to be implied from the mere fact that the consignee has taken delivery (*f*), or, where the goods have been sold at an inter-

Jackson v. *Isaacs* (1858), 3 H. & N. 405), nor is he by such allowance for insurance relieved from responsibility if, by his failure to perform his obligation, the advance freight is lost to the charterer (*Rodocanachi* v. *Milburn* (1886), 18 Q. B. D. 67, C. A.; *Dufourcet* v. *Bishop* (1886), 18 Q. B. D. 373).

(*b*) *Hicks* v. *Shield* (1857), 7 E. & B. 633.

(*a*) *Ibid.*, *per* Lord CAMPBELL, C.J., at p. 639; compare *Tamvaco* v. *Simpson* (1866), L. R. 1 C. P. 363, Ex. Ch.

(*b*) *Hicks* v. *Shield*, *supra*, *per* Lord CAMPBELL, C.J., at p. 639.

(*c*) *Droege* v. *Suart*, *The Karnak* (1869), L. R. 2 P. C. 505.

(*d*) *Mitchell* v. *Darthez* (1836), 2 Bing. (N. C.) 555; Abbott on Shipping, 5th ed., p. 320; 14th ed., p. 726. A different view appears to have been taken in some earlier cases; see *Lutwidge* v. *Grey* (1733), cited in Abbott on Shipping, 5th ed., p. 307; 14th ed., p. 717, H. L., followed in *Luke* v. *Lyde* (1759), 2 Burr. 882; *The Copenhagen* (1799), 1 Ch. Rob. 289, in all of which cases *pro ratâ* freight was awarded. *Pro ratâ* freight was payable under the ancient law maritime (Abbott on Shipping, 5th ed., p. 303; 14th ed., pp. 713, 714, citing the ancient authorities). The cause of the shipowner's failure to reach the proper destination is immaterial (*Liddard* v. *Lopes* (1809), 10 East, 526; *Hopper* v. *Burness* (1876), 1 C. P. D. 137; *Metcalfe* v. *Britannia Ironworks Co.* (1877), 2 Q. B. D. 423, C. A.; *Castel and Latta* v. *Trechman* (1884), Cab. & El. 276), except perhaps where it arises under a state of facts out of the contemplation of the contracting parties in the course of the transaction (*The Friends* (1810), Edw. 246, where it was held that the Court of Admiralty, under its equitable jurisdiction, might apportion the freight); see also Abbott on Shipping, 5th ed., pp. 329, 330 (14th ed., pp. 732 *et seq.*), cited in *The Teutonia* (1871), L. R. 3 A. & E. 394, *per* Sir R. PHILLIMORE, at p. 419 (affirmed on other grounds (1872), L. R. 4 P. C. 171), and in *Metcalfe* v. *Britannia Ironworks Co.* (1876), 1 Q. B. D. 613, *per* QUAIN, J., at p. 635 (affirmed (1877) 2 Q. B. D. 423, C. A.).

(*e*) *Christy* v. *Row* (1808), 1 Taunt. 300; see, however, *The Leptir* (1885), 52 L. T. 768, where there was no real abandonment of the voyage; and contrast *The Cito* (1881), 7 P. D. 5, C. A. No portion of the freight is payable unless the voyage has actually been begun (*Curling* v. *Long* (1797), 1 Bos. & P. 634).

(*f*) *Cook* v. *Jennings* (1797), 7 Term Rep. 381; *Osgood* v. *Groning* (1810), 2 Camp. 466; *Hocquard* v. *R.*, *The Newport* (1858), 6 W. R. 310, P. C.; *Metcalfe* v. *Britannia Ironworks Co.*, *supra*; compare *Mulloy* v. *Backer* (1804), 5 East, 316. As to when the full freight is payable, see p. 237, *ante*.

mediate port, has received the proceeds of the sale (*g*). It must further be shown that the consignee either expressly contracted to pay it (*h*), or waived any further performance of the original contract (*i*), notwithstanding that the shipowner was ready and willing (*k*) to earn the freight by transhipping and forwarding the goods (*l*).

SECT. 6. The Payment of Freight.

SECT. 7.—*General Average.*

SUB-SECT. 1.—*Definitions.*

431. During the performance of a contract of carriage by sea there are, speaking generally, three separate interests which are exposed to the risks incidental to a maritime adventure—namely, the interest in the ship, the interest in the freight, and the interest in the cargo (*m*). In the ordinary course, any loss which may be sustained by any of these interests falls upon the particular interest affected, in which case the loss is called a particular average loss (*n*). Where, however, the loss arises in consequence of extraordinary sacrifices made or expenses incurred for the preservation of the several interests involved, it no longer falls upon the particular interest exclusively, but must be borne in due proportion by all (*o*). The loss is then called a general average loss (*p*); the sacrifices or expenses which give rise to it are known as general average sacrifices and general average expenses (*q*), whilst the amount to be contributed towards the loss by the respective interests is called a general average contribution (*r*).

Interests involved.

Particular average.

General average.

(*g*) *Hunter* v. *Prinsep* (1808), 10 East, 378; *Liddard* v. *Lopes* (1809), 10 East, 526; *Vlierboom* v. *Chapman* (1844), 13 M. & W. 230; *Hopper* v. *Burness* (1876), 1 C. P. D. 137; *Acatos* v. *Burns* (1878), 3 Ex. D. 282, C. A.

(*h*) *Cook* v. *Jennings* (1797), 7 Term Rep. 381, *per* LAWRENCE, J., at p. 385.

(*i*) *Hunter* v. *Prinsep, supra, per* Lord ELLENBOROUGH, C.J., at p. 393; *The Soblomsten* (1866), L. R. 1 A. & E. 293; compare *Thornton* v. *Fairlie* (1818), 8 Taunt. 354; *Christy* v. *Row* (1808), 1 Taunt. 300.

(*k*) *Vlierboom* v. *Chapman, supra, per* PARKE, B., at p. 238.

(*l*) *Hill* v. *Wilson* (1879), 4 C. P. D. 329.

(*m*) As a general rule, all these interests are covered by insurance, and consequently disputes as to liability for general average are, for the most part, between the insurers of the different interests, in which case it is immaterial that the same person is the owner of all three interests (*Montgomery & Co.* v. *Indemnity Mutual Marine Insurance Co.*, [1902] 1 K. B. 734, C. A., overruling *The Brigella*, [1893] P. 189). As to general average in connexion with marine policies, generally, see title INSURANCE, Vol. XVII., pp. 447 *et seq.* The existence of an insurance policy does not, however, affect the liability to general average (*Price* v. *Noble* (1811), 4 Taunt. 123).

(*n*) Abbott on Shipping, 5th ed., p. 342; 14th ed., pp. 751, 752.

(*o*) *Birkley* v. *Presgrave* (1801), 1 East, 220, *per* LAWRENCE, J., at p. 228.

(*p*) Abbott on Shipping, 5th ed., p. 342; 14th ed., pp. 751, 752.

(*q*) Compare Marine Insurance Act, 1906 (6 Edw. 7, c. 41), s. 66 (1); and see title INSURANCE, Vol. XVII., p. 447.

(*r*) Marine Insurance Act, 1906 (6 Edw. 7, c. 41), s. 66 (3). It has been suggested that the liability to pay a general average contribution is based upon an implied contract (*Wright* v. *Marwood* (1881), 7 Q. B. D. 62, C. A., *per* BRAMWELL, L.J., at p. 67), but the better opinion is that it does not arise out of any contract, but is derived from the *Lex Rhodia de jactu* (Digest XIV., tit. 2), which has become part of the law maritime, whence it has been incorporated in the law of England (*Burton* v. *English* (1883),

Requisites.

432. To give rise to a right to claim a general average contribution, the following conditions must be fulfilled, namely:—

Common danger.

(1) The interest claiming contribution and the interest from which contribution is claimed must have been exposed to a common danger (*s*). There is no case for contribution if the latter interest was never in jeopardy (*t*), or had been placed in safety before the danger arose (*a*).

No default.

(2) The danger must not be attributable to the default of the interest claiming contribution (*b*). If goods are improperly shipped in a dangerous condition, and have to be jettisoned or otherwise destroyed for the purpose of saving the adventure, their owner has no claim for general average contribution, but must bear the loss himself (*c*). Nor can the shipowner in his turn claim for any loss sustained by the ship, where the danger arose from the unseaworthiness of the ship at starting (*d*), or from the negligence of the master or crew acting on his behalf (*e*). If, however, by the terms of the contract of carriage the shipowner is not responsible for the negligence of his servants (*f*), he may claim, as against parties to the contract, a general average contribution, notwithstanding that the danger which gives rise to the claim was attributable to such negligence (*g*).

Where the interest claiming contribution is not in default, the cause of the danger is to be disregarded (*h*).

12 Q. B. D. 218, C. A., *per* BRETT, L.J., at p. 220; *Strang, Steel & Co.* v. *Scott (A.) & Co.* (1889), 14 App. Cas. 601, P. C., *per* Lord WATSON, at p. 607; *Simonds* v. *White* (1824), 2 B. & C. 805, *per* ABBOTT, C.J., at p. 811; Abbott on Shipping, 5th ed., p. 342; 14th ed., pp. 751, 752).

(*s*) *Royal Mail Steam Packet Co.* v. *English Bank of Rio de Janeiro* (1887), 19 Q. B. D. 362; *Walthew* v. *Mavrojani* (1870), L. R. 5 Exch. 116, Ex. Ch.; compare *McCall & Co.* v. *Houlder & Co.* (1897), 76 L. T. 469. The danger need not be a danger of total loss of the whole adventure (*Whitecross Wire Co.* v. *Savill* (1882), 8 Q. B. D. 653, C. A.).

(*t*) *Nesbitt* v. *Lushington* (1792), 4 Term Rep. 783, *per* Lord KENYON, C.J., at p. 787; compare *Dobson* v. *Wilson* (1813), 3 Camp. 480.

(*a*) *Royal Mail Steam Packet Co.* v. *English Bank of Rio de Janeiro, supra; Job* v. *Langton* (1857), 6 E. & B. 779; *Walthew* v. *Mavrojani, supra;* compare Abbott on Shipping, 5th ed., p. 346; 14th ed., pp. 757, 758; *Sheppard* v. *Wright* (1694—99), Show. Parl. Cas. 18.

(*b*) *Johnson* v. *Chapman* (1865), 19 C. B. (N. S.) 563; *Pirie & Co.* v. *Middle Dock Co.* (1881), 44 L. T. 426; *Strang, Steele & Co.* v. *Scott (A.) & Co., supra, per* Lord WATSON, at p. 668; compare Abbott on Shipping, 5th ed., p. 344; 14th ed., pp. 753 *et seq.*

(*c*) *Pirie & Co.* v. *Middle Dock Co., supra.* But the fact that the cargo shipped is liable, for instance, to take fire does not preclude the cargo owner from claiming contribution for cargo damaged in the efforts to extinguish the fire, unless his conduct in shipping the cargo was wrongful or negligent (*Greenshields, Cowie & Co.* v. *Stephens & Sons, Ltd.*, [1908] A. C. 431).

(*d*) *Schloss* v. *Heriot* (1863), 14 C. B. (N. S.) 59.

(*e*) *The Ettrick* (1881), 6 P. D. 127, C. A.

(*f*) See p. 116, *ante.*

(*g*) *The Carron Park* (1890), 15 P. D. 203, following *Strang, Steele & Co.* v. *Scott (A.) & Co., supra, per* Lord WATSON, at p. 609; *Milburn & Co.* v. *Jamaica Fruit Importing and Trading Co. of London*, [1900] 2 Q. B. 540, C. A., distinguishing *Schmidt* v. *Royal Mail Steamship Co.* (1876), 45 L. J. (Q. B.) 646, and *Crooks* v. *Allan* (1879), 5 Q. B. D. 38.

(*h*) Thus, the fact that the cause of the sacrifice was the shipowner's

(3) The danger must be a real danger (*i*), such as exists where there is certainty of loss within a short time, unless something not to be anticipated should intervene (*k*). Real danger.

(4) The property in respect of which general average contribution is claimed must have been sacrificed for the benefit of the adventure (*l*). To constitute a sacrifice, the act must have been voluntarily and reasonably done for the purpose of saving the property (*m*), and the property dealt with must be safe, except for the common danger (*n*). There is no sacrifice if the property is forced out of the ship by the violence of the waves, even though the rest of the adventure is thereby saved (*o*); nor is there a sacrifice where the property in question is, owing to its state or condition, doomed already, and must necessarily perish whether the whole adventure is saved or not (*p*). Sacrifice.

(5) The property which is called upon to pay general average contribution must have been saved by reason of the sacrifice (*q*). Property saved.

433. A general average loss of cargo may arise in various ways. Thus, a portion of the cargo may be jettisoned for the purpose of saving the rest of the adventure (*r*). A jettison of deck cargo, however, does not give rise to general average contribution (*s*), Examples. General average loss of cargo.

negligence does not preclude a cargo owner who is not responsible for it from claiming contribution from another (*Strang, Steel & Co.* v. *Scott* (*A.*) *& Co.* (1889), 14 App. Cas. 601, P. C.).

(*i*) A reasonable anticipation of danger is sufficient (*Corry* v. *Coulthard* (1877), C. A., cited 2 C. P. D. 583).

(*k*) *Harrison* v. *Bank of Australasia* (1872), L. R. 7 Exch. 39, *per* KELLY, C.B., at p. 52.

(*l*) *McCall & Co.* v. *Houlder & Co.* (1897), 76 L. T. 469; and see the cases cited throughout this sub-section; *Royal Mail Steam Packet Co.* v. *English Bank of Rio de Janeiro* (1887), 19 Q. B. D. 362, 373; *Butler* v. *Wildman* (1820), 3 B. & Ald. 398 (where money was thrown overboard to prevent it falling into an enemy's hands, and it was held that the loss was not occasioned by a general average sacrifice).

(*m*) Abbott on Shipping, 5th ed., p. 344; 14th ed., pp. 753 *et seq.*; *The Copenhagen* (1799), 1 Ch. Rob. 289, *per* Lord STOWELL, at p. 293; *Hallett* v. *Wigram* (1850), 9 C. B. 580; and see Marine Insurance Act, 1906 (6 Edw. 7, c. 41), s. 66 (2); *Iredale* v. *China Traders Insurance Co.*, [1900] 2 Q. B. 515, C. A., *per* A. L. SMITH, L.J., at p. 519. The sacrifice need not be made by the master: it may be made by a passenger (*Mouse's Case* (1608), 12 Co. Rep. 63); or by a captor (*Price* v. *Noble* (1811), 4 Taunt. 123, where, however, the mate remained on board); or by the orders of the port authority (*Papayanni and Jeromia* v. *Grampian Steamship Co., Ltd.* (1896), 1 Com. Cas. 448).

(*n*) *Johnson* v. *Chapman* (1865), 19 C. B. (N. S.) 563.

(*o*) Abbott on Shipping, 5th ed., p. 344; 14th ed., pp. 753 *et seq.*

(*p*) *Shepherd* v. *Kottgen* (1877), 2 C. P. D. 585, C. A.

(*q*) Cargo which has been jettisoned, but which is afterwards saved, must also contribute; compare *Royal Mail Steam Packet Co.* v. *English Bank of Rio de Janeiro*, *supra*.

(*r*) Abbott on Shipping, 5th ed., p. 344; 14th ed., pp. 753 *et seq.*; *Strang, Steel & Co.* v. *Scott* (*A.*) *& Co.*, *supra*; compare *The Marpessa*, [1891] P. 403. Jettison of the cargo does not divest its owner of his property (*Tucker* v. *Cappes* (1625), 2 Roll. Rep. 497).

(*s*) *Wright* v. *Marwood* (1881), 7 Q. B. D. 62, C. A. If improperly stowed on deck there is no case of contribution, but the shipowner is liable for the full value (*Royal Exchange Shipping Co.* v. *Dixon* (1886), 12 App. Cas. 11); see title INSURANCE, Vol. XVII., p. 449.

SECT. 7. General Average.

unless the cargo is carried there by virtue of some custom (*t*) or by agreement of all the parties interested (*a*). There is equally a general average loss where, in consequence of a fire on board, the cargo is damaged by water being poured upon it to extinguish the fire (*b*), or through the ship being scuttled with the same object (*c*); or where, through stress of circumstances, it becomes necessary to burn part of the cargo to enable the engines to keep going (*d*). The sale of part of the cargo at a port of refuge is a general average sacrifice, if it is necessary for the purpose of completing the voyage, and if it is in the interest of the rest of the cargo that the voyage should be completed (*e*), but not in any other case (*f*). Moreover, any depreciation in the value of the cargo caused by putting into a port of refuge to escape a peril is a general average loss (*g*).

General average loss of freight.

434. There is a general average loss of freight where the shipowner, in taking steps to avert the danger to the whole adventure, so damages a portion of the cargo as to render it unfit to be carried to its destination, and thus sacrifices his opportunity of earning freight upon that portion (*h*). There is, on the other hand, no general average sacrifice of freight where, owing to the inherent defect of the cargo, the shipowner has been compelled to put into a

(*t*) *Wright* v. *Marwood* (1881), 7 Q. B. D. 62, C. A., *per* BRAMWELL, L.J., at p. 67; *Gould* v. *Oliver* (1837), 4 Bing. (N. C.) 134; *Milward* v. *Hibbert* (1842), 3 Q. B. 120. In this case the shipowner is liable to contribute, though the deck cargo is carried "at merchant's risk" (*Burton* v. *English* (1883), 12 Q. B. D. 218, C. A.). See also title INSURANCE, Vol. XVII., p. 449.

(*a*) *Strang, Steel & Co.* v. *Scott* (*A.*) *& Co.* (1889), 14 App. Cas. 601, P. C., *per* Lord WATSON, at p. 609. If all the cargo belongs to the same person, he is entitled to contribution in respect of any cargo which by the contract is to be carried on deck (*Johnson* v. *Chapman* (1865), 19 C. B. (N. S.) 563).

(*b*) *Whitecross Wire Co.* v. *Savill* (1882), 8 Q. B. D. 653, C. A.; *Pirie & Co.* v. *Middle Dock Co.* (1881), 44 L. T. 426; *Greenshields, Cowie & Co.* v. *Stephens & Sons, Ltd.*, [1908] A. C. 431; *Stewart* v. *West India and Pacific Steamship Co.* (1873), L. R. 8 Q. B. 362, Ex. Ch.; compare *McCall & Co.* v. *Houlder & Co.* (1897), 76 L. T. 469, where the cargo was damaged while the ship was undergoing necessary repairs.

(*c*) *Achard* v. *Ring* (1874), 31 L. T. 647; *Papayanni and Jeromia* v. *Grampian Steamship Co., Ltd.* (1896), 1 Com. Cas. 448.

(*d*) *Walford de Baerdemaecker & Co.* v. *Galindez Brothers* (1897), 2 Com. Cas. 137; *Robinson* v. *Price* (1877), 2 Q. B. D. 295, C. A.

(*e*) *The Gratitudine* (1801), 3 Ch. Rob. 240, 255; *Hallett* v. *Wigram* (1850), 9 C. B. 580. In this case the value of the cargo sold may be measured by the actual price received, and not by the value at the port of destination (*Richardson* v. *Nourse* (1819), 3 B. & Ald. 237).

(*f*) *Hopper* v. *Burness* (1876), 1 C. P. D. 137. As to sale of the cargo, see pp. 247 *et seq.*, *ante*.

(*g*) *Anglo-Argentine Live Stock and Produce Agency* v. *Temperley Shipping Co.*, [1899] 2 Q. B. 403 (where a cargo of live cattle for the United Kingdom had to be landed on the Continent and sold at a lower price, the ship having been compelled to take refuge in a port from which the importation of live cattle was prohibited).

(*h*) *Pirie & Co.* v. *Middle Dock Co.* (1881), 44 L. T. 426; *Iredale* v. *China Traders Insurance Co.*, [1899] 2 Q. B. 356, *per* BIGHAM, J., at p. 360, affirmed, [1900] 2 Q. B. 515, C. A. Where, however, the ship is chartered under a time charter containing a cesser of hire clause, there is no general average loss of freight, such loss being caused by the operation of the cesser clause (*Hudson* v. *British and Foreign Marine Insurance Co.* (1902), 8 Com. Cas. 6).

port of refuge and abandon the attempt to carry it further, so that the freight was already lost (*i*).

SECT. 7. **General Average.**

435. The same principle applies to the case of the ship, her tackle, machinery, or other equipment. In this case, however, no question of general average sacrifice arises, where the loss takes place through the use of the ship in the ordinary way (*k*). However great the peril, it is the duty of the shipowner, in the due performance of the contract, to do everything possible to save both ship and cargo, and for that purpose to make use of all the appliances with which the ship is provided (*l*). To constitute a general average sacrifice there must be an intentionally abnormal use of the ship (*m*) or of her equipment (*n*). Thus, the ship may be run ashore to avoid the danger of a storm or capture (*o*), or scuttled to extinguish a fire (*p*); an anchor may be slipped, or a cable may be used in a particular manner out of the usual course for the purpose of protecting the ship (*q*). A boat may be sacrificed to mislead a pursuing enemy, by being set adrift with a light at its masthead (*r*). The engines may be strained in the attempt to force a stranded ship off the ground (*a*); a steam pump, owing to the leaking condition of the ship, may have to be worked constantly, and for this purpose it may become necessary to use spars as fuel (*b*).

General average loss of ship and equipment.

Where, on the other hand, the loss is occasioned by the ordinary use of the ship or its equipment for the purposes for which they were intended, there is no general average sacrifice, however great the peril may have been, and however great the efforts made to escape it (*c*); thus, the ship may be damaged in a fight with a privateer (*d*); she may lose a mast in the attempt to escape through carrying on under full sail when the wind is too strong (*e*); or she may be compelled to use more coal than was anticipated (*f*): and the shipowner cannot claim contribution where he himself was in default (*g*).

436. Expenditure incurred by the shipowner for the benefit of the adventure may also be recovered by him as a general average

General average expenditure.

(*i*) *Iredale* v. *China Traders Insurance Co.*, [1899] 2 Q. B. 356.
(*k*) Abbott on Shipping, 5th ed., p. 348; 14th ed., p. 770.
(*l*) *Robinson* v. *Price* (1877), 2 Q. B. D. 295, C. A.; *Wilson* v. *Bank of Victoria* (1867), L. R. 2 Q. B. 203, *per* BLACKBURN, J., at p. 212; compare *Rose* v. *Bank of Australasia*, [1894] A. C. 687.
(*m*) *The Bona*, [1895] P. 125, C. A., *per* Lord ESHER, M.R., at p. 138; *McCall & Co.* v. *Houlder & Co.* (1897), 76 L. T. 469.
(*n*) *Birkley* v. *Presgrave* (1801), 1 East, 220.
(*o*) Abbott on Shipping, 5th ed., p. 349; 14th ed., p. 771.
(*p*) *Whitecross Wire Co.* v. *Savill* (1882), 8 Q. B. D. 653, C. A., *per* BRETT, L.J., at p. 663.
(*q*) *Birkley* v. *Presgrave*, *supra*.
(*r*) Abbott on Shipping, 5th ed., p 348; 14th ed., p. 770, citing Emerigon, Vol. I., p. 622.
(*a*) *The Bona*, *supra*.
(*b*) *Harrison* v. *Bank of Australasia* (1872), L. R. 7 Exch. 39; *Robinson* v. *Price*, *supra*.
(*c*) *Birkley* v. *Presgrave*, *supra*; *Harrison* v. *Bank of Australasia*, *supra*.
(*d*) *Taylor* v. *Curtis* (1816), 6 Taunt. 668.
(*e*) *Covington* v. *Roberts* (1806), 2 Bos. & P. (N. R.) 378; compare *Power* v. *Whitmore* (1815), 4 M. & S. 141.
(*f*) *Wilson* v. *Bank of Victoria*, *supra*.
(*g*) See p. 306, *ante*.

SECT. 7. General Average.

sacrifice (*h*). He cannot, however, recover all extraordinary expenses incurred for the purpose of continuing the voyage (*i*). Thus, the expense of discharging the cargo and placing it into lighters or landing it, is a general average sacrifice (*k*); but expenses incurred after the removal of the cargo, as, for instance, in connexion with the refloating of the ship, are incurred to save the ship, and are not, as a general rule, for the benefit of the cargo; they must therefore be borne by the shipowner alone (*l*). There may, however, be cases in which such expenses would fall under general average, as, for instance, where the cargo would be lost unless it is carried on to its destination by the same ship, there being no other means of transport or disposal available (*m*), or where the discharging of the cargo and refloating of the ship form one continuous operation (*n*). Similarly, payment made to sailors employed by the shipowner may form the subject of general average if the safety of the whole adventure is involved (*o*).

Expenses in port of refuge.

437. Where the ship puts into a port of refuge, the question whether expenses incurred there are general average expenses or not necessarily depends upon the circumstances of each case (*p*). It is not sufficient that the expenses should have been incurred for the common benefit of the ship and cargo (*q*); they must either themselves fall within the definition of a general average sacrifice (*r*), or, if not in themselves a general average sacrifice, be nevertheless caused or rendered necessary by one (*s*). In considering the question it is, therefore, necessary to distinguish the following items, namely:—

Repairs.

(1) The cost of repairing the ship. If the repairs are occasioned

(*h*) *Kemp* v. *Halliday* (1865), 6 B. & S. 723, *per* BLACKBURN, J., at p. 746 (affirmed (1866), L. R. 1 Q. B. 520, Ex. Ch.); *Ocean Steamship Co.* v. *Anderson* (1883), 13 Q. B. D. 651, C. A., *per* BRETT, L.J., at p. 662 (reversed (1884), 10 App. Cas. 107); *Rose* v. *Bank of Australasia*, [1894] A. C. 687.

(*i*) *Walthew* v. *Mavrojani* (1870), L. R. 5 Exch. 116, Ex. Ch.; compare *Da Costa* v. *Newnham* (1788), 2 Term Rep. 407.

(*k*) *Job* v. *Langton* (1857), 6 E. & B. 779; compare *Rose* v. *Bank of Australasia*, *supra*, doubting *Schuster* v. *Fletcher* (1878), 3 Q. B. D. 418.

(*l*) *Job* v. *Langton*, *supra*; *Royal Mail Steam Packet Co.* v. *English Bank of Rio de Janeiro* (1887), 19 Q. B. D. 362; *Walthew* v. *Mavrojani*, *supra*.

(*m*) *Job* v. *Langton*, *supra*, *per* Lord CAMPBELL, C.J., at p. 793; *Walthew* v. *Mavrojani*, *supra*, *per* MONTAGUE SMITH, J., at p. 126.

(*n*) *Moran* v. *Jones* (1857), 7 E. & B. 523; doubted in *Svendsen* v. *Wallace* (1884), 13 Q. B. D. 69, C. A., and in *Royal Mail Steam Packet Co.* v. *English Bank of Rio de Janeiro*, *supra*.

(*o*) *Birkley* v. *Presgrave* (1801), 1 East, 220; *Kemp* v. *Halliday*, *supra*; *Anderson* v. *Ocean Steamship Co.* (1884), 10 App. Cas. 107, varying *Ocean Steamship Co.* v. *Anderson*, *supra*.

(*p*) *Svendsen* v. *Wallace* (1885), 10 App. Cas. 404, *per* Lord BLACKBURN, at p. 420, approving S. C. (1884), 13 Q. B. D. 69, C. A., *per* BOWEN, L.J., at p. 85.

(*q*) *Svendsen* v. *Wallace* (1884), 13 Q. B. D. 69, C. A., *per* BOWEN, L.J., at p. 86; *Harrison* v. *Bank of Australasia* (1872), L. R. 7 Exch. 39, 50.

(*r*) See pp. 315, 317, *ante*.

(*s*) *Svendsen* v. *Wallace* (1884), 13 Q. B. D. 69, C. A., *per* BOWEN, L.J., at p. 85.

by a general average sacrifice, any expenses incurred in repairs fall under general average (*t*), otherwise they are borne by the shipowner (*a*).

(2) Port charges and pilotage dues. Since putting into a port of refuge, if justifiable at all (*b*), is a general average sacrifice (*c*), all inward port charges and pilotage dues are general average expenses (*d*), whether the damage which caused the ship to seek the port of refuge is the subject of general average (*e*) or not (*f*). On the other hand, the outward port charges and pilotage dues are particular average charges, borne by the freight, since they are incurred for the purpose of earning it (*g*), unless the original damage was the subject of general average, in which case such charges are treated as general average (*h*).

(2) Port charges and pilotage dues.

(3) Wages of the crew. The shipowner is entitled to a general average contribution towards the wages of the crew in the port of refuge, provided that the damage which caused the ship to seek the port of refuge is itself the subject of general average (*i*), but not otherwise (*k*).

(3) Wages.

(4) The cost of discharging the cargo. If the discharge is necessary for the common preservation of both ship and cargo, it is in itself a general average sacrifice (*l*); though not necessary for the preservation of the cargo, it may be impossible to repair the ship unless the cargo is discharged, and in this case, if the cost of repairs is the subject of general average, the expenses of discharging are equally the subject of general average (*m*). In practice, the expenses of discharging the cargo are always treated as the subject of general average (*n*).

(4) Unloading charges.

(5) The cost of warehousing and reloading the cargo. If the unloading was necessitated by some antecedent act of general

(5) Warehousing and reloading charges.

(*t*) *Hallett* v. *Wigram* (1850), 9 C. B. 580; *Harrison* v. *Bank of Australasia* (1872), L. R. 7 Exch. 39, *per* KELLY, C.B., at p. 53. The shipowner cannot claim for the loss of the use of the ship during the period occupied in the repairs where the delay is suffered in common by all the parties interested (*The Leitrim*, [1902] P. 256).

(*a*) *Hallett* v. *Wigram*, *supra*.

(*b*) See pp. 95, 96, *ante*.

(*c*) *Svendsen* v. *Wallace* (1884), 13 Q. B. D. 69, C. A.; (1885), 10 App. Cas. 404.

(*d*) *Ibid.*

(*e*) *Atwood* v. *Sellar* (1880), 5 Q. B. D. 286, C. A.

(*f*) *Svendsen* v. *Wallace*, *supra*.

(*g*) *Ibid.*; compare *Westoll* v. *Carter* (1898), 3 Com. Cas. 112.

(*h*) *Atwood* v. *Sellar*, *supra*. In *Svendsen* v. *Wallace*, *supra*, no decision on this point was given.

(*i*) *Da Costa* v. *Newnham* (1788), 2 Term Rep. 407, 413; *Atwood* v. *Sellar*, *supra*, *per* THESIGER, L.J., at p. 291. It has been the practice not to charge wages to general average, but there does not appear to be any legal justification for it (*The Leitrim*, *supra*, at p. 268).

(*k*) *Power* v. *Whitmore* (1815), 4 M. & S. 141; *Anglo-Argentine Live Stock and Produce Agency* v. *Temperley Shipping Co.*, [1899] 2 Q. B. 403; compare *Howden & Co.* v. *Steamship Nutfield Co., Ltd.* (1898), 3 Com. Cas. 56.

(*l*) *Svendsen* v. *Wallace* (1884), 13 Q. B. D. 69, C. A., *per* BOWEN, L.J., at p. 88, citing *The Copenhagen* (1799), 1 Ch. Rob. 289.

(*m*) *Hamel* v. *Peninsular and Oriental Steam Navigation Co.*, [1908] 2 K. B. 298.

(*n*) *Svendsen* v. *Wallace* (1885), 10 App. Cas. 404.

SECT. 7. General Average.

average sacrifice, these expenses form the subject of general average, provided that all the dealings with the cargo form part of a continuous operation (*o*). In any other case the warehouse rent of cargo is charged to cargo (*p*), whilst the cost of reloading is charged to freight (*q*).

SUB-SECT. 3.—*The Liability to Contribution.*

Persons liable.

438. All persons whose interest in the adventure is benefited by a general average sacrifice or by a general average expenditure are liable to make a general average contribution (*r*). These persons are:—(1) The shipowner (*s*), who is liable in respect of the ship, and also in respect of the freight (*t*). (2) The charterer, if any, who is liable in respect of his interest in the bill of lading freight (*a*); in this case the shipowner's liability as regards the freight is restricted to the chartered freight (*b*). If the charterparty is by way of demise, the charterer is also liable in respect of the ship (*c*). (3) The owner of the cargo, who is liable in respect of the cargo (*d*). (4) Any other person who may be liable under some express term in the contract of carriage. Thus, the bill of lading may preserve the shipper's liability (*e*), or it may provide for payment of general average contribution by the consignee (*f*). A consignee is not, as such, liable, even though he has taken delivery of the cargo (*g*); he may, however, make himself liable as under a new contract, by taking delivery with notice that the cargo is held

(*o*) *Atwood* v. *Sellar* (1880), 5 Q. B. D. 286, C. A., as explained in *Svendsen* v. *Wallace* (1884), 13 Q. B. D. 69, C. A., *per* BOWEN, L.J., at p. 89; *Moran* v. *Jones* (1857), 7 E. & B. 523; *Plummer* v. *Wildman* (1815), 3 M. & S. 482.

(*p*) *Svendsen* v. *Wallace*, *supra*.

(*q*) *Svendsen* v. *Wallace* (1885), 10 App. Cas. 404, *per* Lord BLACKBURN, at p. 416.

(*r*) *Fletcher* v. *Alexander* (1868), L. R. 3 C. P. 375, *per* BOVILL, C.J., at p. 382. Unless the liability is excluded by special contract (*Jackson* v. *Charnock* (1800), 8 Term Rep. 509). There is no liability to contribute in respect of victuals, or in respect of passenger's personal luggage, as opposed to merchandise (*Brown* v. *Stapyleton* (1827), 4 Bing. 119).

(*s*) The shipowner is liable, though the cause of the sacrifice is an excepted peril (*Schmidt* v. *Royal Mail Steamship Co.* (1876), 45 L. J. (Q. B.) 646; followed in *Greenshields, Cowie & Co.* v. *Stephens & Sons, Ltd.*, [1908] A. C. 431).

(*t*) *Moran* v. *Jones*, *supra*; *Strang, Steel & Co.* v. *Scott* (*A.*) *& Co.* (1889), 14 App. Cas. 601, P. C. Where the ship is chartered out and home, the homeward freight may be liable to contribute towards a general average loss on the outward voyage (*Williams* v. *London Assurance Co.* (1813), 1 M. & S. 318, followed in *Steamship Carisbrook Co.* v. *London and Provincial Marine and General Insurance Co.*, [1902] 2 K. B. 681, C. A.; *Moran* v. *Jones*, *supra*).

(*a*) He is also liable in respect of any chartered freight paid in advance (*Frayes* v. *Worms* (1865), 19 C. B. (N. S.) 159).

(*b*) *Moran* v. *Jones*, *supra*.

(*c*) This follows from the fact that he is owner *pro tempore* of the ship; see p. 85, *ante*.

(*d*) *Scaife* v. *Tobin* (1832), 3 B. & Ad. 523; *Strang, Steel & Co.* v. *Scott* (*A.*) *& Co.*, *supra*.

(*e*) *Walford de Baerdemaecker & Co.* v. *Galindez Brothers* (1897), 2 Com. Cas. 137.

(*f*) See Encyclopædia of Forms and Precedents, Vol. XIV., p. 120.

(*g*) *Scaife* v. *Tobin*, *supra*.

by the shipowner subject to his lien for general average contribution (*h*); or he may be liable as owner of the cargo (*i*).

Enforcement by lien.

439. The liability of any particular interest to make contribution is usually enforced by the shipowner on behalf of all interests concerned (*k*). He is entitled, as regards the cargo, to exercise a lien over it, and to withhold delivery until any general average contributions due either to himself or to any other persons have been paid (*l*). Unless the contract otherwise provides, it is his duty to exercise his lien on behalf of such other persons (*m*); and, if he fails to do so, he is himself liable to them (*n*). In practice, delivery of the cargo is usually made upon the cargo owner giving security (*o*) to pay the amount which will be found due upon adjustment (*p*).

Enforcement by action.

440. The lien is only available to the shipowner, or to the charterer, if the charterparty is by way of demise (*q*). If they do not rely upon their lien, they may maintain an action against the person liable to contribute (*r*). Any other person claiming contribution, such as, for instance, the owner of the cargo (*s*) or the person entitled to the freight (*t*), must enforce his right by action.

Adjustment.

441. Unless the contract provides otherwise (*a*), the adjustment of the amount to be contributed by the respective interests is determined by the law of the place where the adjustment is to be made (*a*), that is to say, at the place where under the contract the voyage is to terminate (*b*). The adjustment may take place at

(*h*) *Scaife* v. *Tobin* (1832), 3 B. & Ad. 523; compare p. 295, *ante*.

(*i*) *Scaife* v. *Tobin*, *supra*, *per* Lord TENTERDEN, C.J., at p. 529.

(*k*) *Svendsen* v. *Wallace* (1885), 10 App. Cas. 404; *Strang, Steel & Co.* v. *Scott* (*A.*) *& Co.* (1889), 14 App. Cas. 601, P. C.

(*l*) *Crooks* v. *Allan* (1879), 5 Q. B. D. 38; *Huth* v. *Lamport* (1886), 16 Q. B. D. 735, C. A.; *Hallett* v. *Bousfield* (1811), 18 Ves. 187.

(*m*) *Strang, Steel & Co.* v. *Scott* (*A.*) *& Co.*, *supra*, at p. 606, distinguishing *Hallett* v. *Bousfield*, *supra*, where an injunction was refused. There is no duty, as regards salvors, to exercise the lien (*The Raisby* (1885), 10 P. D. 114).

(*n*) *Crooks* v. *Allan*, *supra*; *Nobel's Explosives Co., Ltd.* v. *Rea* (1897), 2 Com. Cas. 293.

(*o*) For a form of average bond, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 122.

(*p*) *Svendsen* v. *Wallace*, *supra*, *per* Lord BLACKBURN, at pp. 409, 410; *Huth* v. *Lamport*, *supra* (where it was held that the terms of the security demanded must be reasonable).

(*q*) *Walford de Baerdemaecker & Co.* v. *Galindez Brothers* (1897), 2 Com. Cas. 137.

(*r*) *Birkley* v. *Presgrave* (1801), 1 East, 220; *Anderson* v. *Ocean Steamship Co.* (1884), 10 App. Cas. 107.

(*s*) *Dobson* v. *Wilson* (1813), 3 Camp, 480; *Strang, Steel & Co.* v. *Scott* (*A.*) *& Co.*, *supra*; compare *The North Star* (1860), Lush. 45.

(*t*) *Pirie & Co.* v. *Middle Dock Co.* (1881), 44 L. T. 426.

(*a*) *Stewart* v. *West India and Pacific Steamship Co.* (1873), L. R. 8 Q. B. 362, Ex. Ch.; *Dalglish* v. *Davidson* (1824), 5 Dow. & Ry. (K. B.) 6. It is usual for the contract to expressly provide that adjustment is to be made in accordance with the York-Antwerp Rules. For these Rules, see title INSURANCE, Vol. XVII., pp. 508 *et seq.*; and, for the practice on adjustment, see *ibid.*, pp. 452 *et seq.*, 471.

(*b*) *Hill* v. *Wilson* (1879), 4. C. P. D. 329; *Simonds* v. *White* (1824), 2 B. & C. 805.

SECT. 7. General Average.

a port of refuge, if the voyage is abandoned there by agreement or by necessity (*c*), but not otherwise (*d*).

Value of cargo.

As regards the cargo, the rules to be applied, both in estimating the value of the cargo sacrificed and in valuing the cargo saved, depend upon the time and place of the adjustment and not upon the time and place of the sacrifice (*e*). In estimating the value of the cargo sacrificed, it is necessary to take into account the probable state of the cargo on its arrival, if the sacrifice had never taken place: if therefore it would, in all probability, have arrived in an unsound state, the value for the purposes of contribution is its value if it had arrived in an unsound state (*f*). Similarly, where the cargo is damaged or otherwise depreciated through a general average sacrifice, the difference in value arising from the depreciation is to be allowed (*g*),

Value of ship.

442. As regards the ship, the amount to be contributed towards the sacrifice made by the shipowner is to be based on the cost of repairing the ship or making good the equipment sacrificed (*h*). If the ship, in consequence of the sacrifice, becomes a constructive total loss, the adjustment must be based upon the value of the ship just before the sacrifice took place (*i*). If the ship had at that time already sustained particular average damage, her value at the time of the sacrifice is her value as depreciated by the particular average damage, and this must be calculated by deducting the estimated cost of repairing the particular average damage; a further deduction must be made in respect of the proceeds of the sale of the ship, and the balance is the amount of the general average loss (*k*).

If it is the shipowner who has to make contribution, his liability is based on the value of the ship at the time when she arrives at her destination or other place of adjustment (*l*).

Value of freight.

443. As regards the freight, the contribution payable by the person entitled to it is based on the amount of freight at risk (*m*), less the expenses of earning it, which would have been saved if the ship had been lost (*n*). Where freight has been sacrificed, the

(*c*) *Fletcher* v. *Alexander* (1868), L. R. 3 C. P. 375; *Mavro* v. *Ocean Marine Insurance Co.* (1875), L. R. 10 C. P. 414, Ex. Ch.

(*d*) *Hill* v. *Wilson* (1879), 4 C. P. D. 329.

(*e*) *Fletcher* v. *Alexander*, *supra*, *per* BOVILL, C.J., at p. 383. But where the general average sacrifice is a sale of part of the cargo, the value for contribution purposes may be the price realised on the sale (*Richardson* v. *Nourse* (1819), 3 B. & Ald. 237.)

(*f*) *Fletcher* v. *Alexander*, *supra*.

(*g*) *Anglo-Argentine Live Stock and Produce Agency* v. *Temperley Shipping Co.*, [1899] 2 Q. B. 403.

(*h*) In the case of a wooden ship an allowance is made, after the first voyage, of one-third, inasmuch as the shipowner receives new for old (*Aitchison* v. *Lohre* (1879), 4 App. Cas. 755; *Pirie* v. *Steele* (1837), 2 Mood. & R. 49; *Fenwick* v. *Robinson* (1828), 3 C. & P. 323).

(*i*) *Henderson Brothers* v. *Shankland & Co.*, [1896] 1 Q. B. 525, C. A.

(*k*) *Ibid.* No deduction is to be made in this case in respect of "one-third new for old" (*ibid.*).

(*l*) Abbott on Shipping, 5th ed., p. 356; 14th ed., p. 796.

(*m*) *Cox* v. *May* (1815), 4 M. & S. 152, *per* Lord ELLENBOROUGH, C.J., at p. 159.

(*n*) *The Brigella*, [1893] P. 189, *per* GORELL BARNES, J., at p. 196.

amount to be made good is the gross freight lost, after deducting the charges which the shipowner would have incurred to earn it, but which he has, in consequence of the sacrifice, not incurred (*o*).

Average statement.

444. The shipowner is not bound to employ a professional average adjuster, and any average statement prepared by such adjuster does not in the absence of express contract bind the various persons interested (*p*). The shipowner must, however, present the average statement within a reasonable time (*q*). It is his duty at the same time to place before the average adjuster all necessary particulars and accounts (*r*).

SECT. 8.—*The Shipowner as a Common Carrier.*

Liability as a common carrier.

445. Every shipowner who carries goods for hire in his ship, whether by inland navigation (*s*), or coastwise (*a*), or abroad (*b*), undertakes to carry them at his own absolute risk, the act of God (*c*) or of the King's enemies (*d*), or the inherent defect of the goods themselves (*e*), or the shipper's default (*f*) alone excepted, unless by agreement between himself and a particular shipper on a particular voyage or on particular voyages he limits his liability by further exceptions (*g*). He therefore incurs the liability of a

(*o*) See Rules of Practice of the Association of Average Adjusters, and Customs at Lloyd's, quoted in Abbott on Shipping, 14th ed., pp. 1346—1356.

(*p*) *Wavertree Sailing Ship Co.* v. *Love*, [1897] A. C. 373, P. C., explaining *Simonds* v. *White* (1824), 2 B. & C. 805.

(*q*) *Crooks* v. *Allan* (1879), 5 Q. B. D. 38; *Wavertree Sailing Ship Co.* v. *Love*, *supra*.

(*r*) *Huth* v. *Lamport* (1886), 16 Q. B. D. 735, C. A.; compare *Twizell* v. *Allen* (1839), 5 M. & W. 337.

(*s*) *Rich* v. *Kneeland* (1613), Hob. 17; *Trent Navigation* (*Proprietors*) v. *Wood* (1785), 3 Esp. 127; *Dale* v. *Hall* (1750), 1 Wils. 281. The rule does not apply to a warehouseman who contracts for the carriage of his goods by barge from his ships to his warehouse (*Consolidated Tea and Lands Co.* v. *Oliver's Bonded Wharf etc. Proprietors*, [1910] 2 K. B. 395, where a sub-contract was made with a lighterman).

(*a*) *Hill* v. *Scott*, [1895] 2 Q. B. 713, C. A.; *Oakley* v. *Portsmouth and Ryde Steam Packet Co.* (1856), 11 Exch. 618.

(*b*) *Barclay* v. *Cuculla y Gana* (1784), 3 Doug. (K. B.) 389; *Mors* v. *Sluce* (1672), 1 Mod. Rep. 85; *Boucher* v. *Lawson* (1735), Lee *temp.* Hard. 85; *Goff* v. *Clinkard* (1750), 1 Wils. 282, n.

(*c*) *Nugent* v. *Smith* (1876), 1 C. P. D. 423, C. A.; *Amies* v. *Stephens* (1718), 1 Stra. 127; compare *Smith* v. *Shepherd* (1796), cited in Abbott on Shipping, 5th ed., p. 252; 14th ed., p. 578, where it was held that the act of God must be the immediate cause of the loss. As to the meaning of "act of God," see p. 108, *ante*.

(*d*) *Liver Alkali Co.* v. *Johnson* (1874), L. R. 9 Exch. 338, Ex. Ch., *per* BRETT, J., at p. 334.

(*e*) *The Barcore*, [1896] P. 294. But the shipowner is not protected where the goods would not have been affected but for his own default (*Lindsay & Son* v. *Scholefield* (1897), 24 R. (Ct. of Sess.) 530, where "inherent deterioration" was expressly excepted).

(*f*) *Ohrloff* v. *Briscall, The "Helene"* (1866), L. R. 1 P. C. 231. Including persons for whom the shipper is responsible (*Royal Mail Steamship Co.* v. *Macintyre Brothers & Co.* (1911), 16 Com. Cas. 231).

(*g*) *Liver Alkali Co.* v. *Johnson*, *supra*, *per* BRETT, J., at p. 344; *Phillips* v. *Edwards* (1858), 3 H. & N. 813. He may limit his liability by notice (*Evans* v. *Soule* (1813), 2 M. & S. 1; *Phillips* v. *Edwards*, *supra*). As to the statutory limitations on his liability, see M. S. Act, 1894, s. 502; pp. 612 *et seq.*, *post*. As to railway companies in respect of sea traffic, see *Jenkins* v. *Great Central Railway*, [1912] 1 K. B. 1; title RAILWAYS AND CANALS, Vol. XXIII., pp. 635, 636.

SECT. 8. The Shipowner as a Common Carrier.

common carrier (*h*) in respect of the goods which he carries (*i*). In considering the extent of his liability, it thus becomes unnecessary to inquire whether he is a common carrier or not (*k*), or whether the ship is employed in carrying the goods of all comers as a general ship (*l*), or in carrying the goods of a particular person only under a charterparty or similar contract (*m*).

(*h*) *Liver Alkali Co.* v. *Johnson* (1874), L. R. 9 Exch. 338, Ex. Ch., followed in *Hill* v. *Scott*, [1895] 2 Q. B. 713, C. A.

(*i*) The exceptions excusing a shipowner at common law are the same as those which excuse a common carrier; see title CARRIERS, Vol. IV., pp. 8 *et seq.* As to carriage of passengers, see pp. 327 *et seq.*, *post.*

(*k*) There does not appear to be any direct authority on the point. The statement in the text is based upon *Liver Alkali Co.* v. *Johnson*, *supra*, *per* BLACKBURN, J., at p. 340, and upon *Nugent* v. *Smith* (1876), 1 C. P. D. 423, C. A., *per* BRETT, J., at pp. 431 *et seq.*, who cites in favour of this view *Mors* v. *Sluce* (1672), 1 Mod. Rep. 85 (where the special verdict was in general terms), *Coggs* v. *Bernard* (1703), 2 Ld. Raym. 909 (where HOLT, C.J., speaks of shipmasters as a separate and independent class from common carriers), *Dale* v. *Hall* (1750), 1 Wils. 281, *Goff* v. *Clinkard* (1750), 1 Wils. 282, n., *Lyon* v. *Mells* (1804), 5 East, 428, *Barclay* v. *Cuculla y Gana* (1784), 3 Doug. (K. B.) 389, *Schieffelin* v. *Harvey* (1810), 6 Johnson's Reports, 170, and *Elliott* v. *Rossell* (1813), 10 Johnson's Reports, 1. When *Nugent* v. *Smith*, *supra*, went to the Court of Appeal, COCKBURN, C.J., at pp. 434 *et seq.*, expressly dissented from the view taken by BRETT, J., and doubted the correctness of the opinion expressed by BLACKBURN, J., in *Liver Alkali Co.* v. *Johnson*, *supra*; in his view a shipowner who is not a common carrier is an ordinary bailee, bound to use reasonable care, and exempt from liability where the loss could not have been avoided by reasonable care, skill and diligence. There are various *dicta* which may appear to support this view; see *Grill* v. *General Iron Screw Collier Co.* (1866), L. R. 1 C. P. 600, *per* WILLES, J., at p. 612, citing *Laurie* v. *Douglas* (1846), 15 M. & W. 746; *Notara* v. *Henderson* (1872), L. R. 7 Q. B. 225, Ex. Ch., *per* WILLES, J., at p. 236; *Wilson, Sons & Co.* v. *The "Xantho"* (*Owners of Cargo*) (1887), 12 App. Cas. 503, *per* Lord HERSCHELL, at p. 510; *Hamilton, Fraser & Co.* v. *Pandorf & Co.* (1887), 12 App. Cas. 518, *per* Lord WATSON, at p. 526. But it will be found on looking at the cases that this point was not clearly present to the minds of the respective judges, so as to make it certain that they were expressing an opinion contrary to that held by BRETT, J.; and the language used, as, for instance, in *Notara* v. *Henderson*, *supra*, at p. 237, is not inconsistent with it. It may be noted that, though the use of exceptions in a bill of lading may be defended on the grounds that the bill of lading is a document in common form, and that the ship may at any time be employed as a general ship, in which case the shipowner is liable as a common carrier, and therefore needs protection, a contract by charterparty stands in a different position. The shipowner who charters his ship is not necessarily a common carrier making a special contract of carriage; if, therefore, he is not liable as insurer, but only for negligence, it is unnecessary to insert in his charterparty any exceptions other than negligence. Consequently, if he is not guilty of negligence, it is immaterial to inquire whether, in the case of the cargo being lost or damaged, any particular exception applies or not, since, even in the absence of negligence, he would not be liable. Yet, in the various cases upon the application of exceptions, it appears to be assumed that, if no exception applies, the shipowner is liable (compare *Burton* v. *English* (1883), 12 Q. B. D. 218, C. A., where BRETT, M.R., at p. 219, points out that the ship was not a general ship, and where BOWEN, L.J., at p. 223, speaks of the shipowner as a carrier; *Kish* v. *Taylor*, [1912] A. C. 604, *per* Lord ATKINSON, at p. 617), and except by COCKBURN, C.J., in *Nugent* v. *Smith*, *supra*, it has not been suggested that he would not be liable unless he was a common carrier.

(*l*) *Mors* v. *Sluce*, *supra*.

(*m*) *Liver Alkali Co.* v. *Johnson*, *supra*; compare *Internationale Guano*

Part VIII.—Carriage of Passengers.

SECT. 1.—*The Contract of Carriage.*

SECT. 1. The Contract of Carriage.

Position of shipowner.

446. The conveyance of passengers on merchant ships is, for the purposes of safety and the like, the subject of numerous statutory regulations, which are dealt with hereafter (*n*). Apart from these, the position of an owner who carries passengers on his ship, or of a charterer who has control of the ship and is entitled to carry passengers (*o*), depends mainly upon the terms of the contract between him and the individual passenger. He is not obliged to carry passengers at all, but if he holds himself out as a carrier of passengers he is probably bound to receive and carry all who are willing to contract with him, provided there is room on the ship and that the prospective passenger is a fit person to be carried, and not one whose presence would be likely to injuriously affect or endanger the ship, the owner, the crew, or the other passengers (*p*). The mere fact that the presence of a particular passenger might offend the susceptibilities of others does not justify a refusal to carry (*q*), and a person of notoriously bad character, who has been accepted as a passenger, is entitled to be carried so long as he behaves himself properly (*r*).

Shipowner's liability.

447. A shipowner is not an insurer of the safety of the passengers carried on his ship (*s*). His responsibility is limited by the terms of the contract of carriage and by his implied undertaking to take all due care (*t*), including the exercise of reasonable skill and foresight by him and his servants, to carry the passenger in safety. This undertaking involves a duty to provide a ship as fit and seaworthy as care and skill can render it (*a*), but there is no implied warranty that the ship is free from all defects likely to cause peril (*b*). The owner, and the master as his agent, must also make

en Superphosphaatwerken v. *Macandrew* (*Robert*) *& Co.*, [1909] 2 K. B. 360, *per* PICKFORD, J., at p. 365.

(*n*) See pp. 331 *et seq.*, *post*; see also pp. 77, 78, *ante*; p. 544, *post*.

(*o*) In *Shaw, Savill & Co.* v. *Aitken, Lilburn & Co.* (1883), Cab. & El. 195, where a charterparty, not amounting to a demise of the ship, provided for the carriage of a full and complete cargo, but was silent as to passengers, it was held that the charterer was not entitled to carry passengers, and that no custom existed entitling such a charterer to carry passengers, or the owner to have passengers carried for his benefit.

(*p*) See *Henderson* v. *Stevenson* (1875), L. R. 2 Sc. & Div. 470, *per* Lord CHELMSFORD, at p. 477; and, as to the position of wrecked seamen, see pp. 56, 57, *ante*.

(*q*) See Abbott on Shipping, 14th ed., p. 888.

(*r*) *Coppin* v. *Braithwaite* (1844), 8 Jur. 875, *per* ROLFE, B., at p. 876; see also pp. 329, 330, *post*, for statutory provisions.

(*s*) See pp. 543, 544, *post*; compare pp. 325, 326, *ante*; and see title CARRIERS Vol. IV., p. 44.

(*t*) For the degree of care required, see *ibid.*

(*a*) This duty is discussed *ibid.*, p. 45; the cases there cited should be referred to; see also *Burges* v. *Wickham* (1863), 3 B. & S. 669. As to safe means of transport, see *John* v. *Bacon* (1870), L. R. 5 C. P. 437; *Preston Corporation* v. *Biornstad, The Ratata*, [1898] A. C. 513.

(*b*) See title CARRIERS, Vol. IV., pp. 44 *et seq.*; *Gray* v. *Cox* (1825), 4 B. & C. 108; *Brown* v. *Edgington* (1841), 2 Man. & G. 279; *Randall* v. *Newson* (1877), 2 Q. B. D. 102, C. A. For the meaning of "seaworthy," see

SECT. 1. The Contract of Carriage.

reasonable provision for the food, comfort and accommodation of the passengers, and provide reasonable facilities for the carriage of their luggage (*c*).

The shipowner's liability to a passenger for injuries sustained by reason of the negligence of the owner, or of his servants while acting within the scope of their employment, extends to a passenger in another ship who may be injured by reason of such negligence, even though the master and crew of the other ship had been guilty of contributory negligence (*d*). A passenger is not identified in respect of negligence with those navigating the ship on which he is carried (*e*).

Limiting liability.

448. A shipowner may, by inserting conditions in the contract, relieve himself, either in whole or in part, from liability for damage, loss, or injury to the passenger or his luggage (*f*), but he must cause the conditions to be brought to the notice of the passenger (*g*). In the absence of a special contract, the owner's liability for injury to the passenger is based upon negligence (*h*), and his liability as to the passenger's luggage is the same as that of other carriers (*i*), though in all cases where the injury or loss occurs without his actual fault or privity the statutory limitations hereafter mentioned may apply (*k*).

Commencement of voyage and delay.

449. Apart from any warranty (*l*), a passenger has no right to insist that the ship shall begin the voyage at the advertised or agreed time. It is sufficient if the voyage is begun within a reasonable time (*m*), but the shipowner must use due care to avoid delay in the prosecution of the voyage, and, if he fails in this, he may be liable to an inconvenienced passenger for such damages

p. 77, *ante*; and for the offence of sending an unseaworthy ship to sea, see *ibid.*; title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 559, 560.

(*c*) See title NEGLIGENCE, Vol. XXI., p. 429.

(*d*) *Mills* v. *Armstrong, The Bernina* (1888), 13 App. Cas. 1; *The Orwell* (1888), 13 P. D. 80; *The Druid* (1842), 1 Wm. Rob. 391; and see p. 544, *post*; title NEGLIGENCE, Vol. XXI., pp. 445 *et seq.*

(*e*) *Mills* v. *Armstrong, The Bernina, supra.* As to the application of this doctrine to the carriage of goods, see *The Milan* (1861), Lush. 388; title NEGLIGENCE, Vol. XXI., p. 485. As to the division of loss under the Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), and the rights of an innocent party where two vessels are in fault, see pp. 359 *et seq.*, *post.*

(*f*) Even to the extent of exoneration for a fatal accident resulting from negligent navigation; see *Haigh* v. *Royal Mail Steam Packet Co.* (1883), 5 Asp. M. L. C. 189, C. A.

(*g*) See title CARRIERS, Vol. IV., pp. 53 *et seq.*; *Acton* v. *Castle Mail Packets Co.* (1895), 8 Asp. M. L. C. 73. As to liability for loss of luggage, see title CARRIERS, Vol. IV., pp. 40 *et seq.*; *Wilton* v. *Atlantic Royal Mail Steam-Navigation Co.* (1861), 10 C. B. (N. S.) 453; *Peninsular etc. Steam Co.* v. *Shand* (1865), 2 Mar. L. C. 244, P. C.; *Taubman* v. *Pacific Steam Navigation Co.* (1872), 1 Asp. M. L. C. 336; *Thompson* v. *Royal Mail Steam Packet Co.* (1875), 5 Asp. M. L. C. 190, n.; *The Stella*, [1900] P. 161.

(*h*) See title NEGLIGENCE, Vol. XXI., pp. 357 *et seq.*

(*i*) See title CARRIERS, Vol. IV., p. 42.

(*k*) See p. 617, *post.*

(*l*) See *Cranston* v. *Marshall* (1850), 5 Exch. 395.

(*m*) *Yates* v. *Duff* (1832), 5 C. & P. 369; *Crane* v. *Tyne Shipping Co.* (1897), 13 T. L. R. 172; see also title CARRIERS, Vol. IV., pp. 56, 59, 60. As to steerage passengers, see pp. 337, 338, *post.*

as are the reasonable consequence of his default, unless he has contracted to be liable to a greater or less extent (*n*).

Passage money.

450. If the contract is silent as to the time for payment of the passage money, it must be paid at the accustomed time, if there is any usage in this respect; and it seems that if the money is paid in advance, and the ship is lost before the commencement of the voyage, the money must be returned (*o*). For unpaid passage money the master has a lien on the passenger's luggage, but not on his person nor on the clothes he is wearing (*p*).

Conflict of laws.

451. A contract for the carriage of passengers is *primâ facie* governed by the law of the country where it is made (*q*), but the parties may agree that the law of the country of the ship's flag shall be applicable (*r*).

Authority of master over passengers.

452. At common law the master of a vessel has absolute control over the passengers, and they are bound to obey all his reasonable orders, and in emergency even to work the ship or to fight it (*a*). The master may use reasonable means to enforce obedience to his lawful commands, and may, when necessary, remove or even imprison a disobedient passenger, but his power is limited to the necessity of the case, and, if he uses excessive means to enforce obedience, or attempts to enforce obedience in such a manner as to exceed his authority, he is liable to an action for damages (*b*).

Power of detention.

The master of a passenger steamer may detain without warrant, and convey before a justice of the peace, any drunk and disorderly person who persists in entering the ship after he has been refused admission and his fare has been returned or tendered, or who, in the United Kingdom, refuses to leave the ship when requested; any person who, after being warned, molests any passenger; any person who persists in attempting to enter a steamer which is full; or who attempts to travel without first paying his fare (*c*); or who knowingly and wilfully travels beyond the distance for which he has paid his

(*n*) See title DAMAGES, Vol. X., pp. 311, 312. If by reason of the unpunctual arrival of the ship a passenger misses his train, he cannot recover the cost of a special train, unless he can show that the expense is one which he would have incurred if he had missed the train by his own fault (*Bright* v. *Peninsular and Oriental Steam Navigation Co.* (1897), 2 Com. Cas. 106).

(*o*) *Gillan* v. *Simpkin* (1815), 4 Camp. 241; *Greeves* v. *West India and Pacific Steamship Co.* (1869), 3 Mar. L. C. 255. As to steerage passage contracts and passengers in emigrant ships, see pp. 336, 337, *post.*

(*p*) *Wolf* v. *Summers* (1811), 2 Camp. 631.

(*q*) *Peninsular etc. Steam Co.* v. *Shand* (1865), 2 Mar. L. C. 244, Ex. Ch.

(*r*) *Lloyd* v. *Guibert* (1865), L. R. 1 Q. B. 115, P. C.; *Re Missouri Steamship Co.* (1889), 42 Ch. D. 321, C. A.; *The August*, [1891] P. 328; *The Industrie*, [1894] P. 58, C. A.; see title CONFLICT OF LAWS, Vol. VI., pp. 238 *et seq.*; and see p. 141, *ante.*

(*a*) *King* v. *Franklin* (1858), 1 F. & F. 360; *Boyce* v. *Bayliffe* (1807), 1 Camp. 58; *Boyce* v. *Douglass* (1807), 1 Camp. 60; *Newman* v. *Walters* (1804), 3 Bos. & P. 612.

(*b*) *Aldworth* v. *Stewart* (1866), 4 F. & F. 957; *Prendergast* v. *Compton* (1837), 8 C. & P. 454; *Noden* v. *Johnson* (1850), 16 Q. B. 218.

(*c*) As to stowaways, see also p. 345, *post.*

SECT. 1. The Contract of Carriage.

fare, in either case with intent to avoid payment; or who refuses and neglects to quit the steamer on arrival at the point to which he has paid his fare; or who fails to pay his fare or exhibit his ticket when requested (*d*); or who wilfully causes obstruction or injury to any part of the machinery or tackle, or obstructs or impedes or molests the crew, or any of them, in the execution of their duty (*e*). The power of detention only arises, however, where the name and address of the offender are unknown to the master or his officer (*f*).

Refusal to admit passenger.

The master of a home-trade passenger steamer may refuse to receive on board any person who is in such a state, or misconducts himself in such a manner, as to annoy or injure passengers on board, and may put any such person ashore at any convenient place (*g*).

Sanitary regulations.

In every emigrant ship the medical practitioner, aided by the master, or in the absence of the medical practitioner the master alone, is bound to exact obedience to all sanitary regulations made by Order in Council (*h*).

Sale of spirits.

In any emigrant ship spirits may not, during the voyage, be sold directly or indirectly to any steerage passenger (*i*).

(*d*) M. S. Act, 1894, s. 287 (1). Penalty, not exceeding 40*s*., recoverable, summarily, without prejudice to the recovery of any fare payable (*ibid.*).

(*e*) *Ibid.*, s. 287 (2). Penalty, not exceeding £20 (*ibid.*).

(*f*) *Ibid.*, s. 287 (3). The refusal to give name and address, or the giving of a false name and address, renders the offender liable to a penalty not exceeding £20, to be paid to the owner of the steamer (*ibid.*, s. 287 (4)).

(*g*) *Ibid.*, s. 288. "Home-trade passenger ship" means a ship employed in carrying passengers within the following limits:—the United Kingdom, the Channel Islands and Isle of Man, and the continent of Europe between the river Elbe and Brest inclusive (*ibid.*, s. 742).

(*h*) *Ibid.*, s. 325 (1). Regulations may be made by Order in Council (1) for preserving order, promoting health and securing cleanliness and ventilation on board emigrant ships proceeding from the British Islands to any port in a British possession; (2) for prohibiting emigration from any port at any time when choleraic or any epidemic disease is generally prevalent in the British Islands or any part thereof; (3) for reducing the number of steerage passengers allowed to be carried either generally or from any particular ports in the British Islands; (4) for permitting the use on board emigrant ships of apparatus for distilling water and for defining in such case the quantity of fresh water to be carried in tanks and casks for the steerage passengers under the earlier provisions of the M. S. Act, 1894, Part III.; and (5) for requiring duly authorised medical practitioners to be carried in emigrant ships where they would not otherwise be required under *ibid.*, Part III., to be carried (*ibid.*, s. 324). An Order in Council approving regulations as to distilling apparatus and quantity of water to be carried on emigrant ships, dated the 25th January, 1908, is in force (Stat. R. & O., 1908, p. 639). If any person on board fails without reasonable cause to obey or offends against any such regulation or any provision of the M. S. Act, 1894, Part III., or obstructs the master or medical practitioner in the execution of any duty imposed upon him by any such regulation, or is guilty of riotous or insubordinate conduct, that person is liable for each offence to a fine not exceeding £2, and, in addition, to imprisonment for any period not exceeding one month (*ibid.*, s. 325 (2)); see also title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 464 *et seq.* As to emigrant ships, see, further, pp. 335 *et seq.*, *post.*

(*i*) M. S. Act, 1894, s. 326 (1). By *ibid.*, s. 326 (2), any person contravening this provision is liable to a fine not exceeding £20.

SECT. 2.—*Statutory Requirements.*

SECT. 2. Statutory Requirements.

SUB-SECT. 1.—*Definitions* (*a*).

453. A "passenger" is any person carried in a ship (*b*) other than the master and crew and the owner, his family and servants (*c*). Passenger.

A "passenger steamer" includes every steamship (*d*), whether British or foreign, carrying passengers to, from or between any places in the United Kingdom, except steam ferry boats working in chains (*e*). Passenger steamer.

An "emigrant ship" means every sea-going (*f*) vessel, whether British or foreign, and whether or not conveying mails, which carries, on any voyage to which the Merchant Shipping Act, 1894, Part III., applies (*g*), more than fifty steerage passengers or a greater number of steerage passengers than, if it be a sailing ship, one statute adult to thirty-three tons, or, if a steamship, one statute adult to twenty tons of the ship's registered tonnage. The definition includes a ship which coming from outside the British Islands takes on board at any port therein such number of steerage passengers, whether British subjects or resident aliens, as would, with or without the steerage passengers already on board, constitute her an emigrant ship (*h*). Emigrant ships.

A "statute adult" is a person aged twelve years or upwards or two persons between the ages of one and twelve years (*i*). Statute adult.

(*a*) The definitions here given are definitions for the purposes of the M. S. Act, 1894, Part III. (*ibid.*, s. 267; *The Clymene*, [1897] P. 295, 300).

(*b*) A ship includes every description of vessel used in navigation not propelled by oars (M. S. Act, 1894, s. 742). A vessel which would otherwise be a ship is not excluded merely because she is propelled by oars (*Ex parte Ferguson* (1871), L. R. 6 Q. B. 280, 290). A hopper barge without motive power may be a ship (*The Mac* (1882), L. R. 7 P. D. 126, C. A.). As to whether an unfinished vessel is a ship, see *Re Softley, Ex parte Hodgkin* (1875), L. R. 20 Eq. 746. See also p. 14, *ante*.

(*c*) M. S. Act, 1894, s. 267. *Semble*, that to make a person a passenger there must be some privity between him and the owner (*The Lion* (1869), L. R. 2 P. C. 525, 530; *Hay* v. *Trinity House Corporation* (1895), 65 L. J. (Q. B.) 90); compare for decisions as to the meaning of "passenger," *Hedges* v. *Hooker* (1889), 60 L. T. 822; *Kiddle* v. *Kidston* (1884), 14 L. R. Ir. 1; *The Hanna* (1866), L. R. 1 A. & E. 283; *The Clymene, supra*; and see p. 610, *post*. As to alien passengers, see Aliens Act, 1905 (5 Edw. 7. c. 13); title ALIENS, Vol. I., pp. 320 *et seq.*

(*d*) This includes vessels propelled by electricity or other mechanical power (M. S. Act, 1894, s. 743). But such vessels to be ships must be used in navigation (*Southport Corporation* v. *Morriss*, [1893] 1 Q. B. 359). A motor boat which plies for hire may be a "passenger steamer" (*Weeks* v. *Ross*, [1913] 2 K. B. 229).

(*e*) M. S. Act, 1894, s. 267, as amended by M. S. Act, 1906, s. 13.

(*f*) M. S. Act, 1894, s. 268. *I.e.*, actually going to sea (*Salt Union* v. *Wood*, [1893] 1 Q. B. 370).

(*g*) *I.e.*, all voyages from the British Islands to any port out of Europe and not within the Mediterranean Sea, and, with some modifications, certain colonial voyages (M. S. Act, 1894, ss. 364—368). As to the modifications of certain provisions of *ibid.*, Part III., in their application to British possessions, see *ibid.*, s. 366; to Australian colonies, *ibid.*, s. 367; as to the application of *ibid.*, Part III., to British India, see *ibid.*, s. 368.

(*h*) *Ibid.*, s. 268 (1).

(*i*) *Ibid.*, s. 268 (2).

SECT. 2. **Statutory Requirements.**

Steerage passenger. Cabin passenger.

A "steerage passenger" is any passenger not a "cabin passenger," and persons are deemed to be cabin passengers when the space allotted to their exclusive use is in the proportion of at least thirty-six superficial feet to each statute adult and their fare is at least £25 for the whole voyage, or is in the proportion of at least 65*s.* for every thousand miles (*k*), and they have been furnished with a duly signed contract ticket in the form prescribed by the Board of Trade for cabin passengers (*l*).

Steerage passage.

"Steerage passage" includes passage of all passengers but cabin passengers (*m*).

Upper passenger deck.

"Upper passenger deck" means and includes the deck immediately beneath the upper deck, or the poop or round-house and deck-house when the number of passengers, whether cabin or steerage passengers, carried in the poop, round-house, or deck-house exceeds one-third of the total number of steerage passengers which the ship may lawfully carry on the deck next below (*n*).

Lower passenger deck.

"Lower passenger deck" means and includes the deck next beneath the upper passenger deck, not being an orlop deck (*o*).

Colonial voyage.

A "colonial voyage" means a voyage from any port in a British possession other than British India (*p*) or Hong Kong to any port whatever, where the distance between such ports exceeds four hundred miles or the duration of the voyage, as determined under the Merchant Shipping Act (*q*), 1894, Part III., exceeds three days (*r*).

SUB-SECT. 2.—*Surveys of Ships.*

(i.) *Passenger Steamers.*

Annual survey.

454. The owner of every passenger steamer (*s*) must cause her to be surveyed at least once a year by a ship surveyor and an

(*k*) By Board of Trade Notice dated the 23rd September, 1907, a voyage from the British Islands to the East Coast of North America is for this purpose three thousand miles, and to South Africa six thousand miles.

(*l*) M. S. Act, 1906, s. 14; for form of ticket, see Stat. R. & O., 1908, p. 614; Encyclopædia of Forms and Precedents, Vol XIV., pp. 138—146. The failure to give such a ticket does not seem to make a person, who is otherwise a cabin passenger, a steerage passenger for the purposes of the definition of "emigrant ship" (*Ellis* v. *Pearce* (1858), E. B. & E. 431).

(*m*) M. S. Act, 1894, s. 268 (4).

(*n*) *Ibid.*, s. 268 (5).

(*o*) *Ibid.*, s. 268 (6).

(*p*) For meaning of "British India," see Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 18 (4).

(*q*) See M. S. Act, 1894, ss. 366 (voyages from ports in British possessions), 368 (2) (b) (voyages from British India). As to length of voyage of an emigrant ship from the British Islands, see *ibid.*, s. 269, and Board of Trade Notice dated the 23rd September, 1907.

(*r*) M. S. Act, 1894, s. 270.

(*s*) *Ibid.*, s. 272. If the provisions as to survey and as to a certificate (as to which see pp. 333, 334, *post*) are not complied with, the master or owner is liable on summary conviction to a fine not exceeding £10 for every passenger carried, and the master or owner of any tender is liable to a like penalty for every passenger taken on board (M. S. Act, 1906 (6 Edw. 7, c. 48), s. 21); as to exemptions for certain foreign steamers, see M. S. Act, 1894, s. 363, and *quære* whether the effect of *ibid.*, s. 271, does not cut down the obligation for survey to passenger steamers carrying more than twelve passengers.

engineer surveyor (*t*), the former being, in the case of iron steamers, qualified in the opinion of the Board of Trade to survey iron steamers. Such surveyors, if satisfied by the survey that they can properly do so, must deliver to the owner declarations of survey, in a form approved by the Board of Trade (*a*), which the owner must within fourteen days of their receipt transmit to the Board of Trade (*b*). If the owner of a steamer feels aggrieved by a declaration of survey, or by the refusal to give a declaration, he may appeal to the court of survey of the port or district where the steamer then is, and the judge of that court must report to the Board of Trade on the question raised by the appeal (*c*). But no such appeal lies where the owner has exercised his right of appointing some other person to accompany the surveyor or surveyors and that person agrees in the result (*d*).

Passenger steamer's certificate.

455. The Board of Trade, on the receipt of the declarations of survey, if satisfied that the statutory requirements have been complied with, must, and on the report of a court of survey, if satisfied that the requirements of the report as well as of the statute have been complied with, may, issue in duplicate a passenger steamer's certificate (*e*). The Board must transmit this certificate to a superintendent or other public officer at the port selected by the owner, or where the owner or agent resides, or the steamer has been surveyed or is lying, and must give notice of the transmission to the master or owner or his agent, and the officer to whom the certificate was transmitted must deliver both copies to the master, owner, or agent on their application and payment of the proper fee. It is sufficient proof of the issue of a certificate to show its receipt by the officer and notice of transmission to the owner, master, or agent (*f*). A certificate is in force for a year from the date of issue or any less time specified in it, unless the Board of Trade gives notice that it has cancelled it (*g*). The Board may cancel a certificate if it has reason to believe that there was any fraud

(*t*) The survey may be made by the same person if he has been appointed both as ship and engineer surveyor (M. S. Act, 1906, s. 75 (3)); as to the appointment of surveyors, see M. S. Acts, 1894, s. 724; 1906, s. 75.

(*a*) M. S. Acts, 1894, s. 272; 1906, s. 75(1) (substituting "ship" surveyor for "shipwright" surveyor). For the particulars required to be contained in the declarations, see M. S. Act, 1894, s. 272 (3), (4).

(*b*) *Ibid.*, s. 273 (1). On failure to do so without reasonable cause, the owner becomes liable to forfeit not exceeding 10*s.* for each day of delay (*ibid.*, s. 273 (2), which makes the sum forfeited payable on the grant of the certificate of survey in addition to the fee).

(*c*) *Ibid.*, s. 275. This provision for appeal was held to oust the jurisdiction of the Court of Session, at least until after appeal (*Denny and Brothers* v. *Board of Trade* (1880), 7 R. (Ct. of Sess.) 1019). As to courts of survey and their procedure, see *ibid.*, ss. 487—489; title COURTS, Vol. IX., p. 107; p. 662, *post*.

(*d*) M. S. Act, 1894, s. 275 (4).

(*e*) *Ibid.*, ss. 274, 275 (2). For the statements to be contained in the certificate, see *ibid.*

(*f*) *Ibid.*, s. 276, which includes in the proper fee any other sums mentioned in the Act as payable on the grant of the certificate. By *ibid.*, s. 277, the fee is to be fixed by the Board of Trade, subject to the maximum specified in *ibid.*, Sched. IX., Part I.

(*g*) *Ibid.*, s. 278 (1).

SECT. 2. **Statutory Requirements.**

or error in any declaration upon which the certificate was founded, or that it was issued upon false or erroneous information, or that, since the declaration was made, the hull, equipments or machinery have been injured, or are otherwise insufficient (*h*). When a certificate has expired or been cancelled the Board may require its delivery up (*i*).

Exhibiting certificate.

456. The master or owner of every steamer required to have a certificate (*k*) must, on its receipt by him or his agent, have one of the copies at once posted up on board in a conspicuous place so as to be legible to all persons on board, and must have it kept so posted up and legible while it remains in force and the steamer is in use. Failure without reasonable cause to comply with this regulation renders the owner or master liable to a fine of not exceeding £10 for each offence; and if the steamer plies or goes to sea with passengers on board and the regulation is not complied with, the owner is liable to a fine not exceeding £100 and the master to a further fine not exceeding £20 (*l*).

Plying without certificate.

457. Unless the owner or master of a passenger steamer which carries more than twelve passengers has obtained a passenger steamer's certificate, the steamer may not ply or proceed to sea or on any voyage or excursion with any passengers on board, and if it should attempt to do so it may be detained until the certificate is produced to the proper officer of Customs (*m*); and the master or owner is also liable on a breach of this provision to a fine on summary conviction (*n*). But when a passenger steamer is abroad when her certificate expires, no fine for want of a certificate is incurred until she first begins to ply with passengers after her next return to the United Kingdom (*o*).

It is an offence for an owner or master of a passenger steamer to receive on board, or on any part of her, a number of passengers greater than the certificate allows (*p*).

It is a misdemeanour (*q*) knowingly and wilfully to make or assist in making a false declaration of survey or passenger steamer's certificate, or to forge or fraudulently to alter any such declaration or certificate.

(*h*) M. S. Act, 1894, s. 279 (1). In every such case the Board may require the owner to have a fresh survey of the hull, equipments or machinery, and to transmit fresh declarations of survey before reissuing the certificate or granting a fresh one (*ibid.*, s. 279 (2)).

(*i*) An owner or master who fails without reasonable cause to comply is liable to a fine not exceeding £10 (*ibid.*, s. 280).

(*k*) *I.e.*, a passenger steamer which carries more than twelve passengers, and which plies or proceeds to sea on any voyage or excursion with passengers on board, not being an emigrant ship, which has complied with the rules for survey of emigrant ships (*ibid.*, s. 271).

(*l*) *Ibid.*, s. 281.

(*m*) *Ibid.*, s. 271 (2).

(*n*) M. S. Act, 1906 (6 Edw. 7, c. 46), s. 21; see note (*s*), p. 332, *ante*.

(*o*) M. S. Act, 1894, s. 278 (2).

(*p*) The penalty is a fine not exceeding £20 for each offence, and in addition, a fine for every passenger above the number allowed (*ibid.*, s. 283). Where a passenger steamer has such an excess of passengers on board at any place, the master or owner is deemed to have received them on board at such place (M. S. Act, 1906, s. 22).

(*q*) M. S. Act, 1894, s. 282. For punishment, see *ibid.*, s. 680.

458. Where the Board of Trade is satisfied that the laws of a British possession provide for the grant of passenger steamers' certificates similar to those in the United Kingdom and after similar surveys, an Order in Council may declare that such certificates have the same force as those granted in the United Kingdom, and are subject, with or without modification, to the foregoing provisions, and may impose conditions or regulations with regard to the certificates, their use, delivery, and cancellation, and impose fines not exceeding £50 for breach of such conditions and regulations (*r*).

(ii.) *Emigrant Ships.*

Survey of emigrant ship.

459. An emigrant ship (*s*) which has no passenger steamer's certificate in force (*t*) must be surveyed at the expense of her owner or charterer, under the direction of the emigration officer (*a*), at the port of clearance, by at least two competent surveyors, and must be reported by them seaworthy and fit for the intended voyage before clearing outwards or proceeding to sea on a voyage (*b*).

The survey must be made before any cargo is loaded, except such as may be necessary for ballast, and that portion, if any, must be shifted at the request of the emigration officer or the surveyors so as to expose successively each part of the frame of the vessel (*c*).

Adverse report.

In case of an adverse report the owner or charterer may require the emigration officer to appoint three other competent surveyors, two at least being shipwrights, to survey at the expense of the owner or charterer. The officer must then appoint, and if these surveyors report unanimously that the ship is seaworthy and fit for her voyage, she may clear and proceed (*d*).

(*r*) M. S. Act, 1894, s. 284. The orders in force are:—Bengal, 17th October, 1884; Bombay, 26th June, 1884; New South Wales, 23rd November, 1893; New Zealand, 26th November, 1886; Queensland, 8th March, 1895; South Australia, 14th February, 1883; Tasmania, 21st November, 1895; Victoria, 8th March, 1895 (all in Stat. R. & O. Rev., Vol. VIII., Merchant Shipping, pp. 122—131); and Mauritius, 27th February, 1905 (Stat. R. & O., 1905, p. 208). The convention of the 20th January, 1914 (see note (*p*), p. 78, *ante*), provides for mutual recognition of certificates by the countries concerned.

(*s*) For definition, see p. 331, *ante*.

(*t*) M. S. Act, 1894, s. 289 (1).

(*a*) As to these officers, see *ibid.*, s. 355. As to the fees payable for survey, see *ibid.*, s. 360 (2). As to the equipment required, see *ibid.*, s. 290. Any person employed under *ibid.*, Part III., who demands or receives, directly or indirectly, otherwise than by direction of the Board of Trade, any fee, remuneration, or gratuity whatever in respect of any duty performed by him under *ibid.*, Part III., is liable for each offence to a fine not exceeding £50 (*ibid.*, s. 360 (3)).

(*b*) For the voyages to which this applies, see *ibid.*, ss. 364, 365; as to the exemption from survey of certain foreign vessels, *ibid.*, s. 363; as to the application of survey rules to British possessions, *ibid.*, s. 366 (3). The surveyors are appointed by the Board of Trade at any ports in the British Islands where there is an emigration officer, and at other ports by the Commissioners of Customs (*ibid.*, s. 289 (1)).

(*c*) *Ibid.*, s. 289 (2).

(*d*) *Ibid.*, s. 289 (3). If any of the above requirements are not complied

SECT. 2. SUB-SECT. 3.—*Equipment of Ships.*

Statutory Requirements.

460. In addition to the requirements stated elsewhere (*e*) as to compasses, and fire-extinguishing and life-saving appliances, a home-trade passenger steamer (*f*) must have such shelter for her deck passengers as the Board of Trade requires, and every passenger steamer must have a safety-valve to each boiler, so constructed as to be out of the control of the engineer when the steam is up, and, if this valve is in addition to the ordinary valve, so constructed as to have an area not less and a pressure not greater than the area of and pressure on the ordinary valve (*g*). Emigrant ships must be supplied with sufficient anchors and chains (*h*).

Deck shelter.

Safety valve.

Signals.

461. Every sea-going passenger ship must also be provided, to the satisfaction of the Board of Trade, with means for making signals of distress and with a proper supply of lights inextinguishable in water and attachable to lifebuoys (*i*).

Every ship must also be provided with lights and the means of making fog signals in conformity with the collision regulations (*j*), and the provisions as to inspection, notices and detention with regard to life-saving appliances apply (*k*). But in the case of lights and fog signals appeal may be made on the refusal of a certificate to the court of survey (*l*) in the port or district where the ship for the time being is, and the judge of the court is to report to the Board of Trade, who may, if satisfied that the requirements of the report and of the statute as to lights and fog signals have been complied with, grant or direct the grant of the certificate (*m*). No appeal lies if the owner has appointed some person to accompany the surveyor on his inspection, and that person and the surveyor agreed (*n*).

SUB-SECT. 4.—*Passenger's Contract.*

Contract tickets.

462. Any person, except the Board of Trade and persons acting for it and under its direct authority, who receives money from any person, for or in respect of a passage as a steerage passenger in

with the owner, charterer, or master is liable to a fine not exceeding £100 for each offence (M. S. Act, 1894, s. 289 (4)).

(*e*) See pp. 77, 78, *ante.*

(*f*) See M. S. Act, 1894, s. 742, for definition of "home-trade ship" and "home-trade passenger ship."

(*g*) *Ibid.*, s. 285 (3), (4). For penalties for breach, see *ibid.*, s. 285 (5); s. 286 forbids any person to increase the weight on the safety valve of a passenger steamer beyond the limits fixed by the surveyor, under penalty, in addition to any other liability incurred, not exceeding £100 ; compare also *ibid.*, s. 433, for a similar provision applying to all steamships.

(*h*) *Ibid.*, ss. 290, 363.

(*i*) *Ibid.*, s. 435 (1). If any such ship goes to sea from any port in the United Kingdom without being so provided, the owner, if in fault, is liable to a fine not exceeding £100, and the master, if in fault, to a fine not exceeding £50 (*ibid.*, s. 435 (2)).

(*j*) For these, see *ibid.*, s. 418 ; and see pp. 373 *et seq.*, *post.*

(*k*) M. S. Act, 1894, s. 420 (1), (3). For the fees chargeable for inspection, see *ibid.*, s. 420 (8).

(*l*) As to courts of survey, see *ibid.*, ss. 487—489 ; p. 662, *post.*

(*m*) M. S. Act, 1894, s. 420 (4), (5). By *ibid.*, s. 420 (6), costs of and incidental to such an appeal follow the event subject to any order made by the judge of the court of survey.

(*n*) *Ibid.*, s. 420 (7).

any ship (*o*), or as a cabin passenger in any emigrant ship proceeding from the British Islands to any port outside of Europe and not within the Mediterranean Sea, is to give to the person paying the same a contract ticket, signed by or on behalf of the owner, charterer, or master of the ship, and printed in plain and legible characters (*a*). The ticket is to be in a form approved by the Board of Trade and published in the *London Gazette*, and any directions contained in the ticket, not being inconsistent with the Merchant Shipping Act, 1894, are to be obeyed as if set forth in the Act (*b*). Such a ticket is not liable to stamp duty (*c*).

Any question arising as to breach or non-performance of any stipulation in such ticket may at the option of the passenger interested, whether cabin or steerage, be tried before a court of summary jurisdiction (*d*).

Production of ticket.

463. It is an offence for any passenger, either cabin or steerage, to fail without reasonable cause to produce, on demand of any emigration officer, his contract ticket, or for any owner, charterer, or master of a ship on like demand to fail without reasonable cause to produce, for the inspection of such officer and for the purposes of the Act, the counterpart of any contract ticket issued by him or on his behalf (*e*). Any person who, after the issue of a contract ticket and during the continuance of the contract of which that ticket is evidence, alters it or induces any person to part with it or renders it useless or destroys it, is liable, except in the case of the contract ticket of a cabin passenger who consents, to a fine (*f*).

SUB-SECT. 5.—*Number of and Accommodation for Passengers.*

Steerage passengers.

464. The number of steerage passengers carried in an emigrant ship must not exceed the number limited by the regulations issued by the Board of Trade (*g*), and if at or after the time of clearance a

(*o*) The provisions as to steerage passengers' contract tickets do not apply to colonial voyages (M. S. Act, 1894, s. 365 (1)); see p. 332, *ante*.

(*a*) To bring a case within this provision there must be a receipt of money paid for a specified passage commencing at a fixed time in a named ship (*Morris* v. *Howden*, [1897] 1 Q. B. 378).

(*b*) M. S. Act, 1894, s. 320 (1), (2). For form of ticket, see Stat. R. & O., 1908, pp. 614, 615. The "form" of the ticket covers the matters for which it makes provision, and provisions which have not been approved must not be included either on the form or on the back (*O'Brien* v. *Oceanic Steam Navigation Co.* (1913), 29 T. L. R. 629). The penalty for failure to comply with this provision is, for each offence, not exceeding £50 (M. S. Act, 1894, s. 320 (3)).

(*c*) *Ibid.*, s. 320 (4).

(*d*) *Ibid.*, s. 321 (1). Such court may award such damages and costs as it thinks just, not exceeding the amount of passage money specified in the ticket, and £20 in addition (*ibid.*). By *ibid.*, s. 321 (2), a passenger who has obtained compensation or redress under any other provision of the Act cannot recover damages under this provision in respect of the same matter; and by *ibid.*, s. 340, any right of action accruing to a steerage passenger in a ship or to any other person for breach or non-performance of any contract made between or on behalf of such steerage passenger or other person and the master, charterer, or owner of any such ship or his agent, or any passage broker, is preserved.

(*e*) *Ibid.*, s. 322; penalty for each offence, not exceeding £10 (*ibid.*).

(*f*) *Ibid.*, s. 323; penalty for each offence, not exceeding £20 (*ibid.*).

(*g*) For these, see Stat. R. & O., 1907, p. 674.

SECT. 2. Statutory Requirements.

greater number is on board such a ship, except as increased by births at sea, the master is liable to a fine (*h*).

The regulations of the Board of Trade as to the accommodation for steerage passengers, relating to the construction of passenger decks, to berths, to hospitals, to privies, and to the supply of light and ventilation are to be observed, and if any requirement in such regulations is not complied with in the case of an emigrant ship, the owner, charterer, or master, or any of them, is liable (*i*). No part of the cargo, or of the steerage passengers' luggage, or of the provisions, water, or stores, whether for the use of the steerage passengers or of the crew, is to be carried on the upper deck or on the passenger decks, unless in the opinion of the emigration officer at the port of clearance the same is so placed as not to impede light or ventilation, or to interfere with the comfort of the steerage passengers, nor unless the same is stowed and secured to the satisfaction of the emigration officer; and the space thereby occupied or rendered in the opinion of such officer unavailable for the accommodation of steerage passengers must, unless occupied by their luggage, be deducted in calculating the space by which the number of steerage passengers is regulated (*k*).

SUB-SECT. 6.—*Provisions, Water, and Stores.*

Provisions and water.

465. Every emigrant ship is to have on board for the steerage passengers provisions and water of good and wholesome quality, and in sweet and good condition, sufficient to secure the prescribed ration issues (*l*). Besides the pure water for each steerage passenger, water must be shipped for cooking purposes sufficient to supply ten gallons for every day of the length of the voyage for every hundred statute adults on board (*m*). There must also be shipped for the use of the crew and all other persons on board an ample amount of

(*h*) The fine is not to exceed £20 for each steerage passenger constituting such excess (M. S. Acts, 1894, s. 292; 1906, s. 17). By M. S. Act, 1894, s. 337, the same limit is placed on the number of steerage passengers on board of a ship bringing such passengers to the British Islands from any port out of Europe and not within the Mediterranean Sea, and in case of excess the master is liable to a fine not exceeding £10 for each statute adult (see p. 331, *ante*) constituting such excess.

(*i*) M. S. Acts, 1894, s. 293; 1906, s. 17. The penalty is £50. The master alone is liable to the fine where, in any such regulation, he is expressed to be alone liable (M. S. Act, 1894, s. 293 (2)). For the regulations, see Stat. R. & O., 1907, p. 674. They do not apply to ships carrying steerage passengers on a colonial voyage (see p. 322, *ante*) of less than three weeks' duration (M. S. Act, 1894, s. 365 (2)).

(*k*) *Ibid.*, s. 294 (1). If any requirement of *ibid.*, s. 294, is not complied with in the case of any emigrant ship, the owner, charterer, or master, or any of them, is liable for each offence to a fine not exceeding £300 (*ibid.*, s. 294 (2)).

(*l*) *Ibid.*, s. 295 (1). For the issues required, see the Scale and Regulations of the 2nd January, 1908, prescribed by the Board of Trade under the M. S. Act, 1906, s. 17 (Stat. R. & O., 1908, p. 636). As to distilled water, see the M. S. Act, 1894, s. 324 (iv.): note (*q*), p. 339, *post*.

(*m*) M. S. Act, 1894, s. 295 (2). The length of voyage is to be determined under *ibid.*, s. 269, by scales fixed by the Board of Trade. The scale now in force is contained in the Notice of the 23rd September, 1907 (Stat. R. & O., 1908, p. 635). As to statute adults, see p. 331, *ante*.

wholesome provisions and pure water, not inferior in quality to those provided for the steerage passengers (*n*). All the water and provisions mentioned are to be stowed away at the expense of the owner, charterer, or master (*o*).

Before clearance of an emigrant ship, a survey of the water and provisions required for the steerage passengers must be held by the emigration officer at the port of clearance, or by some competent surveyor appointed by him, and the officer must be satisfied that they conform to the requirements in quality, condition, and amount. If he considers that any part of the provisions or water fails in quality or condition he may reject and mark that part, or the packages or vessels containing it, and direct it to be landed or emptied (*p*).

The water to be placed on board emigrant ships is to be carried in tanks or casks approved by the emigration officer at the port of clearance; the casks are not to be of greater capacity than 300 gallons, and are to be sweet and tight, and of sufficient strength, and, if made of wood, properly charred inside, and the staves are not to be of fir, pine, or soft wood (*q*).

If an emigrant ship is intended to call at any intermediate port during the voyage to take in water, and an engagement to that effect is inserted in the master's bond (*r*), it is sufficient, subject to certain conditions, to ship at the port of clearance such a supply of water as the Act requires for the voyage to the intermediate port (*s*).

Issue of rations.

466. During the voyage, which includes the time of detention at any place before its termination, the master of every emigrant ship is

(*n*) M. S. Act, 1894, s. 295 (3).

(*o*) *Ibid.*, s. 295 (4). If an emigrant ship obtains a clearance without having the requisite quantities of water and provisions, the owner, charterer, or master, or any of them, is liable to a fine for each offence not exceeding £300 (*ibid.*, s. 295 (5)).

(*p*) *Ibid.*, s. 295 (6), (7). If this is not done, or if what is landed, or any part of it, is reshipped on the same ship, the owner, charterer, or master of the ship, or any of them, is liable to a fine for each offence not exceeding £100; the same penalty is incurred if it is shipped on any other emigrant ship by the person causing it to be so shipped (*ibid.*, s. 295 (8)).

(*q*) *Ibid.*, s. 296, which provides that on non-compliance the owner, charterer, or master is liable to a fine for each offence not exceeding £50. By *ibid.*, s. 324 (iv.), regulations may be made by Order in Council permitting distilling apparatus to be used on emigrant ships, and defining in such case the amount of fresh water to be carried in tanks and casks for steerage passengers. The order now in force is dated 25th January, 1908 (Stat. R. & O., 1908, p. 639).

(*r*) See as to this, pp. 343, 344, *post*.

(*s*) M. S. Act, 1894, s. 297. The conditions are: (1) that the emigration officer at the port of clearance approves in writing of the arrangement, that the approval is carried among the ship's papers exhibited at the intermediate port and delivered on the arrival of the ship at her final port of discharge to the chief officer of customs or British consular officer; (2) that if the length of either portion of the voyage is not determined under *ibid.*, Part III., it is declared by writing by the emigration officer at the port of clearance as part of his approval of the arrangement; (3) that the ship at the time of clearance has such tanks and water casks of the required description as are required for the longest of the aforesaid portions of the voyage (*ibid.*, s. 297).

SECT. 2. Statutory Requirements.

to issue to each steerage passenger, or, where the steerage passengers are divided into messes, to the head man for the time being of each mess on behalf and for the use of all its members, an allowance of pure water and sweet and wholesome provisions of good quality in accordance with the dietary scales prescribed by the Board of Trade (*t*). The Board of Trade may, by notice published in the *London Gazette*, add to these dietary scales any dietary scale which in its opinion contains in the whole the same amount of wholesome nutriment; and any dietary scale so added, inclusive of any regulations relating thereto, is to have effect so that the master of a ship may issue provisions according to either scale, whichever is mentioned in the contract ticket of the steerage passenger (*a*).

The master of every emigrant ship is, on request, to produce to any steerage passenger for his perusal a copy of the scale of provisions to which that person is entitled (*b*), and is to post up copies of the scale in at least two conspicuous places between the decks on which steerage passengers may be carried, and must keep them posted so long as any steerage passenger is entitled to remain in the ship (*c*).

Medical stores.

467. The owner or charterer of every emigrant ship is to provide for the use of the steerage passengers the following medical stores: namely, medicines, medical comforts, instruments, disinfectants and other things proper and necessary for diseases and accidents incidental to sea voyages, and for the medical treatment of the steerage passengers during the voyage, with written directions for the use of such medical stores. The stores must be, in the judgment of the emigration officer at the port of clearance, good in quality, and sufficient in quantity for the probable exigencies of the intended voyage, and must be properly packed and placed under the charge

(*t*) M. S. Acts, 1894, s. 298 (1); 1906, ss. 17, 85, Sched. II. As to the scale, see none (*l*), p. 338, *ante*. The rule as to the issue of provisions, except as to the issue of water, do not apply on a colonial voyage of less than three weeks' duration to any steerage passenger who has contracted to supply his own provisions (M. S. Act, 1894, s. 365 (3)).

(*a*) *Ibid.*, s. 298 (2); M. S. Act, 1906, ss. 17, 85, Sched. II. If any of the requirements of the M. S. Act, 1894, s. 298, are not complied with in the case of an emigrant ship, the master of the ship is liable for each offence to a fine not exceeding £50 (*ibid.*, s. 298 (3)). By *ibid.*, s. 338, the same regulations under the same penalty are applied to ships bringing steerage passengers to the British Islands from any port outside Europe and not within the Mediterranean sea.

(*b*) The Board of Trade may, if it thinks fit, dispense with any specified requirements if equally effective provision is otherwise made (M. S. Act, 1906, s. 78).

(*c*) *Ibid.*, s. 18 (1). The master is liable to a fine of 40*s.* for every day during default; and to the same fine if he fails to produce a copy of the scale (*ibid.*, s. 18 (2)). The obligation of the master under *ibid.*, s. 18, is in addition to, and not in derogation of, any obligation he may be under in pursuance of the M. S. Act, 1894, s. 361 (M. S. Act, 1906, s. 18 (4)). Any person who displaces or defaces any copy of the scale posted under *ibid.*, s. 18, is liable to a fine of 40*s.* (*ibid.*, s. 18 (3)). For similar requirements and penalties with reference to production and posting of the M. S. Act, 1894, Part III., on emigrant ships proceeding from the British Islands to any British possession, see *ibid.*, s. 361. Ships carrying steerage passengers on a colonial voyage are exempt (*ibid.*, s. 365 (1)).

of the medical practitioner, where there is one on board, to be used at his discretion (*d*).

An emigrant ship may not clear outwards or proceed to sea unless a medical practitioner appointed by the emigration officer at the port of clearance has inspected the medical stores and certified to the emigration officer that they are sufficient in quantity and quality, or unless the emigration officer, in case he cannot on any particular occasion obtain the attendance of a medical practitioner, gives written permission for the purpose (*e*).

SUB-SECT. 7.—*Medical Officer and Crew.*

When doctor must be carried.

468. Subject to any regulations made by Order in Council (*f*), a duly authorised (*g*) medical practitioner must be carried on board an emigrant ship where the number of steerage passengers on board exceeds 50, and also where the number of persons on board, including cabin passengers, officers and crew, exceeds 300 (*h*).

When the majority of the steerage passengers in any emigrant ship, or so many as 300 of them, are foreigners, any medical practitioner, whether authorised or not, may, if approved by the emigration officer, be carried therein (*i*).

Where a medical practitioner is carried on board an emigrant ship, he is to be rated on the ship's articles (*k*).

Steward and cook.

469. Every emigrant ship which carries as many as 100 steerage passengers must carry a steerage steward, who must be rated on the ship's articles, and must be a seafaring man and be approved by the emigration officer at the port of clearance. This steward is to be employed in messing and serving out provisions to the steerage passengers, and in assisting to maintain cleanliness, order and good discipline among them, and is not to assist in any way in navigating or working the ship (*l*). Every emigrant ship which carries as many as 100 steerage passengers must also carry one steerage cook,

(*d*) M. S. Act, 1894, s. 300 (1), (2). In case of non-compliance the master is liable to a fine of £50 (*ibid.*, s. 300 (3)).

(*e*) *Ibid.*, s. 300 (4). On non-compliance the master is liable to a fine of £100 (*ibid.*, s. 300 (5)).

(*f*) As to these, see *ibid.*, s. 324.

(*g*) A medical practitioner is not to be considered to be duly authorised for the purposes of the Act unless : (a) he is authorised by law to practise as a legally qualified medical practitioner in some part of His Majesty's dominions or, in the case of a foreign ship, in the country to which that ship belongs ; and (b) his name has been notified to the emigration officer at the port of clearance and has not been objected to by him ; and (c) he is provided with proper surgical instruments to the satisfaction of that officer (*ibid.*, s. 303 (2)).

(*h*) *Ibid.*, s. 303 (1).

(*i*) *Ibid.*, s. 303 (3).

(*k*) *Ibid.*, s. 303 (4). On non-compliance, the master is liable to a fine of £100 ; and if a person proceeds, or attempts to proceed, as medical officer in any emigrant ship without being duly authorised or contrary to the requirements of *ibid.*, s. 303, that person and anyone aiding and abetting him is liable to the like fine (*ibid.*, s. 303 (5), (6)). The provisions as to carrying a medical practitioner do not apply on a colonial voyage whose duration is less than three weeks (*ibid.*, s. 365 (2) (b)).

(*l*) *Ibid.*, s. 304 (1).

SECT. 2. Statutory Requirements.

and if carrying more than 300 statute adults, two steerage cooks. They must be seafaring men, and be rated and approved as in the case of steerage stewards, and must be employed in cooking the food of the steerage passengers (*m*). In every such ship a convenient place for cooking must be set apart on deck, and a sufficient cooking apparatus, properly covered in and arranged, must be provided to the satisfaction of the emigration officer at the port of clearance, with a proper supply of fuel, adequate in his opinion for the intended voyage (*n*).

Interpreters.

470. Every foreign emigrant ship in which as many as one-half of the steerage passengers are British subjects, must, unless the master and officers, or not less than three of them, understand English and speak it intelligibly, carry, if the number of steerage passengers does not exceed 250, one person, and if it exceeds 250, two persons, who understand and speak intelligibly both English and the language spoken by the master and crew. These persons are to act as interpreters and to be employed exclusively in attendance on the steerage passengers and not in working the ship, and no such ship is to clear outwards or proceed to sea without such an interpreter on board (*o*).

SUB-SECT. 8.—*Requirements before Sailing.*

(i.) *Medical Inspection.*

Emigrant ships.

471. An emigrant ship may not clear outwards (*p*) or proceed to sea until a medical practitioner appointed by the emigration officer at the port of clearance has inspected all the steerage passengers and crew about to proceed in the ship, and has certified to the satisfaction of that officer that none of the steerage passengers or crew appear to be by reason of any bodily or mental disease unfit to proceed or likely to endanger the health or safety of the other persons about to proceed in the ship (*q*). The inspection must take place either on board the ship or, in the discretion of the emigration officer, at such convenient place on shore before embarkation as he appoints, and the master, owner or charterer of the ship must pay to the emigration officer in respect of the inspection such fee as the Board of Trade determines (*r*).

(*m*) M. S. Act, 1894, s. 304 (2). By the M. S. Act, 1906, s. 27, in addition to the cook required by the M. S. Act, 1894, s. 304, certain ships must be provided with and carry a duly certificated cook as ship's cook; see p. 44, *ante*. These provisions as to stewards and cooks and cooking apparatus do not apply to a colonial voyage of less than three weeks' duration (M. S. Act, 1894, s. 365 (2) (b)). As to statute adults, see p. 331, *ante*.

(*n*) *Ibid.*, s. 304 (3).

(*o*) *Ibid.*, s. 304 (4). On failure to comply, the master is liable to a fine of £50 (*ibid.*, s. 304 (5)).

(*p*) As to clearances see p. 81, *ante*.

(*q*) M. S. Act, 1894, s. 306 (1). If the emigration officer cannot on any particular occasion obtain the attendance of a medical practitioner, the ship may clear or proceed to sea on the emigration officer giving written permission (*ibid.*). As to facilities for inspection, see *ibid.*, s. 315.

(*r*) *Ibid.*, s. 306 (2). The fee must not exceed 20*s.* for every hundred persons or fraction of a hundred persons inspected (*ibid.*). On failure in

Dealing with sick person.

472. If the emigration officer is satisfied that any person on board or about to proceed in any emigrant ship is by reason of sickness unable to proceed, or is for that or any other reason in a condition likely to endanger the health or safety of the persons on board, he must prohibit the embarkation of that person, or, if he is embarked, must require him to be relanded. And if the emigration officer is satisfied that it is necessary, for the purification of the ship or otherwise, that all or any of the persons on board should be relanded, he may require the master of the ship to reland those persons, with so much of their effects and with such members of their families as cannot in the judgment of the emigration officer be properly separated from them (*s*). Any person who embarks when so prohibited to embark, or fails without reasonable cause to leave the ship when so ordered to be relanded, may be summarily removed (*t*).

Upon such relanding, the master of the ship must pay to each steerage passenger so relanded, or if he is lodged and maintained in any hulk or establishment under the superintendence of the Board of Trade, then to the emigration officer at the port, subsistence money at the rate of 1*s.* 6*d.* per day for each statute adult, until he has been re-embarked or declines or neglects to proceed, or until his passage money, if recoverable as mentioned below, is returned to him (*u*).

Recovery of passage money.

473. Where a person has been relanded from an emigrant ship on account of the sickness either of himself or of any member of his family, and is not re-embarked or does not finally sail on that ship, he, or any emigration officer on his behalf, is entitled, on delivery up of his contract ticket, and notwithstanding that the ship has not sailed, to recover summarily, in the case of a steerage passenger, the whole, or in the case of a cabin passenger one-half of the moneys paid by or on account of the passenger and of the members of his family relanded, from the person to whom the same was paid, or from the owner, charterer, or master of the ship, or any of them, at the option of the person recovering the same (*a*).

(ii.) *Master's Bond.*

Master's bond.

474. Before an emigrant ship clears outwards or proceeds to sea, the master, together with the owner or charterer, or in the event of the owner or charterer being absent or being the master, one other good and sufficient person approved by the chief officer of

the case of any emigrant ship to comply with the requirements of M. S. Act, 1894, s. 306, the master is liable for each offence to a fine not exceeding £100 (M. S. Act, 1894, s. 306 (3)).

(*s*) *Ibid.*, s. 307 (1). If any requirement of *ibid.*, s. 307, is not complied with in the case of an emigrant ship, the master, owner, or charterer of the ship, or any of them, is liable for each offence to a fine not exceeding £200 (*ibid.*, s. 307 (2)).

(*t*) *Ibid.*, s. 307 (3). Such person is liable to a fine not exceeding 40*s.* for each day during which he remains on board after such prohibition or requirement (*ibid.*).

(*u*) *Ibid.*, s. 307 (4). As to statute adults, see p. 331, *ante*.

(*a*) M. S. Act, 1894, s. 308.

SECT. 2. Statutory Requirements.

customs at the port of clearance, must enter into a joint and several bond, called the master's bond, in the sum of £2,000 to the Crown. The bond is to be executed in duplicate and is not liable to stamp duty. If neither the owner nor the charterer resides in the British Islands, the bond is to be for £5,000 instead of £2,000, and is to contain an additional condition for payment to the Crown as a Crown debt of all expenses incurred under the Act in rescuing, maintaining, and forwarding to their destination any steerage passengers carried in the ship who, by reason of shipwreck or any other cause, except their own neglect or default, are not conveyed by or on behalf of the owner, charterer or master to their intended destination (*b*).

Where an emigrant ship is bound to a British possession, the chief officer of customs at the port of clearance must certify on one part of the master's bond that it has been duly executed by the master and the other person bound, and must forward it to the governor of that possession or to such person as the governor shall appoint for that purpose (*c*).

(iii.) *Passenger Lists.*

Passenger lists.

475. The master of every ship carrying steerage passengers on a voyage from the British Islands to any port out of Europe, and not within the Mediterranean Sea, or on a colonial voyage (*d*), must before demanding a clearance for his ship (*e*) sign in duplicate a passengers' list; that is to say, a list correctly setting forth the name and other particulars of the ship, and of every passenger, cabin or steerage, on board of her (*e*). This list is to be counter-

(*b*) M. S. Act, 1894, s. 309. The provisions as to the master's bond do not apply to colonial voyages (*ibid.*, s. 365 (1) (a)). For the present form of bond, see Nos. 1 and 1A of Forms prescribed by the Board of Trade, 21st May, 1908, under the M. S. Act, 1906, ss. 17, 85, Sched. II. (Stat. R. & O., 1908, pp. 616, 617). By M. S. Act, 1906, s. 20, the Board of Trade may, on the application of the owner of any emigrant ship, allow the bond to be given in the form of a continuing bond as regards that ship, and may make regulations for adapting the provisions of the M. S. Act, 1894, ss. 309, 310, to continuing bonds and prescribing conditions under which continuing bonds may be made. For these regulations and form of continuing bond, see Regulations and Forms prescribed by the Board of Trade dated the 24th October, 1909 (Stat. R. & O., 1908, p. 629).

(*c*) M. S. Act, 1894, s. 310 (1). Such certificate is, in any court of a British possession in which the bond is put in suit, conclusive evidence of its due execution by the master and other person bound, and there is no need to prove the handwriting of the customs officer who signed the certificate, nor that he was when he signed it chief officer of customs at the port of clearance (*ibid.*, s. 310 (2)). Any such bond is not to be put in suit in a British possession after the expiration of three months next after the arrival of the ship in that possession, nor in the British Islands after the expiration of twelve months next after the return of the ship and of the master to the British Islands (*ibid.*, s. 310 (3)). By M. S. Act, 1906, s. 20 (3), the provisions of the M. S. Act, 1894, s. 310 (3), are to have effect with respect to every voyage of an emigrant ship during the continuance of a continuing bond (as to which see note (*b*), *supra*), and references to the arrival and return of the ship are to be construed as references to the arrival of the ship and the return of the ship after any voyage, so far as respects matters happening during or in connexion with the voyage.

(*d*) For definition of a colonial voyage, see p. 332, *ante*.

(*e*) M. S. Act, 1894, s. 311 (1). For the form, see No. 2 of Forms

signed by the emigration officer, if there is one at the port, and then delivered by the master to the officer of customs from whom a clearance is demanded, who is to countersign and return one duplicate, called the master's list, and retain the other (*f*).

If at any time after the passengers' list has been so signed and delivered any additional passenger, whether cabin or steerage, is taken on board, the master must add to the master's list, and also enter on a separate list signed by him the names and other particulars of every such additional passenger. This separate list must be countersigned by the emigration officer, where there is one at the port, and must, together with the master's list to which the addition has been made, be delivered to the chief officer of customs at the port, who must thereupon countersign the master's list and return it to the master, retaining the separate list, and so on in like manner whenever any additional passenger is taken on board. If there is no officer of customs stationed at the port where an additional passenger is taken on board, these lists are to be delivered to the officer of customs at the next port having such an officer at which the vessel arrives, to be dealt with as above mentioned. When any additional passenger is taken on board, the master must, before the ship proceeds to sea, obtain a fresh certificate from the emigration officer of the port that the prescribed requirements have been complied with (*g*).

476. If any person is found on board an emigrant ship with intent to obtain a passage therein without the consent of the owner, charterer or master, he, as well as any person aiding and abetting him, is liable to a fine, and in default of payment to imprisonment, and may be taken without warrant before a justice of the peace, who may try the case in a summary manner (*h*). If any person travels or attempts to travel in any passenger steamer without first paying his fare and with intent to avoid payment thereof, he may be dealt with in a similar manner (*i*). Stowaways.

SUB-SECT. 9.—*Carriage of Cattle and Dangerous Cargo.*

477. An emigrant ship may not clear outwards or proceed to sea if there is on board (1) as cargo, any article which is an explosive within the meaning of the Explosives Act, 1875 (*k*), or any vitriol, lucifer matches, guano or green hides, or (2) as cargo or ballast, any article or articles which by reason of their nature, quantity or mode Prohibited cargoes.

prescribed by the Board of Trade, 21st May, 1908, under M. S. Act, 1906, ss. 17, 85, Sched. II. (Stat. R. & O., 1908, p. 619).

(*f*) M. S. Act, 1894, s. 311 (2). If any requirement of *ibid.*, s. 311, to be complied with by the master is not complied with in the case of any ship, or any passengers' list is wilfully false, the master for each offence is liable to a fine not exceeding £100 (*ibid.*, s. 311 (3)).

(*g*) *Ibid.*, s. 312 (1)—(4). If any requirement of *ibid.*, s. 312, is not complied with in the case of any ship, the master is liable for each offence to a fine not exceeding £50 (*ibid.*, s. 302 (5)).

(*h*) *Ibid.*, s. 313. The fine may be £20, and imprisonment, in default, may be three months with or without hard labour (*ibid.*).

(*i*) *Ibid.*, s. 287. Penalty not exceeding 40*s.*, without prejudice to the recovery of the fare. See p. 329, *ante*.

(*k*) Explosives Act, 1875 (38 & 39 Vict. c. 17), ss. 3, 104, 106.

SECT. 2. Statutory Requirements.

of stowage are either singly or collectively in the opinion of the emigration officer (*l*) at the port of clearance likely to endanger the health or lives of the steerage passengers or the safety of the ship, or (3) as cargo, horses, cattle or other animals mentioned in the regulations prescribed by the Board of Trade (*m*), unless they are carried on the conditions stated in those regulations (*n*). But a Secretary of State may by order under his hand authorise the carriage as cargo in any emigrant ship, subject to any conditions and directions specified in the order, of naval and military stores for the public service (*o*). The order is to be addressed to and countersigned by the emigration officer, and delivered to the master of the ship to which it refers, who is to deliver it up to the chief officer of customs at the port where the stores are discharged (*p*). The master must comply with all the conditions and directions in the order (*q*).

SUB-SECT. 10.—*Breach of Contract of Carriage.*

Recovery of passage money.

478. Where a contract has been made by or on behalf of any steerage passenger for a passage in a ship proceeding on a voyage from the British Islands to any port out of Europe and not within the Mediterranean Sea, or proceeding on a colonial voyage (*r*), and such passenger is at the place of embarkation before the hour fixed in his contract, or, if no hour is so fixed, before any hour fixed for embarkation of which he has received not less than twenty-four hours' notice, and the stipulated passage money has, if required, been paid, then if such passenger from any cause whatever other than his own refusal, neglect, or default, or the prohibition of an emigration officer, or the requirement of an Order in Council, is not received on board the ship before such hour, or, having been received on board, does not either obtain a passage in the ship to the port at which he has contracted to land or, together with all the immediate members of his family who are included in the contract, obtain a passage to the same port in some other equally eligible ship to sail within ten days from the expiration of the proper day of embarkation, and is not paid subsistence money at the prescribed rate and from the prescribed time (*s*), such steerage passenger, or any emigration officer on his behalf, may recover summarily (*t*) all money paid by or on account of the

(*l*) If the emigration officer uses his discretion *bonâ fide*, no action will lie for damage caused by the exercise of such discretion; see *Steel* v. *Schomberg* (1855), 4 E. & B. 620.

(*m*) For these, see Stat. R. & O., 1907, p. 674.

(*n*) M. S. Acts, 1894, s. 301 (1); 1906, ss. 17, 85, Sched. II. The penalty for any offence against the requirements of these provisions is a fine not exceeding £300 on the owner, charterer, or master, or any of them (M. S. Act, 1894, s. 301 (2)).

(*o*) *Ibid.*, s. 302 (1).

(*p*) *Ibid.*, s. 302 (2).

(*q*) *Ibid.*, s. 302 (3). A master who fails to do so is liable to a fine not exceeding £300 for each offence (*ibid.*).

(*r*) As defined by *ibid.*, s. 270; see p. 332, *ante*.

(*s*) See p. 347, *post*.

(*t*) This provision does not take away from the steerage passenger his right of action (M. S. Act, 1894, s. 340).

passenger for his passage, together with such further sum, not exceeding £10 in respect of each such steerage passenger, as to the court seems a reasonable compensation for the loss or inconvenience caused to the passenger by the loss of his passage. This money and sum may be recovered either from any person to whom or on whose account any money has been paid under the contract, or, if the contract has been made with the owner, charterer, or master of the ship, or with any person acting on behalf or by the authority of any of them, then, at the option of the passenger or emigration officer, from the owner, charterer, or master or any of them (*u*).

Subsistence money.

479. If any ship, whether an emigrant ship or not, does not actually put out to sea and proceed on her intended voyage before three o'clock in the afternoon of the day next after the day of embarkation appointed in the contract, the owner, charterer, or master of the ship, or his agent or any of them, must until the ship finally proceeds on her voyage pay to every steerage passenger entitled to a passage in the ship subsistence money at the rate of 1*s.* 6*d.* for each of the first ten days of detention and 3*s.* for each subsequent day for each statute adult (*v*). But where the steerage passengers are maintained on board as if the voyage had commenced subsistence money is not payable for the first two days after the proper day of embarkation; nor is any subsistence money payable during any part of a period of detention of the ship caused by wind or weather or any cause not attributable in the opinion of the emigration officer to the act or default of the owner, charterer, or master (*w*).

Unlawful landing.

480. If a steerage passenger is landed from any ship, whether an emigrant ship or not, at any other port than that at which he has contracted to land, unless with his previous consent or unless the landing is rendered necessary by perils of the sea or other unavoidable accident, the master is liable to a fine (*x*).

SUB-SECT. 11.—*Requirements on Arrival.*

End of voyage.

481. For at least forty-eight hours after his arrival at the end of his voyage every steerage passenger in an emigrant ship (*y*) is entitled to sleep in the ship, and to be provided for and maintained on board in the same manner as during the voyage, unless within that period the ship leaves the port in further prosecution of her voyage (*a*).

(*u*) M. S. Act, 1894, s. 328.

(*v*) *Ibid.*, s. 329 (1). If the steerage passenger is lodged and maintained in any hulk or establishment superintended by the Board of Trade, the subsistence money is to be paid to the emigration officer at the port of embarkation (*ibid.*).

(*w*) *Ibid.*, s. 329 (2).

(*x*) The fine may be £50 (*ibid.*, s. 330).

(*y*) These provisions do not apply in the case of a colonial voyage of less than three weeks' duration (*ibid.*, s. 365 (2)).

(*a*) *Ibid.*, s. 327 (1). The master of any emigrant ship, if *ibid.*, s. 327, is not complied with, is liable to a fine for each offence not exceeding £5 (*ibid.*, s. 327 (2)).

SECT. 2. **Statutory Requirements.**

List of steerage passengers.

482. The master of every ship bringing steerage passengers to the British Islands from any port out of Europe and not within the Mediterranean Sea must, within twenty-four hours after arrival, deliver to the emigration officer at the port of arrival a correct list signed by the master specifying the age, name, and calling of every steerage passenger, and the port at which he embarked, and showing also any birth which has occurred amongst the steerage passengers, and the name and supposed cause of death of any steerage passenger who has died (*b*).

SUB-SECT. 12.—*Provisions in Case of Wreck.*

Maintenance of delayed or wrecked steerage passengers.

483. When an emigrant ship (1) has while in any port in the British Islands or after the commencement of the voyage been wrecked or otherwise rendered unfit to proceed on her intended voyage, and any steerage passengers have been brought back to any such port, or (2) has put into any such port in a damaged state, her master, owner, or charterer must, within forty-eight hours, give to the nearest emigration officer a written undertaking as follows:—In case (1) that such owner, master, or charterer will embark and convey the steerage passengers in some other eligible ship to sail within six weeks of the date of the undertaking to the port for which their passage has been taken; and in case (2) that the ship will be made seaworthy and fit in all respects for her intended voyage, and will within six weeks of the date of the undertaking sail again with the steerage passengers (*c*).

In either of these cases, the owner, charterer, or master must, until the steerage passengers proceed on their voyage, either lodge and maintain them on board in the same manner as if they were at sea, or pay to them subsistence money at the rate of 1*s.* 6*d.* a day for each statute adult (*d*).

Recovery of passage money.

484. If the substituted or the damaged ship, as the case may be, does not sail within the six weeks named, or the statutory requirements are not complied with, any steerage passenger, or any emigration officer on his behalf, may recover summarily all money paid by or on account of the passenger for the passage from the person to or on account of whom it was paid, or from the owner, charterer, or master of the ship at the option of the passenger or emigration officer (*e*).

Removal of passengers.

If the emigration officer thinks it necessary, he may direct that the steerage passengers be removed from any damaged emigrant ship at the master's expense (*f*).

(*b*) M. S. Act, 1894, s. 336 (1). The master, on non-delivery of a list or on delivering one wilfully false, is liable to a fine for each offence not exceeding £50 (*ibid.*, s. 336 (2)).

(*c*) *Ibid.*, s. 331 (1).

(*d*) *Ibid.*, s. 331 (2). If the steerage passengers are lodged and maintained in any hulk or establishment under the superintendence of the Board of Trade, the subsistence money is to be paid to the emigration officer at the port (*ibid.*).

(*e*) *Ibid.*, s. 331 (3). The statutory requirements are those of *ibid.*, s. 331.

(*f*) *Ibid.*, s. 331 (4). Any steerage passenger who thereafter refuses to leave the ship is liable for each offence to a fine not exceeding 40*s.*, or imprisonment not exceeding one month (*ibid.*).

Forwarding passengers.

485. If any passenger, whether cabin or steerage, is taken off any ship which is carrying any steerage passenger on a voyage from any part of His Majesty's dominions and is damaged, wrecked, sunk, or otherwise destroyed, or if any such passenger is picked up at sea from any boat, raft or otherwise, the expense incurred may be defrayed in the United Kingdom by a Secretary of State, in a British possession by the governor, or in a port elsewhere by the British consular officer (*g*).

If any passenger, whether cabin or steerage, from any ship which is carrying any steerage passenger on a voyage from any port in His Majesty's dominions, finds himself, without any neglect or default of his own, at any port outside the British Islands other than that for which the ship was originally bound, or at which he or anyone on his behalf has contracted that he should land, the governor of a British possession, or any person authorised by him, or the British consular officer, if the place is elsewhere, may forward the passenger to his intended destination, unless the master of the ship, within forty-eight hours of the arrival of the passenger, gives to the governor or consular officer, as the case may be, a written undertaking to forward or convey the passenger to his original destination within six weeks thereafter and carries out such undertaking (*h*). A passenger so forwarded is not entitled to the return of his passage money or to any compensation for loss of passage (*i*). All expenses thus incurred in respect of a wrecked passenger or forwarding a passenger to his destination, including the cost of maintaining the passenger until forwarded to his destination, and of all necessary bedding, provisions, and stores, are a joint and several debt to the Crown from the owner, charterer, and master of the ship on board of which the passenger had embarked (*k*); and in any proceeding for the recovery of that debt a certificate (*l*) purporting to be under the hand of a Secretary of State, governor, or consular officer, and stating the circumstances of the case and the total amount of the expenses, is admissible in evidence (*m*), and is sufficient evidence of the amount of the expenses and of the fact that they were duly incurred, unless the defendant specially pleads and duly proves that the certificate is false and fraudulent, or that the expenses were not duly incurred under the Act (*n*); but the sum so recovered is not to exceed twice the total passage money in respect of the whole number of passengers who embarked in the ship (*o*).

Insurance in respect of steerage passengers.

486. A policy of insurance may be effected in respect of any steerage passenger, or of any steerage passage or compensation

(*g*) M. S. Act, 1894, s. 332.
(*h*) *Ibid.*, s. 333 (1).
(*i*) *Ibid.*, s. 333 (2). The return and compensation are provided for by *ibid.*, s. 328; see also *ibid.*, s. 340, as to the preservation of rights of action generally.
(*k*) *Ibid.*, s. 334 (1).
(*l*) For form of certificate, see Stat. R. & O., 1908, p. 625; and M. S. Acts, 1894, s. 360; 1906, ss. 17 (2), 85, Sched. II.
(*m*) M. S, Act, 1894, ss. 334 (2), 695.
(*n*) *Ibid.*, s. 334 (2).
(*o*) *Ibid.*, s. 334 (3).

SECT. 2. Statutory Requirements.

money, and may be made to cover all liabilities to provide such passage or to pay such money, or any other similar liabilities imposed on masters, charterers, or owners (*p*).

SUB-SECT. 13.—*Passage Brokers.*

Definition.

487. Any person who sells or lets (*q*), or agrees to sell or let, or is in anywise concerned in the sale or letting of steerage passages in any ship proceeding from the British Islands (*r*) to any place outside Europe not within the Mediterranean Sea, is a passage broker (*s*), and the acts and defaults of any person acting under the authority or as agent of a passage broker are deemed also the acts and defaults of the passage broker (*t*).

Broker must be licensed.

488. No person may act, directly or indirectly, as a passage broker unless he has entered, with two good and sufficient sureties appointed by the emigration officer nearest to his place of business, into a joint and several bond (*a*) with the Crown in the sum of £1,000 and holds a licence for the time being in force so to act (*b*).

Obtaining licence.

489. To obtain a licence application must be made to the licensing authority (*c*) for the place where the applicant has his place of business, who, if satisfied by the applicant that he has

(*p*) M. S. Act, 1894, s. 335; *Gibson* v. *Bradford* (1855), 4 E. & B. 586; *Willis* v. *Cooke* (1855), 5 E. & B. 641; and see title INSURANCE, Vol. XVII., p. 369.

(*q*) The sale or letting must be of a passage in a named ship for a definite voyage to commence at a definite time (*Morris* v. *Howden*, [1897] 1 Q. B. 378). But a contrary view was expressed in *Hart* v. *Hunter* (1906), 5 Adam, 1.

(*r*) M. S. Act, 1894, s. 341 (1), which enacts that he is a passage broker for the purposes of *ibid.*, Part III. By the M. S. Act, 1906, s. 23, the provisions as to passage brokers are applied to any person who at any place in the British Islands sells or lets, or agrees to sell or let, or is in anywise concerned in the sale or letting of, steerage passages from any place in Europe not within the Mediterranean Sea.

(*s*) By the M. S. Act, 1894, s. 365 (1), the provisions as to passage brokers do not apply to ships carrying steerage passengers on a colonial voyage.

(*t*) By *ibid.*, s. 341 (2), they are to be so deemed "for the purposes of this Act."

(*a*) For form of bond and licence, see Nos. 4 and 5 of the Forms prescribed by the Board of Trade, 21st May, 1908, under the M. S. Act, 1906, s. 17 (Stat. R. & O., 1908, pp. 625, 626).

(*b*) M. S. Act, 1894, s. 342 (1). The officer may in lieu of two sureties accept the bond of any guarantee society approved by the Treasury (*ibid.*, s. 342 (3)). The bond, which must be renewed on each occasion of obtaining a licence, and is not liable to stamp duty, is to be executed in duplicate, one part being deposited with the Board of Trade and the other with the emigration officer. For form of such a bond, see No. 17 of Forms prescribed by the Board of Trade under the M. S. Act, 1906, s. 17 (Stat. R. & O., 1910, p. 455); M. S. Act, 1894, s. 342 (2). Any person failing to comply with the above-mentioned requirements is liable for each offence to a penalty not exceeding £50, but the Board of Trade, and any person contracting with the Board or acting under its authority, and any passage broker's duly appointed agent, are exempt (*ibid.*, s. 342 (4), (5)).

(*c*) By *ibid.*, s. 343 (3), the "licensing authority" is, in the administrative county of London, the justices of the peace at petty sessions; elsewhere in England, the council of a county borough or county district; in Scotland, the sheriff; and in Ireland, the justices of the peace in petty sessions.

entered into the bond and deposited one part of it, and has given the Board of Trade at least fourteen clear days' notice of his intention to apply, may grant the licence, and must on so doing notify the Board of Trade forthwith (*d*). The licence remains in force, unless forfeited, for thirty-one days after the 31st December of the year in which it is granted (*e*).

Broker's agents.

490. A passage broker may not employ as an agent in his business as such any person who does not hold from him an appointment signed by him and countersigned by the emigration officer at the port nearest to his place of business, which the agent must on request produce to any emigration officer or any person treating for a steerage passage (*f*).

A passage broker must keep exhibited in some conspicuous place in his office or place of business a correct list in legible characters containing the names and addresses in full of every person for the time being authorised to act as agent or emigrant runner (*g*) for him, and must on or before the fifth day, or, if the fifth day be Sunday, the fourth day of each month, transmit a true copy of that list signed by him to the emigration officer nearest his place of business, to whom he must also report every discharge or fresh engagement of an agent or emigrant runner within twenty-four hours of its taking place (*h*).

SUB-SECT. 14.—*Emigrant Runners.*

Soliciting emigrants.

491. Any person other than a licensed passage broker or his *bonâ fide* salaried clerk who, in or within five miles of the outer boundaries of any port, for hire or reward, or the expectation thereof, directly or indirectly conducts, solicits, influences or recommends any intending emigrant to or on behalf of any passage broker or any owner, charterer or master of a ship, or any keeper of a lodging-house, tavern or shop, or any money-changer or other dealer or chapman for any purpose connected with the preparations or arrangements for a passage, or gives or pretends to give to any intending emigrant any information or assistance in any way relating to emigration, is an emigrant runner (*i*).

(*d*) M. S. Act, 1894, s. 343 (1), (2). For forms of notice by the applicant and the licensing authority, see Nos. 6 and 7 of Forms prescribed by the Board of Trade, 21st September, 1908, under the M. S. Act, 1906, s. 17 (Stat. R. & O., 1908, p. 627).

(*e*) M. S. Act, 1894, s. 344. Forfeiture may be ordered by any court on conviction of the holder of any offence under the M. S. Act, 1894, Part III., or of any breach or non-performance of its requirements, and must be at once notified by such court to the Board of Trade (*ibid.*, s. 344). For form of notice, see Form 8 of Forms prescribed by the Board of Trade, 21st May, 1908, under the M. S. Act, 1906, s. 17 (Stat. R. & O., 1908, p. 627).

(*f*) M. S. Act, 1894, s. 345. Penalty for contravention of this regulation, not exceeding £50 for each offence (*ibid.*). For form of appointment, see Form 9 of Forms prescribed by the Board of Trade, 21st May, 1908, under the M. S. Act, 1906, s. 17 (Stat. R. & O., 1908, p. 628).

(*g*) For emigrant runners, see the text, *infra*.

(*h*) M. S. Act, 1894, s. 346. Any passage broker failing to comply with these requirements is liable for each offence to a fine not exceeding £5 (*ibid.*).

(*i*) And is so regarded for the purposes of the M. S. Act, 1894, Part III.

SECT. 2. Statutory Requirements.

An intending emigrant runner must apply to the licensing authority for passage brokers (*k*) for the place where he wishes to act as emigrant runner and to carry on his business, who may on his application, and on the recommendation in writing of an emigration officer or the chief constable or other head officer of such place, grant him a licence and supply him with a badge (*l*).

An emigrant runner is not entitled to recover from a passage broker any fee, commission, or reward for any service connected with emigration, unless he is acting under the written authority of that broker; nor may he take or demand from any person about to emigrate any fee or reward for procuring his passage or in any way relating thereto (*m*).

SUB-SECT. 15.—*Frauds in Procuring Passages.*

Offences.

492. It is an offence for any person by any false representation, fraud, or false pretence to induce or attempt to induce any person to emigrate or engage a steerage passage in any ship (*n*), or falsely to represent himself to be, or falsely assume to act as, agent of the Board of Trade in assisting persons who desire to emigrate; or to make any false representation in an application for assistance to the Board of Trade, or to aid or abet anyone else in either of these offences (*o*).

(M. S. Act, 1894, s. 347). The provisions as to emigrant runners do not apply to a ship carrying steerage passengers on a colonial voyage (*ibid.*, s. 365 (1)).

(*k*) See note (*c*), p. 350, *ante*.

(*l*) M. S. Act, 1894, s. 348. For form of licence, see No. 10 of Forms prescribed by the Board of Trade, 21st September, 1908 (Stat. R. & O., 1908, p. 628). This licence he must, within forty-eight hours after its grant, lodge with the nearest emigration officer, who is to register his name and abode, and on receipt of a fee of not more than 7*s*. supply him with a badge approved by the Board of Trade (M. S. Act, 1894, s. 348 (2)); on a renewal only the renewal and its date need be entered (*ibid.*). The officer must note any change of abode of the emigrant runner (*ibid.*, s. 348 (4)). If the emigrant runner satisfies the emigration officer for the port in which he is licensed that he has lost his badge, or delivers it to the officer in a mutilated or defaced state and pays 5*s*., the officer may provide him with a new badge (*ibid.*, s. 349). The licence remains in force until the 31st December in the year of grant unless sooner revoked by any justice for an offence against the Act or for some other misconduct of the holder, or unless forfeited (*ibid.*, s. 348 (3)). An emigrant runner must, while acting as such, wear his badge conspicuously on his breast, must lodge his licence with the emigration officer of his port within forty-eight hours of its grant, must give notice of change of abode or the loss of his badge to that office within forty-eight hours of such change or loss, and must on demand produce his badge for inspection and allow any person to take its number. He must not mutilate or deface his badge or wear it while unlicensed, or wear any other badge than that delivered to him by the emigration officer or allow any other person to use his badge, and on non-compliance may be fined 40*s*. and his licence forfeited (*ibid.*, s. 351). Penalty, not exceeding £5 (*ibid.*, s. 350).

(*m*) *Ibid.*, s. 352. For each offence a fine not exceeding £5 is incurred (*ibid.*).

(*n*) M. S. Act, 1906, s. 24. An offender is liable for each offence on summary conviction to a fine not exceeding £50, or to imprisonment with or without hard labour for a period not exceeding three months (*ibid.*).

(*o*) M. S. Act, 1894, s. 354. Thus it is an offence to sell any form of

SUB-SECT. 16.—*Emigration Officers.*

Appointment.

493. In the British Islands the Board of Trade, and in a British possession the governor of that possession, may appoint such emigration officers and assistant emigration officers as seem necessary to act under the direction of the Board or governor as the case may be (*a*). All functions of an emigration officer may be performed by his assistant, and all acts to be done before an emigration officer may be done before his assistant; or at a port where there is no emigration officer or assistant, or in their absence, by or before the chief officer of customs for the time being at such port, whose duty it is in any such case to do anything which it is the duty of the emigration officer or his assistant to do (*b*).

SUB-SECT. 17.—*Legal Proceedings.*

Legal proceedings.

494. All fines and forfeitures for offences against statutory provisions relating to emigrant ships (*c*) are to be sued for by (1) any emigration officer; (2) any chief officer of customs; and also (3) in the British Islands, any person authorised by the Board of Trade or any officer of customs authorised by the Commissioners of Customs; and (4) in a British possession, any person authorised by its governor or any officer of customs authorised by the Government department regulating the customs in that possession (*d*). Any of these officers may sue for any sum of money made recoverable in respect of passage money or subsistence money before a court of summary jurisdiction on behalf of any person entitled thereto (*e*). In reference to such proceedings the Public Authorities Protection Act, 1893 (*f*), is to apply to every place where His Majesty has jurisdiction (*g*). In the absence of any agreement to the contrary, the owner of a ship is ultimately responsible as between himself and any other persons made liable (*h*).

application, embarkation order, or other document or paper issued by the Board of Trade or by a Secretary of State for the purpose of assisting persons who desire to emigrate; or to make any false representation in any such application to the Board of Trade or a Secretary of State, or in any certificate of marriage, birth or baptism, or any other document adduced in support of any such application; or to forge or fraudulently to alter any signature or statement in any such application, certificate or statement, or to personate any person named therein (M. S. Act, 1894, s. 354, which provides for each offence a fine not exceeding £50).

(*a*) *Ibid.*, s. 355 (1).

(*b*) *Ibid.*, s. 355 (2). A person lawfully acting as an emigration officer under the Act is in no case personally liable for the payment of any money or costs or otherwise, in respect of any contract made, or of any legal proceedings for anything done by him in his official capacity as an emigration officer and on the public service (*ibid.*, s. 355 (3)).

(*c*) As to provisions relating to passenger steamers only, see *ibid.*, ss. 273, 280, 281, 283—287; M. S. Act, 1906, ss. 16—21.

(*d*) M. S. Act, 1894, s. 356.

(*e*) They may also sue for damages, compensation, or costs recoverable by *ibid.*, Part III. (*ibid.*, s. 357).

(*f*) 56 & 57 Vict. c. 61.

(*g*) M. S. Act, 1894, s. 358.

(*h*) *Ibid.*, s. 359.

Part IX.—Carriage of Mails.

SECT. 1. **Application of Mail Ships Act, 1891, to certain Mail Ships.**

SECT. 1.—*Application of Mail Ships Act*, 1891, *to certain Mail Ships.*

Application by Order in Council.

495. When a convention has been made with a foreign state respecting the postal service between that state and the United Kingdom (*i*), or respecting the privileges of mail ships—that is to say, ships engaged in any postal service of such state or of any part of His Majesty's dominions—the Mail Ships Act, 1891 (*k*), may by Order in Council, subject to any conditions, exceptions and qualifications contained in the Order, be made to apply during the continuance of the Order as regards such convention and foreign state, and the postal services and mail ships described in the convention (*l*). The Order must recite or embody the terms of the convention; it may be varied or revoked by Order in Council, but must not continue in force for any longer period than the convention (*m*).

SECT. 2.—*Prohibition of Conveyance of Letters by Crew and Passengers.*

Illegal carrying of letters.

496. Where the Mail Ships Act, 1891 (*a*), s. 2, applies to a convention with a foreign state, neither the master nor any other person on board a British ship to which the section applies (*b*) when carrying mails to or from any port of the foreign state, nor the master nor any other person on board a mail ship of the foreign state to which the provision applies when carrying mails to or from any port of the United Kingdom, may convey in the ship for delivery to another person in the foreign state or United Kingdom, as the case may be, any letters other than the letters in the mail bags (*c*) entrusted to the master by a postal officer (*d*) of the

(*i*) As to the application of the Mail Ships Act, 1891 (54 & 55 Vict. c. 31), to British possessions, see *ibid.*, s. 8; Mail Ships (Rules) Order in Council, 1908 (Stat. R. & O., 1908, p. 768). As to its application to public ships, see Mail Ships Act, 1891 (54 & 55 Vict. c. 31), s. 6.

(*k*) 54 & 55 Vict. c. 31.

(*l*) *Ibid.*, s. 1 (1).

(*m*) *Ibid.*, s. 1 (2). The Orders in Council under the Act now in force are:—Mail Ships (France) Order in Council, 1892 (Stat. R. & O. Rev., Vol. X., Post Office, p. 94); Mail Ships (France) Order in Council (South Australia and Western Australia), 5th August, 1892 (*ibid.*, p. 104); Mail Ships (France) Order in Council (India), 16th May, 1893 (*ibid.*, p. 106); Mail Ships (France) Order in Council (New South Wales), 16th October, 1894 (*ibid.*, p. 108); Mail Ships (France) Order in Council (Tasmania), 2nd February, 1895 (*ibid.*, p. 109).

(*a*) 54 & 55 Vict. c. 31.

(*b*) For the conventions and ships to which the provision applies, see the text, *supra*, and the Orders in Council referred to in note (*m*), *supra*.

(*c*) "Mail bag" means a mail of letters or a box or parcel or other envelope in which post letters within the meaning of the Acts relating to the Post Office are conveyed (Mail Ships Act, 1891 (54 & 55 Vict. c. 31), s. 9). For definition of post letters, see Post Office Act, 1908 (8 Edw. 7, c. 48), ss. 89, 91 (3); title POST OFFICE, Vol. XXII., p. 630.

(*d*) "Postal officer" means any person employed in the business of the Post Office of the United Kingdom, or a British possession or foreign state, as the case may be, whether employed by the Postmaster-General, or by the chief of the post office of the British possession, or the chief of the post

United Kingdom or of any foreign state, or than the despatches sent by the Government either of the United Kingdom or of any foreign state (*e*).

It is the duty of the master of the ship (*f*) to secure the observance of the provision by all persons on board, and to inform the proper authorities at the port at which the ship arrives of any breach thereof by any of those persons (*g*).

SECT. 2. Prohibition of Conveyance of Letters by Crew and Passengers.

SECT. 3.—*Exemptions Enjoyed by Mail Ships.*

Arrest and execution of process.

497. Where the Mail Ships Act, 1891 (*h*), s. 4, applies to a convention with a foreign state, and an exempted mail ship to which the provision applies (*i*) is in port in the United Kingdom, no person may be arrested without warrant on board that ship, and before any process, civil or criminal, authorising the arrest of any person who is on board such ship is executed, the following provisions must be observed:—

(1) Written notice of the intention to arrest a person who is or is suspected to be on board the ship, stating the hour at which, if necessary, the ship will be searched, must, if it is a ship of a foreign state, and there is at the port a consulate of that state, be left at the consulate addressed to the consular officer.

(2) The master (*k*) must upon demand, if the person is on board, enable the proper officer to arrest him.

(3) If the officer is unable to arrest the person without search he may, but if it is a foreign ship only after the expiration of such time after notice was left at the consulate as is specified in the convention, search the ship and arrest the person if found (*l*).

office of the foreign state, or by any person under him, or on behalf of any such post office (Mail Ships Act, 1891 (54 & 55 Vict. c. 31), s. 9).

(*e*) *Ibid.*, s. 2 (1). Any person on board such ship who acts in contravention of *ibid.*, s. 2, or refuses or fails on demand to give up to a postal officer, or, if such person is not the master, to the master, any letter so conveyed by him, is liable on summary conviction to a fine not exceeding £5 (*ibid.*, s. 2 (2)). Any person aggrieved by such a conviction may appeal to quarter sessions (*ibid.*, s. 7 (2)). As to ship's letters, see title POST OFFICE, Vol. XXII., p. 654.

(*f*) The expression "master of a ship" includes any person in charge of a ship, whether commander, mate, or any other person (Mail Ships Act, 1891 (54 & 55 Vict. c. 31), s. 9).

(*g*) *Ibid.*, s. 2 (3); if the master wilfully fails to perform this duty he is liable to a fine not exceeding £5 (*ibid.*). No person is liable under *ibid.*, s. 2, to a fine for any offence for which he has been punished by the law of the foreign state (*ibid.*, s. 2 (4)). *Ibid.*, s. 2, does not apply to any letters which, if sent from the United Kingdom, would be exempted from the exclusive privilege of the Postmaster-General under the Post Office Management Act, 1837 (7 Will. 4 & 1 Vict. c. 33) (repealed by the Post Office Act, 1908 (8 Edw. 7. c. 48), s. 92, Sched. II., and re-enacted thereby) (Mail Ships Act, 1891 (54 & 55 Vict. c. 31), s. 2 (5)).

(*h*) 54 & 55 Vict. c. 31.

(*i*) That is, a ship engaged in the postal service, whose owner has given security in manner prescribed by *ibid.*, s. 3, and by the Mail Ships Rules, 1908, with scales of fees fixed with the concurrence of the Treasury, dated the 3rd June, 1908 (Stat. R. & O., 1908, p. 757), and the Mail Ships (Rules) Order in Council, 1908, dated the 1st August, 1908 (*ibid.*, p. 768).

(*k*) As to the "master," see note (*f*), *supra*.

(*l*) Mail Ships Act, 1891 (54 & 55 Vict. c. 31), s. 4 (1).

SECT. 3.

Exemptions Enjoyed by Mail Ships.

The ship may be delayed for these purposes for the time specified in the convention and no longer (*m*).

If the master of a ship refuses to permit the search of his ship, any officer of customs may detain it and the master is liable to a fine of £500 (*n*).

Freedom of ship from arrest.

498. An exempted mail ship (*o*) to which the Mail Ships Act, 1891 (*p*), s. 5, applies is not liable to be arrested or detained by any arresting authority either for the purpose of founding jurisdiction in any court of admiralty or of enforcing the payment of any claim; but every court of the United Kingdom, by the process of which the ship could under the circumstances have been arrested or detained, has the same jurisdiction as if the ship had been so arrested or detained; and any legal proceeding in relation to any such matter may be commenced by such service in the United Kingdom as may be prescribed by rules of court (*q*). The High Court must on application in accordance with rules of court cause the security to be applied in discharge of any such claim (*r*).

Nothing, however, in the provision renders invalid the arrest or detention of a ship before the prescribed notice (*s*) is given to the arresting authority, but on proof that the ship is an exempted mail ship the arresting authority must release the ship (*t*).

(*m*) Mail Ships Act, 1891 (54 & 55 Vict. c. 31), s. 4 (2).

(*n*) *Ibid.*, s. 4 (3). By *ibid.*, s. 4 (4), *ibid.*, s. 4, applies to the arrest of the master in like manner as in the case of any other person. Every fine under the Act exceeding £50 may be recovered by action in the High Court in England or Ireland, or in the Court of Session in Scotland, and the court may reduce the fine. A fine under the Act not exceeding £50 may be recovered on summary conviction. Every offence for which a fine exceeding £50 may be imposed may be prosecuted summarily, but in that case the fine may not exceed £50 (*ibid.*, s. 7 (1)). If a fine imposed on the master of a ship is not paid and cannot be recovered out of any security given under the Act, the court may, in addition to any other power for enforcing payment of the fine, direct the amount to be levied by distress or poinding of the ship, her tackle and furniture. An officer of customs in detaining a ship, or releasing a ship after detention in pursuance of the Act, must act upon such requisition or authority and under such regulations as the Commissioners of Customs may make with the consent of the Treasury (*ibid.*, s. 7 (4)).

(*o*) See note (*i*), p. 355, *ante*.

(*p*) 54 & 55 Vict. c. 31.

(*q*) Service of any summons or other matter in any legal proceeding under the Act is good service if made by leaving the summons for the person to be served on board the ship to which he belongs with the person being or appearing to be the master of the ship (*ibid.*, s. 7 (3)).

(*r*) *Ibid.*, s. 5 (1).

(*s*) As to the prescribed notice, see p. 355, *ante*.

(*t*) Mail Ships Act, 1891 (54 & 55 Vict. c. 31), s. 5 (2). Where the Commissioners of Customs in pursuance of any Act, or as a condition of waiving any forfeiture, require a deposit to be made by any exempted mail ship to which *ibid.*, s. 5, applies, the amount of such deposit must, on notice from the Commissioners and without further proceedings, be set apart out of the security as money belonging to the Commissioners, and be paid and applied as they direct. Any rules of court relating to such notice, payment or application must be made with the consent of the Treasury (*ibid.*, s. 5 (2)).

Part X.—Contract of Towage.

SECT. 1.—*Ordinary Obligations.*

SECT. 1. Ordinary Obligations.

SUB-SECT. 1.—*Efficiency of Tug.*

499. In an ordinary contract of towage the owner of the tug contracts that the tug shall be efficient for the purpose for which she is employed, and that her crew, tackle, and equipment shall be equal to the work to be accomplished, in the weather and under the circumstances reasonably to be expected (*u*). There is a warranty implied in such a contract that at the outset the crew, tackle, and equipment are equal to the work to be accomplished in circumstances reasonably to be expected (*a*), and there is an implied obligation that thereafter competent skill and best endeavours shall be used in doing the work (*b*). The grounding of a vessel in tow is *primâ facie* evidence either of the insufficient power of the tug, or of the inefficiency of her crew, tackle, or equipment (*c*). Contract of towage.

There is no warranty that the tug shall be able to accomplish the work in all circumstances and at all hazards, and if the contract is rendered impossible by *vis major*, the obligation of the tug is discharged (*d*). The occurrence of unforeseen difficulties does not in itself, however, discharge the tug from her contract, though it may entitle the tug to salvage remuneration instead of mere towage remuneration (*d*). Impossibility of performance.

Where the contract is for the service of a specified tug, there is no implied warranty that she is fit for the purpose for which she was supplied (*e*). Specified tug.

SUB-SECT. 2.—*Mutual Obligation to Use Due Care.*

500. Where a contract of towage has been made, there is an implied engagement that each vessel will perform its duty in accomplishing it, that proper skill and diligence will be used on board of each, and that neither vessel will by neglect or misconduct create unnecessary risk to the other, or increase any risk which may be incidental to the service undertaken. In case of the breach by either vessel of this duty causing damage to the other, the vessel committing the breach will be liable to the other, unless the sufferer has by misconduct or lack of skill on his own part contributed to Obligations imposed by contract.

(*u*) *The West Cock*, [1911] P. 208, C. A., following *The Minnehaha* (1861), Lush. 335, 347, P. C.; *The Robert Dixon* (1879), 5 P. D. 54, C. A.; *The Undaunted* (1886), 11 P. D. 46. See also pp. 521, 527 *et seq.*, 557 *et seq.*, *post*, for cases relating to the position of the parties to a contract of towage. For form of notice by a tug owner limiting his liability in case of damage, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 89. As to the jurisdiction of the Admiralty Division over actions for towage, see title ADMIRALTY, Vol. I., p. 68.

(*a*) *The Maréchal Suchet*, [1911] P. 1, 12; see p. 527, *post*.

(*b*) *The West Cock*, *supra*, following *Steel* v. *State Line Steamship Co.* (1877), 3 App. Cas. 72, 76, 86.

(*c*) *The Maréchal Suchet*, *supra*; *Preston Corporation* v. *Biornstad*, *The Ratata*, [1898] A. C. 513, 517.

(*d*) *The Minnehaha*, *supra*; and see *The Hjemmett* (1880), 5 P. D. 227. As to salvage, see p. 568, *post*; as to impossibility of performance of contract, see *The Salvador* (1909), 25 T. L. R. 384; 26 T. L. R. 149, C. A.; title CONTRACT, Vol. VII., pp. 426 *et seq.*

(*e*) *Robertson* v. *Amazon Tug and Lighterage Co.* (1881), 7 Q. B. D. 598, C. A.

SECT. 1. Ordinary Obligations.

the accident (*f*). This obligation continues until the work undertaken to be done is carried out to its consummation (*g*) or the contract is otherwise determined.

Where salvage disallowed.

Where in the course of carrying out such a contract a tug fails to fulfil its obligations, and in consequence of such failure the services become of a salvage nature, the tug is not permitted to recover as for salvage (*h*).

SUB-SECT. 3.—*Tug under Control of Tow.*

Tow controls tug.

501. In an ordinary contract of towage the tug is under the control of the tow, and must obey the directions given to her by those in charge of the tow (*i*). In such case the tug is not liable if by reason of such directions the tow gets into a position of danger (*j*), but if without good cause such directions are disobeyed by the tug and damage ensues to the tow, the tug is liable for any resulting damage and may forfeit her towage remuneration (*k*). A tug should not obey such directions where they are given owing to wilful misconduct or gross mismanagement of those in charge of the tow (*l*). Though in general the tow should give directions to the tug (*m*), the question as to the relation between them is one of fact (*n*), and the tow is not bound on all occasions to give detailed directions to the tug (*o*), and where no directions are given by the tow, it is the duty of the tug to direct the course (*p*). And it is always the duty of the tug, although she be controlled by the tow, to look out both for herself and the tow (*q*).

Duty of tug.

SECT. 2.—*Special Conditions Relieving the Tug.*

Conditions relieving tug.

502. It is competent for a tug by her contract to relieve herself from any of the ordinary obligations incident to the contract of towage (*r*). Where, however, there is any ambiguity in the terms of such relieving conditions they are strictly construed against the party relying upon them (*s*). A tug owner, where the cause of the

(*f*) *The Julia* (1861), Lush. 224, 231, P. C.; compare *Smith* v. *St. Laurence Tow-Boat Co.* (1873), L. R. 5 P. C. 308, 314; *Spaight* v. *Tedcastle* (1881), 6 App. Cas. 217, 220; *The Altair*, [1897] P. 105.

(*g*) *Preston Corporation* v. *Biornstad, The Ratata*, [1898] A. C. 513, 516.

(*h*) *The Minnehaha* (1861), Lush. 335, P. C.; *The Robert Dixon* (1879), 5 P. D. 54, C. A.; *The Maréchal Suchet*, [1911] P. 1; and see *The Madras*, [1898] P. 90; and pp. 568, 569, *post.*

(*i*) *The Christina* (1848), 3 Wm. Rob. 27; *The Gipsey King* (1847), 5 Notes of Cases, 282, 288; *The Energy* (1870), L. R. 3 A. & E. 48; *The Robert Dixon, supra; The Isca* (1886), 12 P. D. 34; *The Niobe* (1888), 13 P. D. 55.

(*j*) *The Robert Dixon, supra.*

(*k*) *Spaight* v. *Tedcastle, supra; The Christina, supra.*

(*l*) *The Christina, supra.*

(*m*) See cases cited in note (*i*), *supra.*

(*n*) *S.S. Devonshire* v. *Barge Leslie*, [1912] A. C. 634.

(*o*) *The Sinquasi* (1880), 5 P. D. 241; *The Isca, supra.*

(*p*) *Smith* v. *St. Laurence Tow-Boat Co., supra.*

(*q*) *The Jane Bacon* (1878), 27 W. R. 35, C. A.

(*r*) *The United Service* (1883), 9 P. D. 3, C. A.; *The Tasmania* (1888), 13 P. D. 110; *The Richmond* (1902), 19 T. L. R. 29.

(*s*) *The Forfarshire*, [1908] P. 339; *The West Cock*, [1911] P. 23, 208, C. A., following *S.S. Waikato (Owners of Cargo)* v. *New Zealand Shipping Co.*, [1899] 1 Q. B. 56, 58, C. A.; *Rathbone Brothers & Co.* v. *McIver (D.), Sons & Co.*, 1903] 2 K. B. 378, 384, C. A.; *Elderslie Steamship Co.* v. *Borthwick*, [1905]

damage complained of is the negligence of himself or his servants (*t*), cannot rely upon conditions exempting him from liability, if negligence is not expressly excepted, and the conditions exempting from liability must be read, unless clear words indicate the contrary intention, as applying only when the tug owner has fulfilled his duty as to the fitness of the tug when the towage service begins (*u*). Though, as between the owner of the tug and the owner of the tow, the owner of the tug may by his contract be freed from liability for damage done by a vessel in tow, such a contract does not amount to an indemnity by the owner of the tow against any damages for which the tug has been held liable (*v*).

SECT. 2. **Special Conditions Relieving the Tug.**

How construed.

Exempting conditions no indemnity.

Part XI.—Collisions.

SECT. 1.—*Statutory Provisions as to the Sea Regulations; and Construction and Observance of these Regulations.*

SUB-SECT. 1.—*Authority to Make the Regulations.*

503. His Majesty (*a*) may, on the joint recommendation of the Admiralty and the Board of Trade, by Order in Council make regulations (*b*) for the prevention of collisions (*c*) at sea (*d*), and may

Authority making regulations.

A. C. 93, 96; *Nelson Line* (*Liverpool*), *Ltd.* v. *Nelson* (*James*) *& Sons, Ltd.*, [1908] A. C. 16, 19.

(*t*) *The Forfarshire*, [1908] P. 339.

(*u*) *The Undaunted* (1886), 11 P. D. 46; *The West Cock*, [1911] P. 23, 208, C. A., and cases cited in note (*s*), p. 358, *ante*. See also, *The Millwall*, [1905] P. 155, C. A.

(*v*) *The Richmond* (1902), 19 T. L. R. 29; and see *The Devonshire and St. Winifred*, [1913] P. 13. As to collision when under tow, see pp. 385, 386, 388 *et seq.*, 410, 414, 490 *et seq.*, 516, 521, 527 *et seq.*, *post*, where the numerous cases on the subject are cited.

(*a*) M. S. Act, 1894, s. 418 (1).

(*b*) *Ibid.* The Sea Regulations, 1910 (Stat. R. & O. 1910, p. 457), were made by Order in Council of the 13th October, 1910, under this authority, and have effect as if enacted in the M. S. Act, 1894. The title "Sea Regulations, 1910," though not the title given in Stat. R. & O., has judicial sanction, and throughout this part of this title the phrase "Sea Regulations" is used in place of "Collision Regulations" or similar titles.

(*c*) "Collision" seems here to be used in the sense of the striking together of two ships causing damage (compare *The Normandy*, [1904] P. 187, 198); apart from damage, the impact of one ship on another affords no cause of action (*The Margaret* (1881), 6 P. D. 76, 79, C. A.). Some further consideration of the term "collision" is important in this connexion. The original use, now rare or obsolete, of the word "collide" was, in a transitive sense, to dash together; it was not until about 1860—70 that "collide" was first used in this country, of ships, in the intransitive sense of coming abruptly together. So also the use of the word "collision" with regard to ships, in the sense of coming together so as to to cause damage, appears to have arisen chiefly in the latter half of the nineteenth century (compare New English Dictionary). An older word used in Admiralty Court practice and some statutes to describe the effect of one ship injuriously striking either another ship or some other object was "damage"; compare *Mersey Docks and Harbour Board* v. *Turner*, *The "Zeta,"* [1893] A. C. 468, *per* Lord HERSCHELL, L.C., at pp. 479, 480, 483, 485. Accordingly "damage" and "action of damage" were the terms in ordinary use to describe the fact and the legal remedy for it in the books and

(*d*) For note (*d*) see p. 360, *post*.

SECT. 1. Statutory Provisions as to Sea Regulations etc.

thereby regulate the lights to be carried and exhibited, the fog signals (*e*) to be carried and used, and the steering and sailing rules to be observed, by ships (*f*).

SUB-SECT. 2.—*Principles of Construction.*

Simple and seamanlike construction.

504. The first principles of construction laid down by the courts with regard to the Sea Regulations are to the effect that

records relating to the Admiralty Court for a considerable time before the nineteenth century, and even during the first half of that century, and they are still sometimes used now ("causes of damage" is still the general expression in the Admiralty Court for damage cases; see *The Normandy*, [1904] P. 187, 199; compare also "Damage" in Williams and Bruce's Admiralty Practice, 3rd ed., 1902, and in Pritchard's Admiralty Digest, 1st ed., 1847). Actions of damage between two ships were not very common before the nineteenth century, and during the first twenty years of that century there were only 112 such actions in the Admiralty Court (Abbott on Shipping, 14th ed., p. 908; compare *The Clarence* (1853), 1 Ecc. & Ad. 206, 208 ("cases of damage, now augmenting to twenty, where there was only one thirty or forty years ago")). Such actions have grown in number and importance with the increase in the number and tonnage of ships, and especially with the introduction of steamships, able to proceed in any direction and at great speed. Hence the frequency and importance of the damage itself, of the regulations to prevent it, and of the legal remedy against the wrong-doer, have all grown largely during the last hundred years, and during the same period have arisen the expressions "action of damage by collision," and now often simply "collision action." But cases of ships striking something which is not engaged in navigation are still very rare (*The Normandy*, [1904] P. 187, 201). Arising out of these facts, one result of considerable practical importance is that "collision," having more recently displaced the old term "damage," is still to some extent a word of ambiguous meaning. In matters of Admiralty practice and some other cases it appears to be confined to the striking together of two ships. For this narrower meaning, compare *The Normandy, supra* (the jurisdiction over "damage by collision" given by the County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 3, does not extend to damage done by a vessel by striking against another object which is not a vessel), followed in *The Upcerne*, [1912] P. 160; *Reischer* v. *Borwick*, [1894] 2 Q. B. 548, 552, C. A. ("the risk of collision, by which I understand collision with other ships"); *Chandler* v. *Blogg*, [1898] 1 Q. B. 32 ("collision" when used alone, without other words, means two navigable things coming into contact); *Bennett S.S. Co.* v. *Hull Mutual Protection Society, Ltd.* (1913), 82 L. J. (K. B.) 1003 (nets extending a mile from ship not part of ship). But sometimes in marine insurance and in other cases "collision" is used in the sense of a ship striking an object which is not a ship; compare *Re Margetts and Ocean Accident and Guarantee Corporation*, [1901] 2 K. B. 792 (striking an anchor held to be collision); *M'Cowan* v. *Baine, The "Niobe,"* [1891] A. C. 401 (striking the tug is collision with the tow); *Mersey Docks and Harbour Board* v. *Turner, The "Zeta,"* [1893] A. C. 468; title INSURANCE, Vol. XVII., p. 442.

(*d*) The collision regulations made under this authority in fact extend to inland waters, but are not in this respect *ultra vires* (*The Anselm*, [1907] P. 151, C. A.). Such regulations are by the M. S. Act, 1894, s. 418 (1), to have effect as if they were part of the Act, which seems important in this connexion. See, further, under the preliminary article of the Sea Regulations, 1910, "and in all waters connected therewith," pp. 376, 377, *post*.

(*e*) Though no power is given under this provision to make regulations for helm signals, such signals as imposed by the Sea Regulations, 1897, art. 28 (Stat. R. & O. Rev., Vol. VIII., Merchant Shipping, p. 275), were held to have full statutory effect (*The Aristocrat*, [1908] P. 9, 20, C. A.).

(*f*) The word used in the Sea Regulations, 1910, is not "ships," but "vessels." As to this, see the preliminary article "by all vessels,' pp. 374, 375, *post*, and p. 14, *ante*.

they are to be interpreted in a simple way and with seamanlike knowledge. They are to be read in a literal or simple manner, and not according to the strictest and nicest interpretation of language, because they are issued for the guidance of seafaring men, sometimes men on vessels of small size and value, who will be inclined to read them literally (*g*). They should be read with seamanlike knowledge, because statutory provisions which are made applicable to a large trade or business should be construed according to their reasonable and business interpretation with regard to such trade or business (*h*), and this principle appears to have peculiar force when the courts are dealing with business on the seas. They are to be construed with due regard to all dangers of navigation, and to any special circumstances which may render a departure from arts. 1—26 of the Sea Regulations, 1910, necessary to avoid immediate danger (*i*).

International interpretation.

505. The conferences and conventions between the representatives of different nations, by which the Sea Regulations and the statutes in connexion therewith have been brought to their present development, have given these Regulations a specially international character; and it seems reasonable that the fact of a certain construction being placed on one of these Regulations in the courts of a foreign country, for instance of the United States, should have weight in inducing the courts of this country to adopt a like construction (*j*).

Lessening the damage.

506. One motive of the Sea Regulations is to minimise the results (*k*) and lessen the damage arising from a collision (*l*); and this is to be taken into account in construing these Regulations. Thus disobedience to the Regulations or improper delay in taking action imposed by them, which causes an increase of the damage, renders a vessel to blame (*m*).

(*g*) Compare *The Libra* (1881), 6 P. D. 139, 142, 143, C. A.; *The Dunelm* (1884) 9 P. D. 164, 171, C. A.; *The London*, [1904] P. 355, 357, 358.

(*h*) Compare *The Dunelm*, *supra*, at p. 171.

(*i*) See art. 27, *post*.

(*j*) Compare *The Sylvester Hale* (*The Schooner*) (1873), 6 Benedict, United States District Court Reports, 529 ("the paramount importance of having international rules [for the prevention of collisions] understood alike by all nations, is manifest"). See also *Wells* v. *Gas Float Whitton No.* 2, (*Owners*), [1897] A. C. 337, 344 (though they [the American cases] are not authorities in our courts, the opinions and reasoning of the learned judges of courts in the United States have always been regarded with respectful consideration, and have often afforded valuable assistance); *Readhead* v. *Midland Rail. Co.* (1869), L. R. 4 Q. B. 379, 392, Ex. Ch. The report of a case, however, is no proof of the foreign law, which can only be proved by a practised lawyer; the decision may be inconsistent with other cases, or may be reversed or varied.

(*k*) *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1880), 5 App. Cas. 876, 904 ("with a view to minimise the results of collision").

(*l*) As to the meaning of "collision," see note (*c*), p. 359, *ante*.

(*m*) Compare *Maclaren* v. *Compagnie Française etc.* (1884), 9 App. Cas. 746 (there was fault on both sides contributing to the damage and loss); *The Margaret* (1881), 6 P. D. 76, C. A. (contributing not to cause the collision, but to increase the damage, makes a vessel to blame). *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation*

SECT. 1. Statutory Provisions as to Sea Regulations etc.

Judicial construction of former regulations.

507. There is another principle of construction which affects the importance of decisions of the Admiralty Court and Courts of Appeal on earlier statutory regulations, now annulled. Where a statute has received a judicial construction putting a certain meaning on its words, and the same words are used in a subsequent statute on a like matter, there is a presumption that those words were intended to bear that meaning; and unless this presumption is rebutted, the statute is to be so construed, even if the words are such that they might originally have been construed otherwise (*n*).

SUB-SECT. 3.—*Statutory Provisions as to Observance of the Sea Regulations, and the Enforcement thereof.*

Penalties for disobedience upon owner and master.

508. All owners and masters of ships must obey the Sea Regulations, and must not carry or exhibit any other lights, or use any other fog signals, than such as are required by those Regulations (*o*). If an infringement of the Sea Regulations is caused by the wilful default (*p*) of the master or owner of the ship, that master or owner is in respect of each offence guilty of a misdemeanour (*a*).

The Board of Trade must furnish a copy of the Sea Regulations to any master or owner of a ship who applies for it (*b*).

Co. (1880), 5 App. Cas. 876, is not an authority to the contrary. In that case the vessel was deemed to be in fault under the M. S. Act, 1873 (36 & 37 Vict. c. 85), s. 17, and in such a case it did not matter whether the infringement in fact contributed to the collision, unless it was also shown that it could not have contributed; and it was held not to be clear, but at the best left in doubt, whether obedience to the rule could not have avoided the collision. It was in these circumstances that it was held to be immaterial that the purpose of the infringement was to alleviate the violence of the collision or even that the course adopted probably did alleviate it.

(*n*) *Mersey Docks and Harbour Board* v. *Cameron, Jones* v. *Mersey Docks and Harbour Board* (1864), 11 H. L. Cas. 443, 480, 481; *Re Cathcart, Ex parte Campbell* (1870), 5 Ch. App. 703, 706; and see title STATUTES, Vol. XXVII., p. 142, and the cases collected in Maxwell on the Interpretation of Statutes, 5th ed., p. 500, note (n).

(*o*) M. S. Act, 1894, s. 419 (1). As regards the former principle of presumption of fault for infringement of the Sea Regulations, and its abolition in all collision actions begun since the 16th December, 1911, see note (*a*), *infra*. As regards the statutory provisions as to the observance of the Sea Regulations, 1910, by foreign ships, and as to the special application of these Regulations to those ships, see under the preliminary article, "by all vessels," pp. 374, 375, *post*.

(*p*) This statutory proviso as regards "wilful default" does not exempt the owners from liability for the act of the master (*Grill* v. *General Iron Screw Collier Co.* (1866), L. R. 1 C. P. 600; affirmed (1868), 3 C. P. 476, Ex. Ch.). In construing "wilful default," a man must be taken to intend the natural consequences of his act (*Gayford* v. *Chouler*, [1898] 1 Q. B. 316). See also M. S. Act, 1894, s. 220; *Deacon* v. *Evans*, [1911], 1 K. B. 571.

(*a*) M. S. Act, 1894, s. 419 (2). As to the punishment for a misdemeanour, see *ibid.*, s. 680. Since the 16th December, 1911, such an infringement no longer raises any presumption that damage arising therefrom was occasioned by default of the person in charge of the deck of the ship; see Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 4 (2). As to this presumption before that date, see M. S. Act, 1894, s. 419 (3). The enactment of this presumption of fault first appeared in substance in stat. (1846) 9 & 10 Vict. c. 100, s. 13. Negligence contributing to the collision had, apparently, to be proved in order to show that the damage had arisen in consequence of the non-observance of one of the collision regulations; compare *Morrison* v. *General Steam Navigation Co.* (1853), 8 Exch. 733; *Tuff* v. *Warman* (1857), 2 C. B. (N. S.) 740.

(*b*) M. S. Act, 1894, s. 419 (5).

Inspection as to ship's lights and fog signals.

509. A surveyor of ships (*c*) may inspect (*d*) any ship, British or foreign, for the purpose of seeing that the ship is properly provided with lights and the means of making fog signals (*e*), in conformity with the Sea Regulations; and if the surveyor finds that the ship is not so provided, he must give to the master or owner notice in writing pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same (*f*). Every notice so given must be communicated (*g*) in the proper manner to the chief officer of customs at any port at which the ship may seek to obtain a clearance or transire (*h*); and the ship must be detained until the production of a certificate from a surveyor of ships to the effect that the ship is properly provided with regulation lights and means of making fog signals (*i*).

SUB-SECT. 4.—*Principles as to Observance of the Sea Regulations, and as to Exceptions thereto.*

General principles.

510. The principles with regard to observance of collision regulations, and with regard to the exceptional circumstances which justify departure (*k*) from them, were to a great extent laid down by the courts between 1840 and 1851 (*l*), in reference to the first general collision regulations, the Trinity House Regulations, 1840 (*m*), and to the later statutory regulations (*n*) introduced during that period. These principles, since the 16th December, 1911, again (*o*) represent the existing law, and are further enforced by the statutory provisions as to observance of the Sea Regulations which have been stated above; they are also supplemented by the principles laid down by the courts between 1851 and 1911, so far as those principles have a general bearing and are not confined to the construction of the special statutes which then prevailed as regards the observance of general collision regulations (*p*).

(*c*) For the purpose of an inspection the surveyor has all the powers of a Board of Trade inspector under the M. S. Act, 1894, s. 420 (3).

(*d*) Such fees as the Board of Trade may determine are payable for the inspection (*ibid.*, s. 420 (8)).

(*e*) Compare *The Love Bird* (1881), 6 P. D. 80.

(*f*) M. S. Act, 1894, s. 420 (1).

(*g*) *Ibid.*, s. 420 (2).

(*h*) A transire is a permit from the custom-house to let goods pass.

(*i*) M. S. Act, 1894, s. 420 (2); see, further, pp. 81, 336, *ante*.

(*k*) That is to say, which prevent the rule applying in the particular instance; see pp. 471 *et seq.*, *post*.

(*l*) Before any statutory presumptions of fault, or other special penalties, were attached to breach of the regulations. The first special penalty, namely, inability of the owner to recover damages, in case of non-observance of one of the rules, was introduced by the Steam Navigation Act, 1851 (14 & 15 Vict. c. 79), s. 28 (now repealed).

(*m*) Compare *The Duke of Sussex* (1841), 1 Wm. Rob. 274, 275 ("The rule emanates from the Trinity House, and although it cannot be said to constitute a law *per se*, the courts will consider this rule of binding authority").

(*n*) Stat. (1846) 9 & 10 Vict. c. 100, s. 9. As regards the Admiralty Regulations, 1848, as to lights, made under this Act, see note (*k*), p. 403, *post*.

(*o*) By the Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 4; see pp. 382, 516 *et seq.*, *post*.

(*p*) Between 1840, when the first general collision regulations came into force, and the 16th December, 1911, when statutory presumption of fault was

SECT. 1. Statutory Provisions as to Sea Regulations etc.

Obedience.

511. The first principle which has been always insisted upon by the courts, when the earlier general collision regulations or the later Sea Regulations have applied, is obedience (*q*). From the first it has been held that such regulations must in ordinary cases be adopted by all persons having charge of the navigation of vessels, and the owner of a vessel is responsible if the person in charge disobeys them (*r*). Obedience must be prompt (*s*). Each

done away with, there were four periods in which various principles were applied as regards observance of the general collision regulations. In the first period, between 1840 and 1851, no statutory consequence was attached to non-observance of the general collision regulations; liability for a collision only arose on proof of negligence, and the importance of a breach of the various general collision regulations at this time was that it was primary evidence of negligence. In the second period, between 1851 and 1863, if the collision was proved to have been occasioned by non-observance of the statutory collision regulations, the owner of the ship by which any such regulation had been infringed could not recover damages unless the departure from the regulation was justified or made necessary by the circumstances (Steam Navigation Act, 1851 (14 & 15 Vict. c. 79), s. 28; M. S. Act, 1854, s. 298). During this period, as in the first period, liability only arose if the non-observance amounted to negligence which contributed to the collision (*Tuff* v. *Warman* (1858), 5 C. B. (N. S.) 573, Ex. Ch.); but if the non-observance did amount to this, then, in cases of both to blame, the party guilty of the non-observance could recover nothing, and the other party not thus guilty could in the Admiralty Court recover half damages from him (*The Aurora, The Robert Ingham* (1861), Lush. 327). In the third period, from 1863 till 1873, if the collision was proved to have been occasioned by non-observance of any of the Sea Regulations, the ship by which such regulation was infringed was deemed to be in fault, unless the departure from the regulation was made necessary by the circumstances (M. S. Act, 1862, s. 29). During this period, also, liability only arose if the infringement was negligence which contributed to the collision; and in cases of both to blame, the party guilty of the infringement could in the Admiralty Court recover half damages, as in the first period. It appears that during this period the statutory consequence attached to an infringement only affected the burden of proof; and that in other respects the principles as regards observance of the Sea Regulations were the same as the principles relating to observance of the general collision regulations during the first period. In the fourth period, from 1873 till 1911, if in a collision case it was proved that any of the Sea Regulations had been infringed, the ship by which the regulation was infringed was deemed to be in fault, unless the departure from the regulation was made necessary by the circumstances or to avoid immediate danger, or unless it could not by any possibility have contributed to the collision (M. S. Act, 1873 (36 & 37 Vict. c. 85), s. 17; M. S. Act, 1894, s. 419 (4); Sea Regulations, 1880 and 1884, art. 23; Sea Regulations, 1897, art. 27; *Eastern Steamship Co.* v. *Smith, The "Duke of Buccleuch,"* [1891] A. C. 310). During this period proof of any infringement of the Sea Regulations, unless brought within the narrow exceptions just stated, carried with it liability; and thus the owner of a vessel became liable for a collision either on proof of negligence of his servants contributing to the collision, or on proof of an unexcused infringement, even if there was no negligence on their part (*Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1880), 5 App. Cas. 876, *per* Lord BLACKBURN, at pp. 890—894). See, further, Marsden, Collisions at Sea, 4th ed., pp. 46—50.

(*q*) See also M. S. Act, 1894, s. 419 (1); and see p. 362, *ante*.

(*r*) *The Duke of Sussex* (1841), 1 Wm. Rob. 274; *The Gazelle* (1842), 1 Wm. Rob. 471, 476 (laid down for the regulation of ordinary cases); *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co., supra*, at p. 909 (to be adopted by all persons having charge of the navigation of vessels).

(*s*) *The Stadacona* (1847), 5 Notes of Cases, 371, 374.

rule is made not merely for the sake of the vessel which is to obey it, but also for the sake of other vessels, which may be approaching from far off and at night or in fog, or may be manœuvring at close quarters, and which have every right and reason to suppose that the vessel will obey the rule, and none to suppose that she will break it (*t*). A master is not allowed to engraft upon a regulation his own exceptions, according to his own views of seamanship (*u*), or convenience or advantage, as if there were no rule; for if so, the rule would soon degenerate into no rule (*x*). Where there is an express regulation, and a master departs from it on his own authority and without justifiable reason—for instance, by putting a light in some other position than that prescribed—it ought to be at his own risk (*a*). Convenience, such as gaining greater speed, does not afford any ground for exception to a regulation; nor a usage to the contrary, if it is based on mere convenience (*b*). For instance, it is a well-known convenience to keep at the side of a channel and in the slack of the tide when it is against a vessel, and in its strength when it is in one's favour, but when the legislature, in spite of this, has made a regulation applying to a narrow channel that vessels shall keep to the starboard side, this matter of convenience is not to be regarded (*c*). Hence a practice based merely on such convenience of navigation in respect of wind and tide is superseded by a regulation to keep to the starboard side. And no suggestion of danger from not following the practice, which may arise because a great number of people follow it, can be listened to as a reason for following the practice in preference to the rule (*d*).

(*t*) Compare *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1880), 5 App. Cas. 876, 909; *The Mangerton* (1856), Sw. 120, 124 (both parties are bound to act on the presumption that the statute will be obeyed by the other; the confusion otherwise would be endless); *General Iron Screw Co.* v. *Moss, The Araxes and The Black Prince* (1861), 15 Moo. P. C. C. 122, 131.

(*u*) Compare *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.*, *supra*, at p. 895 (even if it would in the absence of such a rule be better seamanship to keep way on the ship, the legislature has thought it better to prescribe the course which must be followed).

(*x*) *The Gazelle* (1842), 1 Wm. Rob. 471, 476.

(*a*) "*The Telegraph*," *Valentine* v. *Cleugh* (1854), 1 Ecc. & Ad. 427, 435, 436.

(*b*) *The* "*Sylph*" (1854), 2 Ecc. & Ad. 75, 80.

(*c*) *Ibid.* As to following a usage which is essential to safety in navigation, see pp. 370, 371, *post*.

(*d*) *The* "*Sylph*," *supra*. As to such usages which have been disallowed when contrary to regulations, see *The Duke of Sussex* (1841), 1 Wm. Rob. 274 (practice in river Thames for steam vessels going down to keep to the north shore, superseded by Trinity House Regulation to the effect that when steam vessels must cross so near that by continuing their respective courses there would be risk of collision, each shall port); *The Gazelle, supra*; *The Friends* (1842), 1 Wm. Rob. 478. As to a similar custom in the Tyne, contrary to the M. S. Act, 1854 (17 & 18 Vict. c. 104), s. 297, see *The Unity* (1856), Sw. 101; *The Hand of Providence* (1856), Sw. 107; see also *H.M.S. Topaze* (1864), 10 L. T. 659 (alleged custom for His Majesty's ships coming in or going out of Devonport harbour to display the pilot jack, and so warn merchant ships to leave them the deep water channel); *The Nimrod* (1851), 15 Jur. 1201 (question whether circumstances as to tide or otherwise rendered it dangerous or unreasonable or improper for a steam vessel to keep to her

SECT. 1. Statutory Provisions as to Sea Regulations etc.

Opportunity to know that rule applies.

512. The consideration, however, must always be, in these cases, not whether the rule was in fact applicable, but whether the circumstances were such that the person in charge ought to have known that it was applicable (*e*). The question is whether with ordinary skill and care he could have ascertained this (*f*). If he could not, he does not break the regulation. Thus, where a sailing vessel closehauled ported to another sailing vessel a little on her starboard bow, which her master could not with ordinary skill and care know to be running free, he was held not to have broken the regulation (*g*). So also, where a vessel's sudden change of course is so startling and the period before the master of the other vessel acts is so brief that he could not be fairly expected to know that a collision was imminent before he gave the proper order (stop and reverse), the rule is not broken, because it cannot be reasonably held to have applied before it was obeyed (*h*).

Ordinary nerve expected of master.

A master of a ship is only bound to show ordinary nerve, and the same amount of skilled judgment is not to be expected in such a case as in other circumstances (*i*).

Exceptional cases.

513. On the other hand, there is the question whether the particular regulation applies in the circumstances. Even if it purports to apply (*k*), good seamanship may determine that the case is exceptional, and that it ought not to be applied. If any regulation were laid down which could never be departed from in certain circumstances, it would necessarily involve on many occasions the destruction of those ships which it was intended to preserve (*l*). Paramount authority must be given to the obligation to obey the dictates of good seamanship (*m*). The court is bound to consider not the law alone, but what circumstances might justify any departure from it; it seems a reasonable comment on collision regulations that, as they are passed to prevent danger, so they may be departed from to avoid immediate danger (*n*). The applicability of a regulation depends on its being a probable means of avoiding collision (*o*). No doubt there are certain rules as to

right side); *The Earl Wemys* (1889), 6 Asp. M. L. C. 407, C. A. (the custom of sailors to treat sailing ships when in the trades as closehauled, when they are sailing a point or two from being as closehauled as they can be, does not affect the legal construction of the Sea Regulations). Where, however, a usage is essential to the safety of navigation, it will be valid, although it may constitute an exception to a regulation; see p. 370, *post.*

(*e*) *The Beryl* (1884), 9 P. D. 137, 139, C. A.; *Dryden* v. *Allix, The "Moderation"* (1863), 1 Moo. P. C. C. (N. S.) 528.

(*f*) *Baker* v. *The "Theodore H. Rand"* (*Owners*), *The "Theodore H. Rand"* (1887), 12 App. Cas. 247, 250.

(*g*) *Ibid.*

(*h*) *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1880), 5 App. Cas. 876, 901, 902.

(*i*) *The Bywell Castle* (1879), 4 P. D. 219, 226, C. A; *"Tasmania"* (*Owners and Owners of Freight*) v. *Smith, "City of Corinth"* (*Owners*), *The "Tasmania"* (1890), 15 App. Cas. 223, 226.

(*k*) The Sea Regulations only purport to apply to certain cases, and a great variety of other cases are left to be determined by the rules of good seamanship; see p. 485, *post.*

(*l*) *The Allan* v. *The Flora* (1866), 2 Mar. L. C. 386.

(*m*) *The Grovehurst*, [1910] P. 316, C. A., *per* BUCKLEY, L.J., at p. 334.

(*n*) *The Irishman* (1858), 4 Ir. Jur. (N. S.) 24, 26.

(*o*) *General Steam Navigation Co.* v. *Tonkin, The Friends* (1844), 4 Moo.

what vessels ought to do in particular circumstances, but the first rule is to avoid a collision, if it can be done with safety (*p*). There may be too pertinacious an adherence to the strict rule of navigation (*q*). Under the Sea Regulations introduced in 1863 and later years, these principles have been further emphasised by an article (*r*), now art. 27 (*s*), which contains a warning that, in obeying and construing these Regulations, due regard must be had to all dangers of navigation and collision and to any special circumstances which may render a departure from the previous rules necessary in order to avoid immediate danger.

These principles, however, should be applied very cautiously (*t*). It is of the greatest importance to adhere as closely as possible to established rules and never to allow a deviation from them unless the circumstances which are alleged to have rendered such a deviation necessary are distinctly proved, otherwise vessels would always be in doubt and doing wrong (*u*). To leave to masters of vessels a discretion as to obeying or departing from the sailing rules is dangerous to the public, and to require them to exercise such discretion, except in a very clear case of necessity, is hard upon the masters themselves (*x*). The burden of proof to justify the exception is upon the party deviating from the general rule (*a*).

P. C. C. 314, 320, 321 (the port helm rule of the Trinity House Regulations, 1840, "can only be applicable where the vessels by continuing their respective courses are likely to come into collision, and where, by putting their helms to port, the collision may probably be avoided"); and see *The Eliza* v. *The Orinoco* (1865), Holt (ADM.), 98, 101 ("parties are released," by art. 19 of the Sea Regulations, 1863, "from the severe obligation of complying" with the previous articles "by circumstances which would render obedience to them conducive to peril, while by deviation they might escape from that peril"). But where the chances of avoiding collision by following or deviating from a rule are equal, the rule should no doubt be followed.

(*p*) *The Lady Anne* (1850), 15 Jur. 18; *The "Test"* (1847), 5 Notes of Cases, 276, 278 (it is a principle of law that you are not to adhere to strict rules of navigation, but avoid an accident if possible).

(*q*) *The Hope* (1840), 1 Wm. Rob. 154, 157.

(*r*) Sea Regulations, 1863, art. 19; Sea Regulations, 1880 and 1884, art. 23; Sea Regulations, 1897 and 1910, art. 27.

(*s*) See pp. 471 *et seq.*, *post*.

(*t*) *The William Frederick, The Byfoged Christensen* (1879), 4 App. Cas. 669, P. C. (reversing a decision which had held a vessel, whose primary duty was to keep her course, to blame for not adopting some manœuvre to avoid the collision); *The "Test," supra*.

(*u*) *The "John Buddle"* (1847), 5 Notes of Cases, 387, 388.

(*x*) *The William Frederick, The Byfoged Christensen, supra*, at p. 672; and see *The Immaganda Sara Clasina* (1850), 7 Notes of Cases, 582, 584, 585; on appeal this judgment was reversed on the facts only, *sub nom. Vaux* v. *Sheffer, The Immaganda Sara Clasina* (1852), 8 Moo. P. C. C. 87 (unless absolutely necessary to prevent a collision, the Trinity House rules ought to be followed).

(*a*) *The Concordia* (1866), L. R. 1 A. & E. 93, 98; *The Immaganda Sara Clasina, supra*, at p. 585; see the Sea Regulations, 1910, art. 21, pp. 445 *et seq.*, *post*, under which a vessel which deviates from the regulation by altering her course must not deviate more than necessary, and must show that the departure was necessary to avoid immediate danger, and that her new course was reasonably calculated to avoid that danger; and see under the same article the cases which show that the anticipation by one vessel that a second vessel is going to depart from the regulation is no excuse for the first vessel doing so.

SECT. 1. Statutory Provisions as to Sea Regulations etc.

Reasons for exceptions.

514. Exceptions to the general collision regulations were created by judicial interpretation before any express exceptions were contained in such regulations or in the statute relating to them. The courts have allowed exceptions to such regulations in strong and stringent circumstances(*b*), such as cases of necessity (*c*) and of immediate danger (*d*), whether the danger was one of navigation or collision (*e*). Remote dangers and, usually, doubtful dangers have not been held to justify departure from the regulations (*f*). These exceptions, springing from judicial interpretation of the terms of regulations, chiefly statutory, are instances of the application of well-recognised principles of construction of statutes (*g*).

From 1851 until 1911 the statutes, which imposed special penalties falling on owners of vessels for violation of the regulations, in each case provided in effect for such exceptions as were allowed by the courts (*h*). These express exceptions have now disappeared, together with the special penalties to which they were attached; but this does not appear to affect the judicial exceptions to the regulations as previously admitted and insisted upon by the courts.

Classes of exceptions.

515. Exceptions to general collision regulations, which are based on immediate danger or other necessity, may be divided into two classes: first, cases of absolute necessity, where the regulations

(*b*) *The Gazelle* (1842), 1 Wm. Rob. 471, 476 (there sometimes exists so peculiar a combination of circumstances of a strong and stringent nature as to render the adoption of a rule no longer fitting or expedient); *The "Superior"* (1849), 6 Notes of Cases, 607, 610 (no vessel is required to obey the general rule and go on shore); *The Lucia Jantina* v. *The Mexican* (1864), Holt (ADM.), 130, 132 (it would be sufficient excuse if she would have run herself aground); *The Immaganda Sara Clasina* (1850), 7 Notes of Cases, 582 (no man is bound by a technical rule of navigation to the destruction of life and limb); *The "Sylph"* (1854), 2 Ecc. & Ad. 75, 80 (if there is danger in following in particular cases the directions of the legislature, that would be an adequate reason for not complying with them); *The Benares* (1883), 9 P. D. 16, C. A., *per* BOWEN, L.J., at p. 19.

(*c*) *The Immaganda Sara Clasina, supra.*

(*d*) *The David Cannon* (1865), 2 Asp. M. L. C. 353, n. (it is an ancient principle, much acted upon in the Admiralty Court, that whatever be the rules or regulations which govern ships generally, yet in cases of immediate danger it is the duty of every ship to avoid others).

(*e*) For instance, *The "Superior," supra; General Steam Navigation Co.* v. *Tonkin, The Friends* (1844), 4 Moo. P. C. C. 314, 320.

(*f*) Compare *The Rondane* (1900), 9 Asp. M. L. C. 106, and other cases under art. 16, pp. 414 *et seq.*, *post*, where excuses for not stopping in fog, based on remote or doubtful dangers, have been disallowed. The excuse for not stopping and reversing that the object was to avoid a worse form of collision, more destructive to the vessel or more dangerous to life, has not in some doubtful cases been accepted in the Admiralty Court.

(*g*) See *The Duke of Buccleuch* (1889), 15 P. D. 86, C. A., *per* LINDLEY, L.J., at p. 96; *Curtis* v. *Stovin* (1889), 22 Q. B. D. 513, C. A., *per* BOWEN, L.J., at p. 517; see title STATUTES, Vol. XXVII., pp. 134, 136; and the cases collected in Maxwell on the Interpretation of Statutes, 5th ed., p. 500, note (n).

(*h*) See Steam Navigation Act, 1851 (14 & 15 Vict. c. 79), s. 28 (unless it appears to the court before which the case is tried that the circumstances of the case were such as to justify a departure from the rule); M. S. Act, 1854, s. 298 (unless it is shown to the satisfaction of the court that the circumstances of the case made a departure from the rule necessary); and compare *ibid.*, s. 296; the same proviso in the M. S. Act, 1862, s. 29; and practically the same proviso in the M. S. Act, 1873, s. 17, and M. S. Act, 1894, s. 419 (4).

relate to appliances or conditions which do not exist without any fault of the owner or those for whom he is responsible; and secondly, cases of reasonable necessity or immediate danger of collision or other justification (*i*).

Though these two classes of exceptions are broadly distinct, they sometimes run into one another, especially when they relate to the general condition of the vessel.

Non-existent appliances.

516. Where the regulation relates to the use of appliances, such as the rudder, lights, foghorn, or other things on board of a vessel, and such appliances break down, or cease to exist, without any fault of the owner, the regulation cannot apply, and those in charge of such a vessel (*k*), or of other vessels manœuvring for her (*l*), must be guided by the dictates of good seamanship. So also, where there is a want of means to navigate from the disabled state of the vessel (*m*), or a vessel is stationary in the water (*n*), or there is no room to keep out of the way or to pass another vessel, a collision regulation may not apply; and where a vessel's engines or other appliances are not available in their full use, a regulation may not apply as strictly as usual, or at all (*o*). A vessel is not, however, excused for disobeying the regulations by not sounding a mechanical foghorn, if she has not one on board but ought to have it (*p*); or for not having a regulation light properly burning, when the glass has been broken by severe weather several hours before, and a fresh light ought to have been shown (*q*); or if without necessity she disables herself from keeping out of the way when it is her duty to do so (*r*), because a vessel which has the duty to keep out

(*i*) The danger might not be a danger of navigation or collision, for instance, in a case of running without lights to escape from the King's enemies.

(*k*) *The Kjobenhavn* (1874), 2 Asp. M. L. C. 213, 216, 217, P. C. (use of masthead light when at anchor instead of a riding light destroyed); *The Chilian* (1881), 4 Asp. M. L. C. 473 (mouth foghorn used instead of broken mechanical foghorn).

(*l*) *The Rob Roy* (1845), 3 Wm. Rob. 190, 195 (where one steamer's green light was put out by a heavy sea shortly before the collision, and although she was on an opposite course and almost end on but starboard to starboard with another steamer, that other was held not to blame for porting).

(*m*) *The "Sylph"* (1854), 2 Ecc. & Ad. 75, 81; compare *The "Blenheim"* (1854), 1 Ecc. & Ad. 285 (*nemo cogitur ad impossibilia*). As to the duties, apart from regulations, to keep out of the way of a disabled vessel, and her duty to avoid causing trouble, see pp. 508 *et seq.*, *post.*

(*n*) Compare *The Gladys*, [1910] P. 13; and see the cases under the Sea Regulations, 1910, art. 9, pp. 393 *et seq.*, *post.*

(*o*) Compare *The Helvetia* (1868), 3 Asp. M. L. C. 43, n., P. C.

(*p*) *The Love Bird* (1881), 6 P. D. 80 (where a barque had left port for a long voyage with only a mouth foghorn, a few days before the Sea Regulations, 1879, which imposed the use of a mechanical foghorn, came into force).

(*q*) *The Saxonia, The Eclipse* (1862), Lush. 410, 422, P. C.

(*r*) *The "Blenheim," supra* (a brig lying to reefing sails did not alter and struck another brig which was closehauled on the starboard tack. This reefing of sails was no sufficient reason for her not obeying the statutory regulation, which was in effect to port her helm); see *Seccombe* v. *Wood* (1840), 2 Mood. & R. 290 (it is no defence that the injury was accidental and wholly involuntary on defendant's part, unless the vessel had become unmanageable without his fault. First collision, due to crew's negligence, caused disabled state. Owner of vessel held liable for second collision a few minutes later and half a mile farther on, caused by the

SECT. 1. Statutory Provisions as to Sea Regulations etc.

of the way must do all she can to accomplish this (*s*). If a vessel chooses to go down a river by means of warping at a time which renders it difficult to escape collision, she must bear the consequences (*t*).

Reasonable necessity or immediate danger of collision.

517. In the second class of cases, a departure from the regulations is justified by reasonable necessity or immediate danger of collision or otherwise. If from want of means to navigate with safety, for instance, from the vicinity of shoals, a vessel takes a course which the legislature has prohibited (by not keeping to the starboard side of a narrow channel), in such circumstances she would be unquestionably relieved from punishment (*a*). Thus, the difficulties of manœuvring in a very narrow place or against a strong tide may involve obvious exceptions to the rules, from it being seriously dangerous for vessels which meet to manœuvre past each other in such circumstances (*b*). There are exceptions also to articles 19 and 20 of the present Regulations in the case of incumbered fishing vessels (*c*). And departure from a rule is allowed where to follow the rule would clearly make a collision certain, or more likely (*d*), or of a worse character (*e*), and where to act outside it is the only (*f*) or best (*g*) chance of avoiding a collision. So also a usage may constitute an exception to the rule, where it is essential to the safety of vessels in navigation (*h*). Such an exception

disabled state); *The Jennie S. Barker, The Spindrift* (1875), 3 Asp. M. L. C. 42; *The Byron* (1879), 2 New South Wales Law Reports, Admiralty, 1; compare *The Douglas* (1882), 7 P. D. 151, C. A. (owners of vessel sunk by her own fault in a collision not liable for subsequent collision with wreck due to it being unlighted without their fault).

(*s*) *The Test* (1847), 5 Notes of Cases, 276 (when a sailing vessel could not keep out of the way by porting, it was held to be her duty to do so by wearing); *Ship Calcutta* (*Owners*) v. *Barque Emma* (*Owners*), *The Calcutta* (1869), 21 L. T. 768, P. C. (a sailing vessel, which had to keep out of the way, ported; she was held to blame because she had not also brailed up her spanker and squared her after-yards and done other things to aid her port helm).

(*t*) *The Hope* (1843), 2 Wm. Rob. 8.

(*a*) *The "Sylph"* (1854), 2 Ecc. & Ad. 75, 81 (supposing a vessel, to avoid certain flats, kept away from the prescribed shore to a reasonable extent, no man would say the Act of Parliament was violated).

(*b*) *The Prince Leopold de Belgique*, [1909] P. 103; and see Sea Regulations, 1910, arts. 19, 25.

(*c*) See *ibid*, art. 9.

(*d*) Compare *General Steam Navigation Co.* v. *Tonkin, The Friends* (1844), 4 Moo. P. C. C. 314, 320.

(*e*) *The Immaganda Sara Clasina* (1850), 7 Notes of Cases, 582, 584, 585 (if the helm was starboarded only to avoid a collision that would have been more destructive, and the necessity was occasioned by the delay of the other vessel in porting her helm, no doubt can be entertained that the starboarding was justifiable). As to *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1880), 5 App. Cas. 876, see note (*m*), p. 361, *ante*.

(*f*) *The Benares* (1883), 9 P. D. 17, 19, C. A.

(*g*) *The Columbine* (1843), 2 Wm. Rob. 27, 32. This was a case of necessity, in which the master of the vessel (though starboarding, and so acting contrary to the rule that he should give way, that is, port) adopted the best measures in his power to avoid the accident. The mere fact that there is danger of collision is, of course, no ground for departing from the rule to reverse (*Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.*, *supra*, *per* Lord WATSON, at p. 902).

(*h*) Compare *The "Sylph," supra*, at p. 80; *The Ezardian*, [1911] P. 92.

also may arise from the disabled state or misconduct of other vessels; and in these cases the departure from the rule may become a positive duty. An officer in charge is not allowed to follow a rule of the sea to the injury of another vessel where he could avoid the injury by pursuing a different course (*i*). When one person neglects a duty, and so puts another into danger, the second person is not justified in doing nothing to avert that danger (*a*).

SUB-SECT. 5.—*Subsidiary Statutory Provisions.*

(i.) *As to Rendering Assistance after Collision.*

Duty of rendering assistance.

518. In every case of collision (*b*) between two vessels it is the duty (*c*) of the master or person in charge (*d*) of each vessel (*e*), if and so far as he can do so without danger (*f*) to his own vessel,

(*i*) *Handaysyde* v. *Wilson* (1828), 3 C. & P. 528; *The Boanerges and The Anglo-Indian* (1865), 2 Mar. L. C. 239 (you must depart from a rule if you see with perfect clearness, almost amounting to positive certainty, that adhering to the rule will bring about a collision and violating a rule will avoid it); *The Legatus* v. *The Emily* (1865), Holt (ADM.), 217, 219 (you have no right to stand in a difficulty upon a right obstinately, recklessly, and regardless of the safety of others).

(*a*) *The Jane Bacon* (1878), 27 W. R. 35. For instances of the application of this rule, see especially the cases under the Sea Regulations, 1910, art. 21, of the duty of a vessel to depart from the regulation and alter her course.

(*b*) M. S. Act, 1894, s. 422 (1). A general duty on the person in charge of a vessel to render salvage assistance is imposed by the Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 6 (1).

(*c*) The duty to render assistance was first imposed by M. S. Act Amendment Act, 1862, s. 33, and afterwards by M. S. Act, 1871, s. 9, and M. S. Act, 1873, s. 16, all of which are now repealed. The duty only arises if there is danger from the collision. The question is whether looking at all the circumstances (such as that a collision happened in broad daylight and in a narrow part at no great distance from the centre of a river) the duty in fact arose. If one vessel is able to render assistance, the extent of the obligation will depend upon the degree of danger apprehended at the time; and when a collision takes place at night, which might probably endanger life, it is the duty of a vessel to stay by till the extent of the danger can be ascertained (*The Queen of the Orwell* (1863), 7 L. T. 839). The duty to assist thus created by statute does not so destroy the voluntariness of the service as to deprive the vessel of salvage reward (*The Hannibal, The Queen* (1867), L. R. 2 A. & E. 53). As to salvage services in such circumstances, see, further, p. 563, *post*.

(*d*) "In charge" in M. S. Act, 1894, s. 422 (1), means not only at the time of collision, but at any time afterwards when life could have been saved (*Ex parte Ferguson* (1871), L. R. 6 Q. B. 280, 287 (where the mate in charge at the time of collision, and the master who came up from below afterwards, were both found not to have rendered assistance as provided by statute)). Under the M. S. Act Amendment Act, 1862, s. 33 (where the words were "it shall be the duty of the person in charge"), it was held that, though a compulsory pilot was in command at the time of collision, the words "person in charge" must refer to the master); *The Queen* (1869), L. R. 2 A. & E. 354; compare *The Sussex*, [1904] P. 236, 247, 248.

(*e*) The duty appears to apply to the master of a tug, although the tow alone has been in collision (*The Hannibal, The Queen, supra*, at p. 56). A tug which is to blame for a collision cannot recover salvage (see pp. 568, 569, *post*), but may recover towage remuneration for services rendered to the injured vessel (*The Harvest Home*, [1904] P. 409).

(*f*) A reasonable apprehension that delay may cause capture by the enemy may excuse a steam vessel from staying to render assistance when

SECT. 1. Statutory Provisions as to Sea Regulations etc.

crew, and passengers, first to render to the other vessel, her master, crew, and passengers, such assistance as may be practicable (*g*) and may be necessary to save them from any danger caused by the collision, and to stay by the other vessel until he has ascertained that she has no need of further assistance; and secondly, to give to the master or person in charge of the other vessel the name of his own vessel and of the port to which she belongs, and also the names of the ports from which she comes and to which she is bound. If the master (*h*) or person in charge fails without reasonable cause to comply with these duties, he is guilty of a misdemeanour (*i*), and if he is a certificated officer an inquiry into his conduct may be held and his certificate cancelled or suspended (*k*).

(ii.) *As to Entry in Log.*

Entry in official log.

519. In every case of collision (*l*) in which it is practicable to do so, it is the duty (*m*) of the master of every ship, immediately after the occurrence, to cause a statement thereof, and of the circumstances in which the same occurred, to be entered in the official log-book (*n*), if any. The entry ought to be signed by the master, and also by the mate or one of the crew (*o*).

SECT. 2.—*Regulations for Preventing Collisions etc.*

SUB-SECT. 1.—*History of General Collision Regulations.*

History of general collision regulations.

520. The rules of navigation in the first part of the nineteenth century were treated in courts of common law as matters for the testimony of experts (*p*).

that assistance may be rendered by the approaching enemy (*The Thuringia* (1872), 1 Asp. M. L. C. 283, 292).

(*g*) When a vessel cannot stay by, a master may commit a breach of his statutory duty if he does not send his boat to assist, when there is no reason why he should not (*The Adriatic* (1875), 3 Asp. M. L. C. 16, 19), or if he does not reply to distress signals by returning the signals (*The Emmy Haase* (1884), 9 P. D. 81).

(*h*) M. S. Act, 1894, s. 422 (3).

(*i*) As to the punishment, see *ibid.*, s. 680.

(*k*) *Ibid.*, s. 470; as to disciplinary powers over certificated officers, see pp. 649 *et seq.*, *post.*

(*l*) M. S. Act, 1894, s. 423 (1).

(*m*) If the master fails to comply with this duty, he is liable for each offence to a fine not exceeding £20 (*ibid.*, s. 423 (2)).

(*n*) As to official log-books, and making entries therein, see *ibid.*, ss. 239—243; pp. 82, 83, *ante.*

(*o*) M. S. Act, 1894, s. 423 (1).

(*p*) Compare *Jameson* v. *Drinkald* (1826), 5 L. J. (O. S.) (C. P.) 30. Rules of navigation for British vessels, established by custom and on occasion by authority of a British admiral, have existed from the sixteenth century onwards, and doubtless earlier; and when cognisable by the law courts they were often considered to be part of what was called "the general maritime law." Records of collision cases in the Admiralty Court during the sixteenth century are rare, but include cases where ships, which were being navigated, without excuse fouled others at anchor, in breach of what appears to be the oldest of the rules of navigation now recognised; compare Selden Society, Select Pleas in the Court of Admiralty, Vols. I. and II.; Marsden, Collisions at Sea, 1st ed. p. 133; and see p. 488, *post.* Apparently the first recognition in a court of common law of the rule to the effect that a sailing ship running free shall keep out of the way of one which is close-hauled occurred between 1778 and 1800; see Lord Erskine's letter in

From 1840 onwards a great number of more or less general regulations have been made from time to time by Orders in Council and otherwise. These regulations on some occasions have been limited to special duties of special vessels, for instance, regulations for the fog signals of fishing vessels, and on other occasions have had a much wider scope, sometimes containing a whole code of navigation for vessels generally, and having to some extent an international operation, for instance, the Sea Regulations, 1863. The older regulations have been from time to time annulled, and new regulations have been introduced which have been usually a fuller development of them. Thus in order to understand one of the various articles of the regulations now in force, it is sometimes necessary to trace it back to its first introduction, and to consider the decisions upon the earlier and later terms in which the article has been stated. A table of the general collision regulations made between the years 1840 and 1910 is given in the Appendix (*q*).

SUB-SECT. 2.—*The Sea Regulations*, 1910.

Preliminary article.

521. The preliminary article of the Sea Regulations, 1910 (*r*), is as follows:—

Preliminary.

> These Rules shall be followed by all vessels upon the high seas and in all waters connected therewith, navigable by sea-going vessels. (1896) (*a*)
>
> In the following Rules every steam vessel which is under sail and not under steam is to be considered a sailing vessel,

Kenyon's Life of Lord Chief Justice Kenyon, p. 343. This rule was recognised in the Admiralty Court in 1815 (*The Woodrop-Sims* (1815), 2 Dods. 83) and 1821 (*The Dundee* (1821), *Times*, 5th December, 1821), and again in a court of common law in 1828 (*Handaysyde* v. *Wilson* (1828), 3 C. & P. 528; see also 1 Maude and Pollock, Law of Merchant Shipping, 4th ed., p. 583, note (a)). The port tack rule, to the effect that a ship close-hauled on the port tack shall keep out of the way of one close-hauled on the starboard tack, though imposed in effect on ships under convoy by Admiralty Regulations of the latter part of the eighteenth century (Marsden, Collisions at Sea, 6th ed., p. 314), was apparently refused recognition as a rule of navigation by the Trinity Masters in the Admiralty Court as late as 1789 (*Nelson* v. *Fawcett, The Resolution and The Langton* (1789), Burrell, 332, 333, n.), but was recognised at common law in 1834 (Chitty, General Practice (1834), Vol. II., p. 515), and in the Admiralty Court in 1836 (*Jupiter* (1836), 3 Hag. Adm. 320).

(*q*) The Appendix is printed at the end of this title, after p. 663, *post*.

(*r*) The Sea Regulations, 1910 (hereinafter usually referred to as "these Regulations"), were made by Order in Council of the 13th October, 1910 (Stat. R. & O., 1910, p. 457), under the power conferred by the M. S. Act, 1894, s. 418 (1), and under that provision have effect as if enacted in the Act. They came into force on the 13th October, 1910, and they reproduce with little alteration the provisions of the Sea Regulations, 1896, including art. 9 of those Regulations, which came into force on the 1st May, 1906. The modifications of art. 8 of 1896, by Order in Council of the 7th July, 1897 (Stat. R. & O. Rev., 1904, Vol. VIII., Merchant Shipping, p. 283), are now incorporated in art. 8 of 1910, and certain new notes are added to arts. 9 and 15 of 1910. Under the Order in Council of the 13th October, 1910, in the case of Chinese ships, the application of these Regulations is limited to ships of foreign type. The expression "The Sea Regulations, 1910," has judicial sanction; see note (*b*), p. 359, *ante*.

(*a*) Year when the same or a similar regulation was first introduced.

SECT. 2. Regulations for Preventing Collisions etc.

and every vessel under steam whether under sail or not, is to be considered a steam vessel. (1863) (*b*)

The word "steam vessel" shall include any vessel propelled by machinery. (1897) (*b*)

A vessel is "under way" within the meaning of these Rules when she is not at anchor, or made fast to the shore or aground. (1897) (*b*)

"By all vessels."

522. The Sea Regulations, 1910, must be observed (*c*) by all British ships (*d*) except ships belonging to His Majesty (*e*),

(*b*) Year when the same or a similar regulation was first introduced.

(*c*) M. S. Act, 1894, s. 419 (1); compare s. 418 (1). As to the observance of these Regulations, see pp. 362 *et seq.*, *ante*.

(*d*) "Ships," not "vessels." In the Sea Regulations of 1863, 1879 and 1884 the word generally used was "ship," and "ship" was generally used in the M. S. Act, 1854 (ss. 291, 295—299 etc.), and in the M. S. Act Amendment Act, 1862 (ss. 25, 57, 58), when referring to collision regulations. And the meaning of "ship" in these circumstances was judicially determined to a great extent. So also, though the word "vessel" is sometimes used in Part V. and other parts of the M. S. Act, 1894, the provision in *ibid.*, s. 418 (1), is that His Majesty may, on recommendation as therein provided, by Order in Council, make regulations for the prevention of collisions at sea, and may thereby regulate the lights to be carried and exhibited, the fog signals to be carried and used, and the steering and sailing rules to be observed by "ships." The Sea Regulations, 1910, were applied by the Order in Council of the 13th October, 1910, which made them, to all British "ships"; but in the Sea Regulations, 1910, just as in those of 1897, the word "ship" is not to be found, and the word "vessel" is generally used. The question therefore, in future, will be as to the meaning of the word "vessel," and as to what kind of water structures are included under this term as used in these Regulations. First of all, it appears that the meaning of the word "vessels" in these Regulations cannot be wider than that of "ships" within the M. S. Act, 1894, s. 418 (1); compare *Carse* v. *North British Steam Packet Co.* (1895), 22 R. (Ct. of Sess.) 475; *The Lighter No.* 3 (1902), 18 T. L. R. 322), and should therefore correspond with the definition of "ship" in the M. S. Act, 1894, s. 742; see Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 31. This definition of "ship" is in some respects narrower than the definition of "vessel" in the M. S. Act, 1894, s. 742 (compare *Gapp* v. *Bond* (1887), 19 Q. B. D. 200, 202, C. A.). The term "vessel" may not always have its widest possible meaning in these Regulations, as it may be limited by the context (see Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 31), and it appears that a raft or Thames wherry is not a "vessel" (*Gapp* v. *Bond*, *supra*, at p. 202). A fixed floating landing stage is not a "vessel" so as to involve the filing of preliminary acts in an action for damage done to it by a ship (*The Craighall*, [1910] P. 207, C. A.). "Ship" in the M. S. Act, 1894, s. 742, "includes every description of vessel used in navigation not propelled by oars," unless the context otherwise requires. "Ship" in this connexion is used in its popular and not its technical sense (*The Mac* (1882), 7 P. D. 126, C. A., *per* BRETT, L.J., at p. 130). So even if "vessel" in these Regulations is confined to "ship" within this definition it has a wide meaning, as to which see p. 14, *ante*. A dumb barge was held to be a "ship," and bound to carry lights as a "vessel" being towed, under the Sea Regulations, 1896 (*The Lighter No.* 3, *supra*); and should therefore be within the Sea Regulations, 1910; but see, as to former regulations and otherwise, *The Swallow* (1877), 3 Asp. M. L. C. 371, C. A.; *The C. S. Butler* (1874), L. R. 4 A. & E. 238; *The Owen Wallis* (1874), L. R. 4 A. & E. 175; *Gapp* v. *Bond*, *supra*; *Everard* v. *Kendall* (1870), L. R. 5 C. P. 428. A small open boat for pleasure rowing, which had no sail and did not go to sea, and which was anchored in a river while being used by gentlemen for fishing, was held not to be a "ship," and therefore not required by the Sea Regulations, 1884, art. 10 (f), to carry a light as "an open boat

(*e*) For note (*e*) see p. 375, *post*.

and possibly ships subject to the laws of the legislatures of British oversea dominions (*f*) subject to special rules of local authorities (*g*). These Regulations must also be observed by all foreign private (*h*) ships within British jurisdiction (*i*), and by ships of certain foreign countries (*k*) whether within British jurisdiction or not.

when at anchor" (*Carse* v. *North British Steam Packet Co.* (1895), 22 R. (Ct. of Sess.) 475; compare *Weekes* v. *Ross*, [1913] 2 K. B. 229 (motor boat used to carry passengers); and for a distinction between boat and ship or vessel, compare *The Gas Float Whitton No.* 2, [1896] P. 42, 57, C. A.). A gas float is not a "ship," so that a county court, which has jurisdiction over collisions between ships, has no jurisdiction when such an object in a river is struck by a ship (*The Upcerne*, [1912] P. 160). As to a nondescript sort of craft used in dredging not being a "ship," compare *The Blow Boat*, [1912] P. 217). As to what is a ship for the purpose of salvage, see pp. 559, 560, *post*. See, further, the recitals in the Orders in Council of the 13th October, 1910, and 27th November, 1896; and p. 14, *ante*.

(*e*) These Regulations do not apply to ships belonging to His Majesty, which are, however, governed by precisely similar rules set out in the King's Regulations; see M. S. Act, 1894, s. 741; *H.M.S. Sanspareil*, [1900] P. 267, C. A. Rules similar to the statutory regulations were first issued to the Royal Navy about 1865 (Holt (ADM.), pp. vi, 190). "Ships belonging to His Majesty" include a ship owned by the Government and entered in the Navy List, but exclusively employed in carrying coal to ships of the navy (*Symons* v. *Baker*, [1905] 2 K. B. 723), but do not include a tug and lifeboat owned by the Board of Trade, and used for ordinary commercial harbour purposes (*The Cybele* (1878), 3 P. D. 8, C. A.). Government ships may be registered as British ships, so that the M. S. Act, 1894, and therefore these Regulations, will apply to them; see M. S. Act, 1906 (6 Edw. 7, c. 48), s. 80; see also under art. 13, p. 408, *post*.

(*f*) Compare M. S. Act, 1894, s. 735, giving a limited power to the legislature of any British possession to repeal any provision of the Act other than those which relate to emigrant ships; and *ibid.*, s. 736, giving a limited power to these legislatures to regulate the coasting trade. The M. S. Act, 1894, Part V., is not expressly applied to all British ships like the corresponding M. S. Act, 1854, Part IV.; and there is no special provision relating to its entire application, as there is for many other Parts of the Act. Still there is a presumption that this Part of the Act applies to all British ships, and it is in fact so applied by the Order in Council of the 13th October, 1910; and compare the doctrine that the whole M. S. Act, 1854, generally applied to the colonies (*The Rajah of Cochin* (1859), Sw. 473). There is an intention on the part of some of the legislatures of the British oversea dominions to pass laws as regards the Sea Regulations, 1910, as was done in some cases as regards former Sea Regulations; compare Marsden, Collisions at Sea, 4th ed., 1897, p. 371, note (t).

(*g*) See art. 30, p. 477, *post*.

(*h*) "All foreign ships" are the words used in the M. S. Act, 1894, s. 418 (2); but this appears to mean foreign private ships, as on general principle the statute cannot be intended to apply to the public ships of another sovereign state without its consent; compare *The Parlement Belge* (1880), 5 P. D. 197, C. A. But in the United States the Sea Regulations have been applied to their own public as well as private vessels by Act of Congress.

(*i*) By virtue of the M. S. Act, 1894, s. 418 (2), the Sea Regulations, 1910, together with the provisions of the M. S. Act, 1894, Part V., relating to collision regulations, or otherwise relating to collisions, must be observed by all foreign ships within British jurisdiction; and in any case arising in a British court concerning matters within British jurisdiction foreign ships must, so far as respects the collision regulations and the said provisions of the M. S. Act, 1894, be treated as if they were British ships. British jurisdiction extends over the open seas adjacent to the coasts of the United Kingdom, and of all other parts of His Majesty's dominions to such a distance as is necessary for the defence and security of such dominions;

(*k*) For note (*k*) see p. 376, *post*.

SECT. 2. Regulations for Preventing Collisions etc.

Area of application.

523. The Sea Regulations, 1910, apply generally in waters connected with the high seas navigable by sea-going vessels, and these words must not be treated as *ultra vires* (*l*), although His Majesty is only empowered to make regulations for the prevention of collisions at sea. Thus while these Regulations do not apply in an artificial channel like the Manchester Ship Canal, although navigable by such vessels, which is locked off from the sea, even though there is an influx of sea water in its lower portion at times when the gates are open (*m*), they do apply in tidal (*n*) waters connected with the high seas, navigable by sea-going vessels, if there are no local rules, or no local rules which ought reasonably to prevent their application (*o*), and if their application is suitable (*p*). They

see Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), preamble, s. 7 (definitions). This distance is at least one marine league, or three miles. As to the older law, see *R.* v. *Keyn* (1876), 2 Ex. D. 63, C. C. R., commented on in *Carr* v. *Fracis Times & Co.*, [1902] A. C. 176; *The Saxonia, The Eclipse* (1862), Lush. 410, P. C.; *The Annapolis, The Johanna Stoll* (1861), Lush. 295.

(*k*) By the M. S. Act, 1894, s. 424, power was given to His Majesty by Order in Council with the consent of a foreign country to apply these Regulations to the ships of that country, subject to restrictions; and by various Orders in Council the Sea Regulations, 1897, were so applied. Such power was first given by the M. S. Act Amendment Act, 1862, ss. 58, 62, and the Sea Regulations, 1863, were first thus applied. By the Order in Council of the 13th October, 1910, subject to certain restrictions (which will be found in the subsequent notes to arts. 9 and 15 of these Regulations), and subject to the proviso in the case of Chinese ships that the application of those Regulations shall be limited to ships of foreign type, the Sea Regulations, 1910, were applied to ships of the following countries, whether within British jurisdiction or not, and such ships for the purpose of such regulations are to be treated as if they were British ships:— Argentine Republic; Austria-Hungary; Belgium; Brazil; Bulgaria; Chile; China; Costa Rica; Denmark; Ecuador; Egypt; France; Germany; Greece; Guatemala; Italy; Japan; Mexico; the Netherlands; Norway; Peru; Portugal; Rumania; Russia; Siam; Spain; Sweden; Turkey; the United States; Venezuela. There are a few foreign ships which are not governed by the Sea Regulations, 1910, for instance, the ships of Hayti and Uruguay. As to cases of collisions where the vessels are not governed by the same regulations, see 1 Maude and Pollock, Law of Merchant Shipping, 4th ed., p. 584, note (f); p. 13, *ante*.

(*l*) *The Anselm*, [1907] P. 151, C. A., where reliance was placed on the fact that the Sea Regulations had been constantly applied to harbours, rivers and inland waters, *e.g.*, in *The Concordia* (1866), L. R. 1 A. & E. 93; *General Steam Navigation Co.* v. *Hedley, The "Velocity"* (1869), L. R. 3 P. C. 44; *Malcomson* v. *General Steam Navigation Co., The "Ranger" and The "Cologne"* (1872), L. R. 4 P. C. 519; *The Germania* (1875), 1 Maude and Pollock, Law of Merchant Shipping, 4th ed., p. 606, note (i), P. C.; *Little* v. *Burns* (1881), 9 R. (Ct. of Sess.) 118; *The Leverington* (1886), 11 P. D. 117, C. A.; *Norwegian S.S. "Normandie"* (*Owners*) v. *British S.S. "Pekin"* (*Owners*), *The "Pekin,"* [1897] A. C. 532; and *The Carlotta*, [1899] P. 223. See also *Morrison* v. *General Steam Navigation Co.* (1853), 8 Exch. 733, where the Admiralty Notice respecting Lights, 1852, was held to apply in the Thames.

(*m*) *The Hare*, [1904] P. 331.

(*n*) *The Carlotta, supra, per* BARNES, J., at p. 226. Possibly they also apply in non-tidal waters connected with the sea and navigable by sea-going vessels, at any rate where there is no tide in the neighbouring sea.

(*o*) *Ibid.* In British colonial waters the local rules are sometimes enforced by colonial laws.

(*p*) The Sea Regulations are primarily made for the sea; compare *The Franconia* (1876), 2 P. D. 8, C. A., *per* BRETT, J., at p. 14. The end-on rule (art. 18) has not always been applied in winding rivers; compare

do not apply where they would interfere with a special rule duly made by a local authority for the navigation of any harbour, river, or inland waters (*q*); and where there was a local provision as to whistling applying to a ship in a certain position, it was held that this provision was not to be supplemented by a provision in the Sea Regulations (*r*).

Sea-going vessels.

524. Sea-going vessels are those which go to sea, and not those which are capable of doing so, but which do not in fact go beyond the tidal waters of a river (*s*).

"Steam vessel."

"Steam vessel" includes any vessel propelled by machinery. And so the Sea Regulations as to steam vessels apply to ships propelled by electricity or other mechanical power (*t*). Although a vessel might not be within the meaning of a steamship for some purposes (*u*), she will be a "steam vessel" within these Regulations if she is in fact under steam. The provision that "every steam vessel which is under sail and not under steam is to be considered a sailing vessel, and every vessel under steam, whether under sail or not, is to be considered a steam vessel," seems intended to divide all navigating vessels as far as possible into the two classes of sailing vessels and steam vessels, but they are not exhaustive; for instance, they do not necessarily cover a steam vessel in tow (*x*).

"Under sail."

It has been held that a vessel hove to, reefing her mainsail, is "under sail" (*a*).

"Under steam."

There is sometimes a difficulty in deciding whether a vessel is "under steam" when she is fitted with steam-engines but has too little steam at the time to manœuvre fully, or at all, and is, perhaps, under sail. In such cases the question appears to be whether she has acted reasonably in not having more steam up in the circumstances. If so, she seems to come under the description "not under steam." If not, she seems not to be absolved from the ordinary obligations of a steam vessel by her own act in not having sufficient steam (*b*).

General Steam Navigation Co. v. *Hedley, The "Velocity"* (1869), L. R. 3 P. C. 44, 49; and the crossing rule (art. 19) is also often inapplicable (*ibid.*; *The "Esk" and the "Niord"* (1870), L. R. 3 P. C. 436; *General Steam Navigation Co.* v. *Hedley, The "Velocity,"* *supra*).

(*q*) Sea Regulations, 1910, art. 30.

(*r*) *The Carlotta*, [1899] P. 223, 228; *The Bitinia*, [1912] P. 186 (as to lights).

(*s*) *Salt Union* v. *Wood*, [1893] 1 Q. B. 370 (decided under M. S. Act, 1854 (17 & 18 Vict. c. 104), s. 109).

(*t*) M. S. Act, 1894, s. 743.

(*u*) *E.g.*, for the purpose of a contract for the carriage of goods (*Fraser* v. *Telegraph Construction Co.* (1872), L. R. 7 Q. B. 566).

(*x*) But see *The Whitlieburn* (1900), 9 Asp. M. L. C. 154, which shows that art. 25, as to steam vessels, applies to a tug towing a sailing vessel.

(*a*) *The City of London* (1857), Sw. 245, 300, P. C. In *The C. S. Butler* (1874), L. R. 4 A. & E. 238, Sir R. PHILLIMORE held that a ballast lighter of sixty tons, which was under sail, was not a "ship" within the definition in the M. S. Act, 1854, s. 2 (which is practically the same as that in the M. S. Act, 1894, s. 742), and was therefore not a "sailing ship under weigh" within the Sea Regulations, 1863, art. 5. But the reason for this decision was that the lighter could not be a "ship," as she did not go to sea; and this reason is doubtful; see note (*d*), p. 374, *ante*.

(*b*) Thus a tug seeking in daylight with twenty miles of sea on each side

SECT. 2. Regulations for Preventing Collisions etc.

"Under way."

A vessel is "under way" within the meaning of the Rules (*c*) when she is not at anchor, or made fast to the shore or aground, and accordingly a vessel is "under way" within the definition, as, for instance, a trawler hauling her trawl and stationary, though she is not "proceeding" within article 20 (*d*); and a steam drifter, while shooting her nets, though unable to go ahead or astern without fouling her propeller, but sailing about one knot an hour under a little mizen sail (*e*). Under the definition a tug towing a vessel up to her anchor is not considered to be under the control of that anchor, and is "under way" (*f*); but the vessel herself is considered to be at anchor (*g*). And it would seem that a vessel may be neither "under way" nor at anchor if she is moored to another vessel or floating structure which is itself fast to the shore (*h*).

of her, lying-to, with jib and foresail set and not motionless, with her fires pulled forward and just enough steam to enable her to go a little astern, which never in fact altered her course until the collision, was held not to come within the crossing rule and not to blame for a collision (*The Helvetia* (1868), 3 Asp. M. L. C. 43, note (a), P. C.), and was to be considered as not "under steam" (*ibid.*, as explained in *The Broomfield* (1905), 10 Asp. M. L. C. 194). On the other hand, a tug seeking and lying hove-to in a fair-way, with only just sufficient steam to reverse her engines, was held alone to blame for a collision with a sailing vessel on the ground that she was bound to keep ready to move out of the way of sailing vessels (*The Jennie S. Barker, The Spindrift* (1875), 3 Asp. M. L. C. 42). And similarly a tug lying drifting in a fair-way with so little steam that she failed to go ahead when she tried to do so at the critical moment was held partly to blame for collision with a vessel in tow of a steamer (*Port Jackson Steamboat Co.* v. *Llewellyn, The Brig Byron* (1879), 2 New South Wales Law Reporter, Admiralty, 1); and see art. 14; p. 409, *post*.

(*c*) Formerly "under way" was sometimes written "under weigh," *e.g.*, in the Sea Regulations, 1863, art. 10, and in the Admiralty Regulations as to Lights, 1848 (see Table in Appendix, *post*). Probably "under weigh" expressed a somewhat different idea; compare *National Steamship Co.* v. *Merry, The Pennsylvania* (1870), 23 L. T. 55, P. C., decided on art. 10 of the Sea Regulations, 1863, where the corresponding words in the French Regulations were "*en marche*," and Sir R. PHILLIMORE, apparently referring to this, said that the French rule was not properly translated; and compare *The Edith* (1876), 10 I. R. Eq. 345, 348, in argument. Before 1897 the words had been given somewhat contrary meanings in different cases. Thus, in *National Steamship Co.* v. *Merry, The Pennsylvania, supra*, a barque under sail, but hove-to and making one knot an hour, was held to be "under weigh," within the Sea Regulations, 1863, art. 10 (b), "sailing ships under weigh shall use a foghorn"; in *The George Arkle* (1861), Lush. 382, P. C., under the Admiralty Notice respecting Lights etc., 1858, a sailing vessel was held to be "under way" when driven from her anchors and setting sail, even if wholly unmanageable; and again under the same regulation, in *The Esk* (1869), L. R. 2 A. & E. 350, if having her anchor down but not holden by it or under the control of it; compare *The Indian Chief* (1888), 14 P. D. 24 (sailing vessel dredging down a river with anchor down and mast lowered to go under a bridge, and with a white light on her mast case, held not under way); *The Dunelm* (1884), 9 P. D. 164, 171, C. A. (where fishing vessels attached to their nets and stationary were said to be not under way); *The Chusan* (1885), 5 Asp. M. L. C. 476.

(*d*) *The Gladys*, [1910] P. 13.

(*e*) *The Pitgaveney*, [1910] P. 215.

(*f*) *The Romance*, [1901] P. 15.

(*g*) *Ibid., semble.*

(*h*) Compare *The Turquoise*, [1908] P. 148. As to the meaning of "at anchor" in art. 11, see p. 403, *post*.

SECT. 2. Regulations for Preventing Collisions etc.

525. The regulations as to lights are dealt with in certain rules, as follows:—

Rules concerning lights.

Rules concerning Lights etc.

"Visible."

The word "visible" in these Rules, when applied to lights, shall mean visible on a dark night with a clear atmosphere. (1848)

Article 1.

Article 1.

The Rules concerning lights shall be complied with in all weathers from sunset to sunrise, and during such time no other lights which may be mistaken for the prescribed lights shall be exhibited. (1863)

Use of other lights.

526. The words "no others" in previous regulations were altered in 1897 to "no other lights which may be mistaken for the prescribed lights." A vessel had been held entitled to show a flare to a vessel approaching her from the side (*i*), even before 1897, when permission to this effect was given in the Regulations (*k*). The altered words also permit the reasonable use of lights for ship's purposes.

Object of regulations as to lights.

527. One general object of the regulations as regards lights (*l*) is to tell other vessels whether the vessel carrying them is stationary or in motion, so that the other vessel may direct her course accordingly, and, when it is her duty to keep out of the way, may give the vessel carrying the under-way lights and in motion a wider berth than she would give if that vessel carried an anchor light and was therefore presumably stationary (*m*). The object of the coloured side

(*i*) *The Merchant Prince* (1885), 10 P. D. 139.

(*k*) By art. 12, introduced in the Sea Regulations, 1897.

(*l*) Regulation lights, both under way and at anchor, were first imposed on steam vessels in 1848, and on sailing vessels in 1852; see Table in Appendix, *post*. Previously the duty to show lights depended on circumstances; see *The Osmanli* (1850), 7 Notes of Cases, 507, 509 (beyond all doubt it has been determined that there is no such general obligation as a duty on a sailing vessel to show a light at night); and compare *The Rose* (1843), 2 Wm. Rob. 1, 4; *The Iron Duke* (1845), 4 Notes of Cases, 94, 97; *Londonderry* (*Owners*) v. *Dolbadarn Castle* (*Owners*) (1845), 4 Notes of Cases, Supplement, xxxi., xlii.; *The Victoria* (1848), 3 Wm. Rob. 49, 53 (no general obligation on a vessel at anchor to exhibit a light, though circumstances might render it obligatory; the season of the year, the state of the night, and the locality, were circumstances to be considered; both vessels held to blame, the vessel at anchor for having no light). In 1862 it was declared that a close-hauled vessel was bound to show a light in sufficient time to enable the steamship, or other vessel which had the duty to give way to her, to avoid collision (*The Saxonia, The Eclipse* (1862), Lush. 410, 422, P. C. (the Master of the Rolls, in delivering the judgment of the Privy Council, also said that a vessel at anchor or a fishing boat was bound to exhibit a light to afford the vessels whose duty it was to avoid her the means of doing so)). The duty of a vessel which is being overtaken to show a light to the overtaking vessel grew slowly and was successfully denied for the last time in 1873, on the ground that some authorities considered the exhibition of a stern light to be a disadvantage (*The Earl Spencer* (1875), L. R. 4 A. & E. 431); but this duty was finally established by the Sea Regulations, 1880, art. 11 (see Table in Appendix, *post*). Even after this, one decision against the continued existence of this duty was obtained (*The Reiher* (1881), 4 Asp. M. L. C. 478), but it was soon overruled (*The Main* (1886), 11 P. D. 132, C. A.); see, further, under art. 10; p. 399, *post*.

(*m*) *The Esk* (1869), L. R. 2 A. & E. 350, 353.

SECT. 2. Regulations for Preventing Collisions etc.

lights and of the additional foremast light is to show the course or heading of the vessel when under way.

Application of the regulations as to lights.

528. These regulations do not impose the duty of carrying a light on every vessel. Special lights are imposed on vessels towing, on vessels from any accident not under command, on telegraph cable vessels, on pilot vessels, and on fishing vessels and fishing boats. Also a vessel being towed, a vessel aground in or near a fair-way, and certain small vessels and boats are required to carry certain lights; and a vessel being overtaken is required to show a light from her stern. But apart from these special regulations, the general duty to show lights is only imposed on vessels under way and vessels at anchor. A vessel, however, may be fast to the shore (*n*), or to a structure fixed to the shore, or to one or more vessels which are fast in one of these ways (*o*); or again, a vessel may be fast to an island, or to a landing stage, pontoon (*p*), or similar structure, which is more or less detached from the shore, or may be lying in a tier with a number of other vessels made fast either to buoys or to each other (*q*). In such cases it would appear that the vessel is not at anchor (*r*), and that none of these regulations as to lights apply to her. It may well be, however, that a vessel which is riding alone moored to buoys or a single buoy, or which while not under way (*s*) is made fast to another vessel at anchor, may be considered to be so held by the anchors of the buoy or of the other vessel as to be herself "at anchor."

Vessel aground.

A vessel aground but not in or near a fair-way is not within any of these regulations as to lights (*a*).

Dumb barge.

A dumb barge is a "vessel" within these regulations as to lights, and when being towed is bound to carry green and red side lights (*b*). A dumb barge when drifting on the tide (*c*) or dredging

(*n*) And a craft permanently fast to the shore, or permanently moored as a hulk, might be held not to be a "vessel" within the meaning of these Regulations, and on that account not bound to carry any of the prescribed lights; see the discussion as to "vessels," note (*d*), p. 374, *ante*.

(*o*) *The Turquoise*, [1908] P. 148 (a trawler, moored outside another vessel at a wharf, was held not to be "at anchor" within art. 11, and not bound to show a light).

(*p*) Compare *The Titan*, *The Rambler* (1906), 10 Asp. M. L. C. 350, where a tug, moored to a pontoon which was connected by a bridge with the shore, was apparently held by BARNES, P., not to come within the local rule, which was to the effect that the bell should be rung in fog upon a steam vessel when anchored.

(*q*) Compare *The St. Aubin*, [1907] P. 60. A dumb barge was fast by her head rope to the side of a barge, which was alongside a steamship lying at a tier in the river Thames. The barge had no one on board, and at the time of the collision was swinging at right angles across the stream.

(*r*) Within art. 11; see pp. 404, 405, *post*. Compare the notes (*p*), (*q*), *supra*; and as to the definition of "under way," see p. 378, *ante*.

(*s*) A vessel which is fast to another vessel at anchor, but which is herself under way, for instance, a tug towing a vessel up to her anchor, must exhibit the under-way lights (*The Romance*, [1901] P. 15).

(*a*) See art. 11, pp. 403 *et seq.*, *post*.

(*b*) Under art. 5; see pp. 388 *et seq.*, *post*. See *The Lighter No. 3* (1902), 18 T. L. R. 322. But art. 5 may interfere with the operation of a local rule, and if so will not apply; compare art. 30; p. 477, *post*. As to such a barge when under sail, see p. 377, *ante*.

(*c*) *The Owen Wallis* (1874), L. R. 4 A. & E. 175; followed in *The*

for sand (*d*) was held not to be bound by former Sea Regulations to carry a light; but now she may be held to be a rowing boat within article 7.

A dumb barge, however, or any of the vessels in any of the conditions above stated, may be bound to show a light by a local regulation (*e*), or by the rules of good seamanship.

Obedience to regulations.

529. When these regulations as to lights apply, the general principle adopted by the courts is that it is not advisable to allow these important regulations to be satisfied by equivalents, or by anything less than a close and literal adherence to what they prescribe (*f*).

Exceptions and excuses.

In special circumstances a vessel may be excused for showing unusual lights (*g*).

A vessel which has lost or damaged her lights owing to bad weather, collision, or otherwise, is bound to replace them as soon as she reasonably can (*h*).

It is no excuse for the absence of lights that they were unnecessary owing to bright moonlight (*i*), or that they were being trimmed (*k*), or went out by accident (*l*).

The owners of a vessel have been held liable for a wrong light being carried, though this was done by direction of a compulsory pilot (*a*). A tow has been held liable for her tug not carrying

Swallow (1877), 3 Asp. M. L. C. 371, where Sir R. PHILLIMORE held that a dumb barge going down on the tide was not bound by the Sea Regulations, 1863, or at all, to carry a light, but held that the steamer which collided with her was to blame; and the Court of Appeal, reversing this decision, held the collision to be an inevitable accident.

(*d*) *The Palmyra* v. *The Charles* (1865), Holt (ADM.), 59 (a dumb barge dredging for sand off Blackwall Point in the Thames, and alleged to be lying within the low-water mark, was found by the jury not to be negligent in not showing a light: point reserved as to whether the Sea Regulations, 1863, applied to other than sea-going vessels: no report as to whether a motion to this effect was made).

(*e*) See art. 30, p. 477, *post;* compare *The Swansea* v. *The Condor* (1879), 4 P. D. 115, C. A., where a barge going up river and bound by one of the Thames Rules to show a white light from the stern, as the last of a line of barges being towed, failed to show such light; and it was held that a steamer coming down which struck the barge abaft her beam might have been misled by the absence of the light, and might fairly have assumed that there were only one or two barges astern of the tug; compare also *The St. Aubin*, [1907] P. 60.

(*f*) *The Emperor* v. *The Lady of the Lake* (1865) Holt (ADM.), 37, P. C., *per* Lord CHELMSFORD, at p. 38. As to general principles as regards observance of the regulations, and exceptions thereto, see pp. 363 *et seq.*, *ante*.

(*g*) *The Buckhurst* (1881), 6 P. D. 152; *The Faedrelandet*, [1895] P. 205, C. A.; *The Merchant Prince* (1885), 10 P. D. 139. For an unsuccessful effort to justify a wrong light by custom, see *The Talbot*, [1891] P. 184.

(*h*) *The Aurora*, *The Robert Ingham* (1861), Lush. 327; *The Saxonia*, *The Eclipse* (1862), Lush. 410, P. C.; *The Kjobenhavn* (1874), 2 Asp. M. L. C. 213, P. C.

(*i*) *The City of London* (1857), Sw. 245.

(*k*) *The C. M. Palmer*, *The Larnax* (1873), 2 Asp. M. L. C. 94; *The Victoria* (1848), 3 Wm. Rob. 49.

(*l*) *The Rob Roy* (1849), 3 Wm. Rob. 190; *The Sylph* (1854), 2 Ecc. & Ad. 75; *The Hibernia* (1874), 2 Asp. M. L. C. 454, P. C.

(*a*) *The Ripon* (1885), 10 P. D. 65; *The Giraffe* (1853), Pritchard's Admiralty Digest, 3rd ed., p. 249. As to the effect of the Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), on the liability of a shipowner for the negligence of a compulsory pilot, see note (*o*), p. 529, *post*.

SECT. 2. Regulations for Preventing Collisions etc.

towing lights (*b*); and a sailing ship towing a pilot boat has been held liable for the latter showing a white light while being towed (*c*).

Liability if damage caused by breach.

530. In collision actions begun since the 16th December, 1911, an infringement of these regulations is only evidence of negligence, and the other party has to prove that it was in fact to some extent the cause of the collision (*d*). But in some circumstances, for instance, when a vessel under way and showing no light in breach of the Sea Regulations comes into collision, there appears to be a rebuttable presumption against her owners that this breach contributed to the collision (*e*); and if a missing light would probably have been seen and would have conveyed additional information (*f*), the vessel may be held to blame.

Obscuration of lights.

531. It would probably be too strict to hold that an occasional obscuration of a light at sea under exceptional circumstances is a breach of the Sea Regulations (*g*). But when the light is undoubtedly in the wrong position, and the evidence is strong that it could not be seen, and there is no evidence of any confusion or absence of care on the other vessel, the offending vessel has been held to blame (*h*). When a steamer sees a sailing vessel a long

(*b*) *The Devonian*, [1901] P. 221, C. A.

(*c*) *The Mary Hounsell* (1879), 4 P. D. 204.

(*d*) See p. 507, *post*; Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 9 (2); and *ibid.*, s. 4 (1), repealing M. S. Act, 1894, s. 419 (4); compare *The Enterprise*, [1912] P. 207. In actions for collision brought before the 16th December, 1911, a vessel which was subject to the strict statutory presumption of fault which prevailed since 1873 could only escape liability for not carrying lights as prescribed by the Sea Regulations, if she could show that this was necessary owing to the circumstances of the case, or to avoid immediate danger, or that the infringement could not by any possibility have contributed to the collision (see Sea Regulations, 1910, art. 27; M. S. Act, 1894, s. 419 (4); *The "Fanny M. Carvill"* (*Owners*) v. *"Peru"* (*Owners*), *The "Fanny M. Carvill"* (1875), 13 App. Cas. 455, n., P. C.; *Eastern Steamship Co.* v. *Smith, The "Duke of Buccleuch,"* [1891] A. C. 310; *China Merchants' Steam Navigation Co.* v. *Bignold, The "Hochung," The "Lapwing"* (1882), 7 App. Cas. 512, P. C.; *The Chusan* (1885), 5 Asp. M. L. C. 476; *The Argo* (1900), 9 Asp. M. L. C. 74, C. A.; *The Englishman* (1877), 3 P. D. 18; *The Sans Pareil* (1900), 9 Asp. M. L. C. 59; *The Sophie Rebecca* (1902), *Shipping Gazette*, 5th February; *The Pitgaveney*, [1910] P. 215; *Emery* v. *Cichero, The "Arklow"* (1883), 9 App. Cas. 136, P. C.; *The Vera Cruz* (No. 1) (1884), 9 P. D. 88; *The Imbro* (1889), 14 P. D. 73; *The Talbot*, [1891] P. 184; *The Devonian* (1901), 9 Asp. M. L. C. 158, 160; *The Breadalbane* (1881), 7 P. D. 186; explained in *The Devonian*, [1901] P. 221, C. A.).

(*e*) *The "Fenham"* (1870), L. R. 3 P. C. 212, 216; *Cayzer* v. *Carron Co.* (1884), 9 App. Cas. 873, 882; and see p. 507, *post*.

(*f*) Compare *The Devonian*, [1901] P. 221, 226, 227, C. A. (light missing, which would have shown that the vessel was towing another vessel).

(*g*) *The "Glamorganshire"* (1888), 13 App. Cas. 454, 466, P. C.; compare *The Duke of Buccleuch* (1889), 15 P. D. 86; *The Duke of Sutherland* (1875), L. R. 4 A. & E. 417, 419; *The Fire Queen* (1887), 12 P. D. 147.

(*h*) *S.S. "Gannet"* (*Owners*) v. *S.S. "Algoa"* (*Owners*), *The "Gannet,"* [1900] A. C. 234 (this decision in the House of Lords appears to have been unaffected by the strict statutory presumption of fault, which then applied). Compare also, as to obscuration, *The Hermod* (1890), 6 Asp. M. L. C. 509 (Mersey Regulations); *The Tirzah* (1878), 4 P. D. 33; *The Pacific* (1884), 9 P. D. 124 (where the light is not carried so as to be visible, the court will not be over-nice in inquiring whether the sails and hull could have been seen sooner than they were).

way off, but cannot see her lights owing to their being wrongly placed, and the rash and careless navigation of the steamer is the real cause of the collision, it may be held that the invisibility of the sailing vessel's lights could not properly be said to have contributed to the collision (*i*). A steamer whose lights are being obscured by her own smoke may be under a duty to slacken speed on approaching another vessel (*k*).

Duty of good seamanship to show lights in special cases.

532. Apart from any general or local regulations, it has long been recognised that vessels in certain circumstances are bound to show lights; for instance, when a vessel is getting under way (*l*), or coming to anchor (*m*) in circumstances in which her regulation lights are not visible, or when a vessel is obstructing a fair-way (*n*), or is being approached in circumstances in which it is proper to show a light, though a light is not specially prescribed by any regulations in force (*o*), and in other cases (*p*).

Lights on wrecks.

533. The owner of a ship sunk, whether by his default or not, if he abandon possession and control of her, has not any responsibility to light her so as to protect other vessels from collision with her; but so long and so far as possession, management and control of the wreck be not abandoned or properly transferred, he is bound to take proper steps as regards lighting. In order to fix the owner with liability, it must be shown that, as regards lighting, the control of the vessel had not been abandoned or legitimately transferred, and that the owner has been negligent in the discharge of his legal duty (*q*).

(*i*) *Beal* v. *Marchais, The "Bougainville" and The "James C. Stevenson"* (1873), L. R. 5 P. C. 316. This decision was given when the M. S. Act, 1862 (25 & 26 Vict. c. 63), s. 29, was in force, under which it had to be proved that the collision was occasioned by the non-observance of a regulation before a statutory presumption of fault could arise, and might well be the same under the law as it is now.

(*k*) *The Rona and The Ava* (1873), 2 Asp. M. L. C. 182, P. C.

(*l*) *The John Fenwick* (1872), L. R. 3 A. & E. 500.

(*m*) *The Philotaxe* (1877), 3 Asp. M. L. C. 512.

(*n*) *The Industrie* (1871), L. R. 3 A. & E. 303, 308; *The Thomas Lea* (1876), 3 Asp. M. L. C. 260; *The St. Aubin*, [1907] P. 60 (where an unlighted dumb barge at night was fast by her headfast to another barge which was alongside a steamship at anchor in the Thames, and swung round at right angles athwart the stream, and was struck by a steamship coming down river; it was held that under the duty of good seamanship there ought to have been a man on board the barge, and he ought to have shown a light to the approaching steamer).

(*o*) *The Anglo-Indian* (1875), 3 Asp. M. L. C. 1, P. C. (vessel being overtaken); *The Chanonry* (1873), 1 Asp. M. L. C. 569; *The Jane Bacon* (1878), 27 W. R. 35; compare *The Merchant Prince* (1885), 10 P. D. 139.

(*p*) As to a steamer dredging up stern first, see *The Juno* (1894), 7 Asp. M. L. C. 506; as to a ship so dredging, see *The Indian Chief* (1888), 14 P. D. 24; *The Smyrna* (1860), cited in Lush. 385.

(*q*) *S.S. "Utopia" (Owners)* v. *S.S. "Primula" (Owners and Master), The "Utopia,"* [1893] A. C. 492, 498, P. C.; *The Snark*, [1900] P. 105, C. A. (independent contractor); *The Douglas* (1882), 7 P. D. 151, C. A. (vessel sunk by fault of her master: owners not liable for collision with another vessel due to their vessel being unlighted a few hours after sinking); *White* v. *Crisp* (1854), 10 Exch. 312 (it is the duty of the owner of a sunken vessel in a public navigable river, while he has possession and control, to take precautions to prevent injury to other vessels by their striking it: this obligation may be transferred with the transfer of possession and

SECT. 2. Regulations for Preventing Collisions etc.

Article 2.

534. Article 2 of the Sea Regulations, 1910, is as follows:—

Article 2.

A steam vessel when under way (*r*) shall carry—

(a) On or in front of the foremast (*s*), or if a vessel without a foremast, then in the fore part of the vessel (*t*), at a height above the hull of not less than 20 feet, and if the breadth of the vessel exceeds 20 feet, then at a height above the hull not less than such breadth (*a*), so, however, that the light need not be carried at a greater height above the hull than 40 feet (*b*), a bright white light, so constructed as to show an unbroken light over an arc of the horizon of 20 points of the compass, so fixed as to throw the light 10 points on each side of the vessel, viz., from right ahead to 2 points abaft the beam on either side, and of such a character as to be visible at a distance of at least 5 miles. (1848) (*c*)

(b) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least 2 miles. (1848) (*d*)

(c) On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to 2 points abaft the beam on the port side, and of such a character as to be visible at a distance of at least 2 miles. (1848) (*d*)

(d) The said green and red side-lights shall be fitted with inboard screens projecting at least 3 feet forward from the light (*e*), so as to prevent these lights from being seen across the bow. (1848)

(e) A steam vessel when under way may carry an additional white light similar in construction to the light mentioned in subdivision (a). These two lights shall be so placed in line with the keel that one shall be at least 15 feet higher than the other,

control to another person); *Brown* v. *Mallett* (1848), 5 C. B. 599 (the duty to use reasonable skill and care to prevent mischief while the owner has the control and management of his vessel is the same whether the vessel be floating or aground, under water or above it).

(*r*) As to the meaning of "under way," see p. 378, *ante*.

(*s*) In the Sea Regulations, 1880, the previous words, "at the foremast head," were changed to "on or in front of the foremast."

(*t*) The words "or if . . . of the vessel" were added in the Sea Regulations, 1897.

(*a*) The words "at a height . . . such breadth" were added in 1880. As to carrying lights at the proper height, compare *The Hirondelle* (1905), 22 T. L. R. 146, C. A.

(*b*) The words "so however . . . feet" were added in 1897.

(*c*) In the Sea Regulations, 1863, the words "and of such a character as to be visible at least five miles' were added, with the insertion here of the words "on a dark night with a clear atmosphere," after the word "visible," as to which now see p. 379, *ante*.

(*d*) The words "and of such a character . . . miles" were added in 1863.

(*e*) In 1858 the previous words "with screens on the inboard side of at least 3 feet long" were altered in effect to the present words "with inboard screens . . . light." In 1893 some precise regulations were made as to screening (see Vessels Side Lights Regulations, 1893, in the Table in the Appendix, *post*), but they appear to have expired in 1897.

and in such a position with reference to each other that the lower light shall be forward of the upper one. The vertical distance between these lights shall be less than the horizontal distance. (1897)

535. The vessels to which these regulations apply are required to have masts of sufficient size to carry the lights at the prescribed height (*f*). These lights are not required to be fixed in a particular place, but must be so placed as to be properly visible in accordance with the regulations (*g*). The Board of Trade publishes instructions for fixing and screening, but these instructions, except in so far as authorised by statute, have no legal force (*h*).

Position of lights.

536. Article 3 of the Sea Regulations, 1910, is as follows:— Article 3.

Article 3.

A steam vessel when towing another vessel shall, in addition to her side-lights, carry two bright white lights in a vertical line one over the other, not less than 6 feet (*i*) apart, and when towing more than one vessel shall carry an additional bright white light 6 feet above or below such lights, if the length of the tow, measuring from the stern of the towing vessel to the stern of the last vessel towed, exceeds 600 feet (*k*). Each of these lights shall be of the same construction and character, and shall be carried in the same position as the white light mentioned in Article 2 (a), except the additional light, which may be carried at a height of not less than 14 feet above the hull. (1863) (*l*)

Such steam vessel may carry a small white light abaft the funnel or aftermast for the vessel towed to steer by, but such light shall not be visible forward of the beam. (1897)

537. The purpose of the towing lights is to warn other vessels that the tug is incumbered, and not in all respects mistress of her movements (*m*). A tug towing a vessel up to her anchor should

Tug and tow.

(*f*) A steam tug which had her lights lashed in a line to a rail on the top of the cook-house was held not justified by the fact that she had neither masts nor rigging (*The Louisa* v. *The City of Paris* (1864), Holt (ADM.), 15), and on appeal the tug was held alone to blame; compare *The Hirondelle* (1905), 22 T. L. R. 146, C. A., where a torpedo boat destroyer was similarly not justified in carrying her anchor lights below the prescribed height.

(*g*) *Beal* v. *Marchais, The "Bougainville" and The "James C. Stevenson"* (1873), L. R. 5 P. C. 316. Questions as to the placing and screening of side lights have arisen chiefly with regard to sailing vessels; see under art. 5, pp. 389, 390, *post;* and as to obscuration, see under art. 1, pp. 382, 383, *ante.*

(*h*) *The Magnet* (1875), L. R. 4 A. & E. 417, 426 (except in so far as authorised by statute, the instructions can have no binding force upon English, much less upon foreign, vessels). The court has power to order an inspection of the vessel's lights by the Trinity Masters; see Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 18; R. S. C., Ord. 50, r. 3; *The Germania* (1868), 3 Mar. L. C. 140. Such an order was made after evidence in *The Magnet, supra;* but an application for such an order before the hearing was dismissed as premature in *The Victor Covacevich* (1885), 10 P. D. 40. Such an inspection should be at night (*The Germania* (1869), 21 L. T. 44, P. C.).

(*i*) In the Sea Regulations, 1896, the previous distance, 3 feet, was altered to 6 feet.

(*k*) The words "and when towing . . . 600 feet" were added in 1897.

(*l*) The words "except . . . hull" were added in 1897.

(*m*) *Union Steamship Co.* v. *"Aracan" (Owners), The "America" and*

SECT. 2. Regulations for Preventing Collisions etc.

exhibit the towing lights (*n*). Even when the strict statutory presumption of fault applied, it was held that a tug might escape liability although her small white light was visible before the beam, when the other lights should have shown unmistakably that the vessels in question were tug and tow (*o*).

Where the tow controls the navigation, the tow will be liable for an infringement by the tug of the regulations as to lights (*p*).

Article 4.

538. Article 4 of the Sea Regulations, 1910, is as follows:—

Article 4.

(a) A vessel which from any accident is not under command shall carry at the same height (*q*) as the white light mentioned in Article 2 (a), where they can best be seen (*r*), and, if a steam vessel, in lieu of that light, two (*s*) red lights, in a vertical line one over the other, not less than 6 feet (*t*) apart, and of such a character as to be visible all round the horizon (*a*) at a distance of at least 2 miles; and shall by day carry in a vertical line one over the other not less than 6 feet (*t*) apart, where they can best be seen, two (*s*) black balls or shapes each 2 feet in diameter. (1880) (*b*)

(b) A vessel employed in laying or in picking up a telegraph cable shall carry in the same position as the white light mentioned in Article 2 (a), and if a steam vessel, in lieu of that light, three lights (*c*) in a vertical line one over the other, not less than 6 feet apart. The highest and lowest of these lights shall be red, and the middle light shall be white, and they shall be of such a character as to be visible all round the horizon, at a distance of at least 2 miles (*d*). By day she shall carry in a vertical line one over the other, not less than 6 feet apart, where they can best be seen, three shapes not less

The "Syria" (1874), L. R. 6 P. C. 127, 131. As to the duties and liabilities of tug and tow as regards one another and other vessels, see p. 492, *post*,

(*n*) *The Romance*, [1901] P. 15.

(*o*) *The Sanspareil* (1900), 9 Asp. M. L. C. 59, 62.

(*p*) *The Devonian*, [1901] P. 221, C. A.

(*q*) In the Sea Regulations, 1897, the words "in the same position" were altered to "at the same height."

(*r*) In the Sea Regulations, 1897, the words "in front of but not lower than her foremast head" were altered to "where they can best be seen."

(*s*) In the Sea Regulations, 1897, the number of red lights and of black balls for disabled vessels was reduced from three to two.

(*t*) In the Sea Regulations, 1897, the distance apart was altered from 3 to 6 feet.

(*a*) In the Sea Regulations, 1897, the words "all round the horizon" were added.

(*b*) Special lights and day signals for a ship which from any accident is not under command, and for a telegraph cable ship, were introduced in the Sea Regulations, 1880, and were then the same in each case—three red lights at night, and three black balls by day. In 1884 the telegraph cable ships had allotted to them substantially their present signals; compare the Submarine Telegraph Act, 1885 (48 & 49 Vict. c. 49).

(*c*) In the Sea Regulations, 1897, the words previously inserted here, "in globular lanterns, each not less than ten inches in diameter," were omitted.

(*d*) In the Sea Regulations, 1897, the words "they shall be of such a character that the red shall be visible at the same distance as the white light" were altered to "they shall be of such a character as to be visible all round the horizon at a distance of at least 2 miles."

than 2 feet in diameter, of which the highest and lowest shall be globular in shape and red in colour, and the middle one diamond in shape and white. (1880)

(c) The vessels referred to in this Article when not making way through the water, shall not carry the side lights, but when making way shall carry them. (1880)

(d) The lights and shapes required to be shown by this Article are to be taken by other vessels as signals that the vessel showing them is not under command and cannot therefore get out of the way. (1880)

These signals are not signals of vessels in distress and requiring assistance. Such signals are contained in Article 31. (1884)

Vessel "not under command."

539. The phrase "cannot get out of the way" in sub-section (d) of article 4 is used as explanatory of the phrase "not under command," and appears to be included under it; so that if a vessel is able to get out of the way she cannot be said to be not under command (*e*). Whether a vessel is under command or not depends on all the circumstances. It is a question for the opinion of the Elder Brethren (*f*). A vessel is not within this rule unless she is not only not under command, but also not under command from an accident (*g*).

It may be that a vessel which has steerage way and can steer, but can only answer her helm very slowly so that she cannot get out of the way in the ordinary manner, may properly carry these signals (*h*); and so also a vessel, which can only stop and reverse after great delay (*i*); and so also if owing to an accident the loss

(*e*) *The P. Caland*, [1891] P. 313, 319. A steamship, with engines and steering gear undamaged, but reduced to slow speed owing to hull damage (*Cory & Son, Ltd.* v. *Kopajtic, The "James Joicey"* v. *The "Kostrena,"* [1908] S. C. 295), and a steamship working full speed ahead under a hard-a-port helm, and dragging through the mud on her course at about a knot an hour, and reversing at times to clear her propeller and assist her in answering her helm (*The Bellanoch*, [1907] P. 170, C. A., not appealed against on this point, *sub nom. S.S. Canning* (*Owners*) v. *S.S. Bellanoch* (*Owners*), [1907] A. C. 269) have been held to be under command. On the other hand, where a steamship in a gale near the Goodwin Sands unshackled her anchor, banked her fires, shut off steam, and rode head to wind by her chains, and at night took down the black balls which she had hoisted and put up only anchor lights fore and aft, it was held that the master having rendered his vessel unmanageable ought to have shown the red lights (*The Faedrelandet*, [1895] P. 205, C. A.). A sailing vessel in the English Channel which had her stern and bows damaged and her head gear and foretopmast carried away in a collision, and was putting back in distress, moving slowly under her lower maintopsail, and was trying to get fast to a tug, was held justified in showing the red lights, considering the traffic and all the vessels out of the way of which she would otherwise have had to keep (*The Hawthornbank*, [1904] P. 120; compare *The Buckhurst* (1881), 6 P. D. 152). A steamer with her engines broken down but in tow is not within the rule (*The Matpen* (1913), *Times*, 23rd May).

(*f*) *The Hawthornbank, supra*, at p. 129.

(*g*) Compare *The Bellanoch, supra*, at p. 174.

(*h*) *"P. Caland" and Freight* (*Owners*) v. *Glamorgan Steamship Co., The "P. Caland,"* [1893] A. C. 207, 212. But as to a vessel which can only go ahead very slowly by repeated reversals of her engines, and can only imperfectly obey her helm by reason that she is on the ground, see *The Bellanoch, supra, per* FLETCHER MOULTON, L.J., at p. 187.

(*i*) *"P. Caland" and Freight* (*Owners*) v. *Glamorgan Steamhip Co., The "P. Caland," supra*, at p. 213. But in this case a steamship which was held wrong in carrying the red lights had been found to be probably not able to reverse as quickly as before (*The P. Caland, supra*, at p. 318); the testimony was that in ordinary circumstances she could

SECT. 2. Regulations for Preventing Collisions etc.

of the power to go ahead is reasonably regarded as likely to occur at any moment (*k*). A vessel capable of high speed may be not under command, like a runaway horse (*l*).

Special fog signals are prescribed for a vessel under way, which is unable to get out of the way of an approaching vessel through being not under command, or unable to manœuvre as required by these rules (*m*).

Disabled vessel making way.

540. This article contemplates that a vessel carrying these disablement signals may be making way through the water; and she may be justified in doing so, for instance, if she is very near port, or to avoid an otherwise imminent danger. But she is not justified in proceeding in all cases, and may be to blame for doing so (*n*).

A vessel which puts up these signals and proceeds states that she is in a crippled condition, and should act accordingly, not manœuvring for other vessels, but leaving them to get out of her way (*o*).

Vessels touching and aground.

541. While the duty to give these disablement signals may apply to a vessel touching and moving, it does not apply to a vessel which is hard and fast aground; for in the case of a vessel "aground in or near a fair-way" it was considered necessary expressly to specify in article 11 that she should carry the red lights, and the meaning of a vessel not under command is illustrated by article 15 (*p*).

Article 5.

542. Article 5 of the Sea Regulations, 1910, is as follows:—

Article 5.

A sailing vessel under way, and any vessel being towed, shall carry the same lights as are prescribed by Article 2 for a steam vessel under way, with the exception of the white lights mentioned therein, which they shall never carry. (1858) (*a*)

"Under way."

543. A sailing vessel is "under way" within this article when parted from her anchors and setting sail even if wholly

reverse in three or four seconds, but on this occasion it took nearly a minute (S. C., [1892] P. 191, 195, C. A.).

(*k*) "*P. Caland*" *and Freight* (*Owners*) v. *Glamorgan Steamship Co., The* "*P. Caland*," [1893] A. C. 207, at p. 213.

(*l*) *The P. Caland*, [1891] P. 313, 320.

(*m*) See art. 15 (e), p. 410, *post*.

(*n*) "*P. Caland*" *and Freight* (*Owners*) v. *Glamorgan Steamship Co., The* "*P. Caland*," *supra*, at p. 212 (steamship in Straits of Dover which had accident to her machinery, but could steer and proceed at four to five knots without imminent risk of the engines ceasing to work, though unable to reverse as quickly as before, held not to be entitled to carry the red lights).

(*o*) *The Hawthornbank*, [1904] P. 120, 129, 130.

(*p*) *The Carlotta*, [1899] P. 223, 227.

(*a*) Under the Admiralty Notice, 1852, sailing vessels when under way or being towed, approaching or being approached by any other vessel, were required in effect to show a bright light in time to avoid collision. The coloured side lights for sailing vessels under way or being towed were introduced by the Admiralty Notice, 1858, and were required to be fixed when practicable, but were confined to sea-going sailing vessels. In 1897 the words "or being towed" were altered to "and any vessel being towed."

unmanageable (*b*); and so is a sailing vessel with her anchor down, but not holden by it (*c*).

A dumb barge lashed alongside a tug is "a vessel being towed," and should carry the side lights (*d*); but not a vessel being drawn up to her anchor by a tug (*e*). Before 1880, when separate lights were introduced for a pilot vessel, it was held that a pilot cutter, towing astern of a sailing vessel, infringed this article owing to the pilot cutter showing a white light instead of the side lights and that the sailing vessel was therefore to blame (*f*).

"Vessel being towed."

The substance of the regulation is that the lights must be fairly visible as described. There is no order that the lights must be fixed in any peculiar manner or in any particular part of the ship, nor that the lights must be fixed on the actual sides of the ship; the order is that the green light shall be exhibited on the starboard side, and the red on the port side. The whole question is whether, taking the description of the manner in which the lights are replaced on the vessel, they are so fixed as to be fairly visible (*g*). It is the effect that the legislature looks to, and not the position in which the lights are placed (*h*). The side lights are allowed to be fixed in the rigging (*i*), but not if they are thereby obscured (*k*). When the side lights of a barque were fitted with screens projecting

Fixing of lights.

(*b*) *The George Arkle* (1861), Lush. 382, P. C. (decided under the Admiralty Notice, 1858); and the vessel was held not exempted for not showing the coloured lights by the excuse that such lights were to show a vessel's course, and that being unmanageable this vessel had no course.

(*c*) *The Esk* (1869), L. R. 2 A. & E. 350 (decided under the Sea Regulations, 1863); see, further, the definition of "under way" in the preliminary article, and notes thereto, p. 378, *ante*. Under this definition a sailing vessel dredging down a river with her anchor down to check her way would no doubt be held to be "under way" within this article. As to the older law, compare *The Indian Chief* (1888), 14 P. D. 24 (decided on a similar Thames rule), and *The Smyrna* (1860), cited in Lush. 385.

(*d*) *The Lighter No. 3* (1902), 18 T. L. R. 322. As to the lights of dumb barges under art. 1, see, further, pp. 380, 381, *ante*.

(*e*) *The Romance*, [1901] P. 15.

(*f*) *The Mary Hounsell* (1879), 4 P. D. 204.

(*g*) Side lights placed near the outer edges of a galley 7 feet broad, which was just behind the foremast on a brig of 21 feet beam, were held to be properly placed (*The City of Carlisle* (1864), Brown. & Lush. 363, P. C.; compare *Beal* v. *Marchais*, *The "Bougainville" and The "James C. Stevenson"* (1873), L. R. 5 P. C. 316 (the side lights are not required to be affixed in a particular place, but to be so placed as to be properly visible); *The Gustav*, *The New Ed* (1864), 9 L. T. 547 (side lights not properly placed though duly screened when fixed on stands secured to the paul-bitts of the windlass on a foreign brig of 221 tons)). Placing the side lights forward, where they were obscured a point and a half on either bow, was held not to be justifiable on account of rough weather (*The Tirzah* (1878), 4 P. D. 33); but the obscuration of the starboard light by the cathead to an extent of two and a half to three degrees was held not to be an unreasonable departure from the Regulations (*The Fire Queen* (1887), 12 P. D. 147). As to the position of lights, see, further, under art. 2, p. 385, *ante*; and as to obscuration, see, further, under art. 1, p. 382, *ante*.

(*h*) *The Gustav*, *The New Ed*, *supra*.

(*i*) *The "Glamorganshire"* (1888), 13 App. Cas. 454, P. C.

(*k*) *The Germania* (1868), 3 Mar. L. C. 140; S. C. (1869), 21 L. T. 44, P. C. (placing the side lights in the mizen rigging of a barque, where owing to her form and rig they would not be visible to a vessel coming end on, was held to have partly caused a collision with a steamer struck by the barque's stem obliquely amidships).

SECT. 2. Regulations for Preventing Collisions etc.

only one foot instead of three feet, so that they could be seen across the bow, this together with obscuration of these lights by the main rigging was an inexcusable infraction of the regulations (*l*).

544. Article 6 of the Sea Regulations, 1910, is as follows:—

Article 6.

Article 6.

Whenever, as in the case of small vessels under way during bad weather, the green and red side-lights cannot be fixed, these lights shall be kept at hand lighted and ready for use; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side, nor, if practicable, more than 2 points abaft the beam on their respective sides. (1858) (*m*)

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with proper screens. (1863)

Small vessels.

Side lights.

545. There is no statutory or judicial definition of "small vessel" (*n*). These lights are those which have been previously indicated in art. 2 (b), (c) and (d), and not the different side lights referred to in art. 7, 1 (b). Therefore the present article will not usually apply to steam vessels of less than 40, and vessels under oars and sails of less than 20, gross tons, since they will probably exercise their option not to carry the green and red side lights under art. 2.

"Cannot be fixed."

Whether it was practicable for the vessel to carry the side lights fixed is a question for the Trinity Masters (*o*).

"In sufficient time to prevent collision."

It will probably not be sufficient to carry these lights below (*p*). The words "in sufficient time to prevent collision" mean that the light should be shown when the vessels are approaching under such circumstances that there exists a risk of collision; then there is a duty to show it in time to prevent collision (*q*). Under these words

(*l*) *The Emperor* v. *The Lady of the Lake* (1865), Holt (ADM.), 37, P. C.

(*m*) This regulation was introduced in its original form in the Admiralty Notice as to Lights, 1858, which directed that when the lights were not fixed, "they shall be kept upon deck between sunset and sunrise, and on their proper sides of the vessel, ready for instant exhibition, and shall be exhibited in such a manner as can best be seen, on the approach of or to any other vessel or vessels, in sufficient time to avoid collision, and so that," etc. In the Sea Regulations, 1863, the words were altered to "in such manner as to make them most visible," and there were other verbal alterations. In the Sea Regulations, 1880, the words were altered to "shall be kept on deck, on their respective sides of the vessel, ready for use." In the Sea Regulations, 1884, there was no change. In the Sea Regulations, 1897, the words were altered to "shall be kept at hand lighted and ready for use"; and at the end the words were added "nor, if practicable, more than two points abaft the beam on their respective sides"; and there was also a small verbal alteration.

(*n*) As to the meaning of "vessel," see, further, note (*d*), p. 374, *ante*.

(*o*) Compare *The Livingstone* (1859), Sw. 519; *The Calla* (1859), Sw. 465.

(*p*) Compare *The Margaret* v. *The Tuscar* (1866), 15 L. T. 86, where, however, the rule was "shall be kept upon deck," etc.

(*q*) Compare *The Orion*, [1891] P. 307, 311, decided under the Sea

in other rules, lights shown at a distance of not more than a third of a mile (*r*), and even of two to three hundred yards (*s*), have been held sufficient.

546. Article 7 of the Sea Regulations, 1910, is as follows:—

Article 7.

Article 7.

Steam vessels of less than 40, and vessels under oars or sails of less than 20, tons gross tonnage, respectively, and rowing boats, when under way, shall not be obliged to carry the lights mentioned in Article 2 (a) (b) and (c), but if they do not carry them they shall be provided with the following lights:—

1. Steam vessels of less than 40 tons shall carry:
 (a) In the fore part of the vessel, or on or in front of the funnel, where it can best be seen, and at a height above the gunwale of not less than 9 feet, a bright white light constructed and fixed as prescribed in Article 2 (a), and of such a character as to be visible at a distance of at least 2 miles.
 (b) Green and red side-lights constructed and fixed as prescribed in Article 2 (b) and (c), and of such a character as to be visible at a distance of at least 1 mile, or a combined lantern showing a green light and a red light from right ahead to 2 points abaft the beam on their respective sides. Such lantern shall be carried not less than 3 feet below the white light.
2. Small steamboats, such as are carried by sea-going vessels, may carry the white light at a less height than 9 feet above the gunwale, but it shall be carried above the combined lantern, mentioned in sub-division 1 (b).
3. Vessels under oars or sails, of less then 20 tons, shall have ready at hand a lantern with a green glass on one side and a red glass on the other, which, on the approach of or to other vessels, shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.
4. Rowing boats, whether under oars or sail, shall have ready at hand a lantern showing a white light, which shall be temporarily exhibited in sufficient time to prevent collision.

The vessels referred to in this Article shall not be obliged to carry the lights prescribed by Article 4 (a), and Article 11, last paragraph (*t*). (1897)

Regulations, 1884, art. 10, as modified by Orders in Council of the 30th December, 1884, and 24th June, 1885.

(*r*) *The Orion*, [1891] P. 307, 309.

(*s*) *The Picton*, [1910] P. 46 (decided under the Sea Regulations, 1897, art. 9 (d) 2, made in 1906). But in this case the steamer had a very bad look-out.

(*t*) This article was first introduced in the Sea Regulations, 1897; but under the Sea Regulations, 1863, art. 9, open fishing and other open boats were not required to carry the side lights, but might carry a lantern with green and red sides; and there was a similar provision under the Sea Regulations, 1884, art. 10. A dumb barge, dredging for sand, recovered judgment in a common law court, though showing no light under the Sea Regulations, 1863, art. 9 (*The Palmyra* v. *The Charles* (1865), Holt (ADM.), 59); and a fishing smack was held to blame under that article for carrying an insufficient light in an improper position (*The Robert and Ann* v. *The Lloyds* (1864), Holt (ADM.), 55).

SECT. 2. Regulations for Preventing Collisions etc.

547. It may be that this article is not intended to apply to a little river boat used for pleasure rowing (*a*); but it would apply to a barge using oars.

"Rowing boat."

548. Article 8 of the Sea Regulations, 1910, is as follows:—

Article 8.

Article 8.

Pilot-vessels, when engaged on their station on pilotage duty, shall not show the lights required for other vessels, but shall carry a white light at the masthead, visible all round the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes (*b*). (1858)

On the near approach of or to other vessels they shall have their side-lights lighted, ready for use, and shall flash or show them at short intervals, to indicate the direction in which they are heading, but the green light shall not be shown on the port side, nor the red light on the starboard side (*c*). (1897)

A pilot-vessel of such a class as to be obliged to go alongside of a vessel to put a pilot on board, may show the white light instead of carrying it at the masthead, and may, instead of the coloured lights above mentioned, have at hand ready for use a lantern with a green glass on the one side and a red glass on the other, to be used as prescribed above (*c*). (1897)

A steam pilot-vessel exclusively employed for the service of pilots licensed or certified by any pilotage authority or the Committee of any pilotage district, when engaged on her station on pilotage duty and not at anchor, shall, in addition to the lights required for all pilot boats, carry at a distance of eight feet below her white masthead light a red light visible all round the horizon and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles, and also the coloured side-lights required to be carried by vessels when under way. (1892) (*d*)

When engaged on her station on pilotage duty and at anchor she shall carry, in addition to the lights required for all pilot boats, the red light above mentioned, but not the coloured side-lights. (1892) (*d*)

Pilot-vessels, when not engaged on their station on

(*a*) Compare *Carse* v. *North British Steam Packet Co.* (1895), 22 R. (Ct. of Sess.) 475.

(*b*) This paragraph, when introduced in its original form in the Admiralty Notice as to Lights and Fog Signals, 1858 (see Table in Appendix, *post*), applied only to sailing pilot vessels; and under it the flare was to be exhibited every fifteen minutes. In the Sea Regulations, 1863, there were some verbal alterations, and the words "visible all round the horizon" were added. In 1880 the words "when engaged on her station on pilotage duty" were added after what were then the first words, "a pilot vessel"; and the previous words, "a flare-up light every fifteen minutes," were altered to the present words.

(*c*) These paragraphs were introduced in the Sea Regulations, 1897.

(*d*) These paragraphs, in their original form, were introduced by Order in Council of the 18th August, 1892; and after the words "pilotage district" there then appeared the words "in the United Kingdom," and after "pilotage duty" there were the words "and in British waters"; see Table in Appendix, *post*. Under an Order in Council of the 27th November, 1896, these paragraphs in their original form were added as part of the Sea Regulations, 1897, art. 8; see Table in Appendix, *post*. In the Sea Regulations, 1910, the words stated above have been omitted, and thereby these Regulations have become of wider application.

pilotage duty, shall carry lights similar to those of other vessels of their tonnage (*e*). (1880)

Pilot vessels.

549. All pilot boats, that is, all boats and ships regularly employed in the pilotage service of any district, must be licensed (*f*). But "pilot-vessel" in this article may include a vessel hired and used for pilotage purposes by unlicensed pilots (*g*).

Pilot vessel "engaged on her station on pilotage duty."

550. A pilot vessel is engaged on her station on pilotage duty while she is on her station and is on the look-out for vessels to pilot, or is putting a pilot on another vessel; but she is no longer so engaged when she has done this work and has no longer a pilot on board (*h*).

Article 9.

551. Article 9 of the Sea Regulations, 1910, is as follows :—

Article 9 (*i*).

Fishing-vessels and fishing-boats, when under way and when not required by this Article to carry or show the lights herein-after specified shall carry or show the lights prescribed for vessels of their tonnage under way.

(a) Open boats, by which it is to be understood boats not protected from the entry of sea water by means of a continuous deck, when engaged in any fishing at night with outlying tackle extending not more than 150 feet horizontally from the boat into the seaway, shall carry one all-round white light.

Open boats, when fishing at night, with outlying tackle extending more than 150 feet horizontally from the boat into the seaway, shall carry one all-round white light, and in addition, on approaching or being approached by other vessels, shall show a second white light at least 3 feet below the first light and at a horizontal distance of at least 5 feet away from it in the direction in which the outlying tackle is attached.

(b) Vessels and boats, except open boats as defined in sub-division (a), when fishing with drift-nets (*k*), shall, so long as the nets are wholly or partly in the water, carry two white lights where they can best be seen. Such lights shall be placed so that the vertical distance between them shall be not less than 6 feet and not more than 15 feet, and so that

(*e*) The last words in this paragraph, "of their tonnage," were added in the Sea Regulations, 1897; and the other words come from the Sea Regulations, 1896, being altered a little from their original form in the Sea Regulations, 1880.

(*f*) M. S. Act, 1894, s. 611.

(*g*) *The Mary Hounsell* (1879), 4 P. D. 204 (where it was held that the first paragraph of this article, as it appeared in 1863, did not contemplate a vessel being towed but an independent vessel, and a cutter for unlicensed pilots which was being towed by a sailing vessel was held guilty of an infringement in showing a white light when being towed).

(*h*) *The Reginald* (1907), 10 Asp. M. L. C. 519.

(*i*) The following notes are appended to the Sea Regulations, 1910, art. 9, as scheduled to the original Order in Council of the 13th October, 1910 :— "This article does not apply to Chinese or Siamese vessels." "The expression 'Mediterranean Sea' contained in sub-sections (b) and (c) of this Article includes the Black Sea and the other adjacent inland seas in communication with it."

(*k*) "Dutch vessels and boats when engaged in the 'kol,' or hand-line, fishing, will carry the lights prescribed for vessels fishing with drift-nets." (This note is appended to sub-section (b) of the article as scheduled to the original Order in Council of the 13th October, 1910.)

SECT. 2. Regulations for Preventing Collisions etc.

the horizontal distance between them, measured in a line with the keel, shall be not less than 5 feet and not more than 10 feet. The lower of these two lights shall be in the direction of the nets, and both of them shall be of such a character as to show all round the horizon, and to be visible at a distance of not less than 3 miles.

Within the Mediterranean Sea and in the seas bordering the coasts of Japan and Korea (*l*) sailing fishing vessels of less than 20 tons gross tonnage shall not be obliged to carry the lower of these two lights; should they, however, not carry it, they shall show in the same position (in the direction of the net or gear) a white light, visible at a distance of not less than one sea mile, on the approach of or to other vessels.

(c) Vessels and boats, except open boats as defined in sub-division (a), when line-fishing with their lines out and attached to or hauling their lines, and when not at anchor or stationary within the meaning of sub-division (h), shall carry the same lights as vessels fishing with drift-nets. When shooting lines, or fishing with towing lines, they shall carry the lights prescribed for a steam or sailing vessel under way respectively.

Within the Mediterranean Sea and in the seas bordering the coasts of Japan and Korea (*l*) sailing fishing vessels of less than 20 tons gross tonnage shall not be obliged to carry the lower of these two lights; should they, however, not carry it, they shall show in the same position (in the direction of the lines) a white light, visible at a distance of not less than one sea mile on the approach of or to other vessels.

(d) Vessels, when engaged in trawling, by which is meant the dragging of an apparatus along the bottom of the sea—

1. If steam vessels, shall carry in the same position as the white light mentioned in Article 2 (a), a tricoloured lantern so constructed and fixed as to show a white light from right ahead to two points on each bow, and a green light and a red light over an arc of the horizon from two points on each bow to two points abaft the beam on the starboard and port sides respectively; and not less than 6 nor more than 12 feet below the tricoloured lantern a white light in a lantern, so constructed as to show a clear uniform and unbroken light all round the horizon.
2. If sailing vessels, shall carry a white light in a lantern, so constructed as to show a clear uniform and unbroken light all round the horizon, and shall also, on the approach of or to other vessels, show where it can best be seen a white flare-up light or torch in sufficient time to prevent collision.

All lights mentioned in sub-division (d) 1 and 2 shall be visible at a distance of at least 2 miles.

(*l*) "Also, as regards Russian vessels, in the seas (excluding the Baltic) bordering the coasts of Russia." (This note is appended in sub-sections (b) and (c) of the Sea Regulations, 1910, art. 9, as scheduled to the original Order in Council of the 13th October, 1910.)

(e) Oyster dredgers and other vessels fishing with dredge-nets shall carry and show the same lights as trawlers.

(f) Fishing-vessels and fishing-boats may at any time use a flare-up light in addition to the lights which they are by this Article required to carry and show, and they may also use working lights.

(g) Every fishing-vessel and every fishing-boat under 150 feet in length, when at anchor, shall exhibit a white light visible all round the horizon at a distance of at least one mile.

Every fishing-vessel of 150 feet in length or upwards, when at anchor, shall exhibit a white light visible all round the horizon at a distance of at least one mile, and shall exhibit a second light as provided for vessels of such length by Article 11.

Should any such vessel, whether under 150 feet in length, or of 150 feet in length or upwards, be attached to a net or other fishing gear, she shall on the approach of other vessels show an additional white light at least 3 feet below the anchor light, and at a horizontal distance of at least 5 feet away from it in the direction of the net or gear.

(h) If a vessel or boat when fishing becomes stationary in consequence of her gear getting fast to a rock or other obstruction, she shall in daytime haul down the day-signal required by sub-division (k); at night show the light or lights prescribed for a vessel at anchor; and during fog, mist, falling snow, or heavy rain-storms make the signal prescribed for a vessel at anchor. (See sub-division (d), and the last paragraph, of Article 15.)

(i) In fog, mist, falling snow, or heavy rain-storms, drift-net vessels attached to their nets, and vessels when trawling, dredging, or fishing with any kind of drag-net, and vessels line fishing with their lines out, shall, if of 20 tons gross tonnage or upwards, respectively, at intervals of not more than one minute make a blast; if steam vessels, with the whistle or siren, and if sailing vessels, with the fog-horn; each blast to be followed by ringing the bell (*m*). Fishing vessels and boats of less than 20 tons gross tonnage shall not be obliged to give the above-mentioned signals; but if they do not, they shall make some other efficient sound signal at intervals of not more than one minute.

(k) All vessels or boats fishing with nets or lines or trawls, when under way, shall in daytime indicate their occupation to an approaching vessel by displaying a basket or other efficient signal where it can best be seen. If vessels or boats at anchor have their gear out, they shall, on the approach of other vessels, show the same signal on the side on which those vessels can pass.

The vessels required by this Article to carry or show the lights herein-before specified shall not be obliged to carry the lights prescribed by Article 4 (a), and the last paragraph of Article 11. (1906) (*n*)

(*m*) This is an improvement on the former regulation, art. 10 of 1884; compare *The London*, [1904] P. 355.

(*n*) The first regulations as to lights and day signals for British sea fishing vessels were the British and French Fishermen's Regulations, 1843, imposed by the Sea Fisheries Act, 1843 (6 & 7 Vict. c. 79). These were followed by the Sea Regulations, 1863, art. 9. And so far the regulations

SECT. 2. Regulations for Preventing Collisions etc.

Fishing vessels and fishing boats.

552. This article is in the same terms as art. 9 of the Sea Regulations, 1897, which came into force on the 1st May, 1906. Fishing vessels and fishing boats are probably here coupled together as the statutory and ordinary expressions for the same kind of vessel. "Fishing-vessel" means (*o*) a vessel of whatever size, and in whatever way propelled, which is for the time being employed in sea fishing (*p*) or in the sea fishing service, excepting (*q*) a vessel fishing for pleasure.

Steam fishing vessels incumbered over fishing.

553. One general rule may be drawn from these Regulations and the decisions of the courts as regards the navigation of steam fishing vessels when incumbered (*r*) over fishing, for instance, a steam vessel

were simple and clear. The Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45), annulled the British and French Fishermen's Regulations, 1843, by repealing the Sea Fisheries Act, 1843 (6 & 7 Vict. c. 79), and made new regulations as to the lights for sea fishing vessels. These Sea Fisheries Act Regulations, however, were not consistent with the Sea Regulations, 1863, art. 9, and great uncertainty prevailed as to the proper lights to be carried by British sea fishing vessels; see Maude and Pollock, Law of Merchant Shipping, 4th ed., p. 594. This difficulty continued till 1884, the Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45), being repealed on the 15th May, 1884, and the Sea Regulations, 1863, art. 9, being annulled as regards British ships on the 1st September, 1884. On the 1st September, 1884, the Sea Regulations, 1884, art. 10, came into operation, and remained in force till the 1st May, 1906, and was in many respects similar to the Sea Regulations, 1910, art. 9. But the Sea Regulations, 1884, art. 10, was modified by the Fishing Vessels Lights Regulations, 1885, and the Sailing Trawlers Lights Regulations, 1885, and the Fishing Vessels Fog Signals Regulations, 1905. The result was very complicated. All these regulations were annulled on the 1st May, 1906, and the Fishing-vessels and Fishing-boats Regulations, 1906 (which were styled "art. 9 of the Sea Regulations, 1897"), then came into force. This art. 9 was annulled on the 13th October, 1910; but the Sea Regulations, 1910, art. 9, which then came into force, was in the same terms. As to the regulations referred to in this note, see Table in Appendix, *post*.

(*o*) This is the meaning in M. S. Act, 1894, Part IV., unless the context otherwise requires (*ibid.*, s. 370); and it appears to have the same meaning in these Regulations; compare Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 31.

(*p*) By the Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45), s. 5, "sea-fishing" in that Act is to be construed to refer only to "sea-fish," and "sea-fish" does not include salmon, as defined by any Act relating to salmon, but save as aforesaid, includes every description both of fish and of shell fish which is found in the seas to which that Act applies.

(*q*) Strictly "but, save as otherwise expressly provided, that expression" (fishing-boat) "shall not include a vessel used for catching fish otherwise than for profit" (M. S. Act, 1894, s. 370).

(*r*) *The Grovehurst*, [1910] P. 316, 333, 335, C. A. In *Maddox* v. *Fisher*, *The Independence* (1861), 14 Moo. P. C. C. 103, 115, 116, where the question was whether a sailing vessel ought to give way to a tug towing a sailing ship, Lord KINGSDOWN contrasted an "unincumbered" steamer, first, with a sailing vessel, pointing out that such a steamer can turn out of her course and into it again with little difficulty or inconvenience, and that she can slacken and increase her speed, and stop or reverse her engines; and contrasted her, secondly, with a steamer towing a ship, which is at a disadvantage compared to her in many respects. But an "incumbered" steam fishing vessel is much more incumbered than a tug with a tow, and cannot, like a tug, indicate the nature or line of the obstruction astern of her, and this is a reason for exempting her from the ordinary duties of keeping out of the way which fall on such a tug; see *The Grovehurst*, *supra*, at p. 333. The principle that unincumbered vessels should keep out of the way of sailing vessels engaged in fishing is much older; see the cases collected in Pritchard's Admiralty Digest, 3rd ed., p. 239.

engaged in trawling, and a steam vessel fishing with drift-nets. The rule is that such a vessel is exempted from the duty of keeping out of the way of an unincumbered vessel (whether steam vessel or sailing vessel) under article 19 or 20 of these Regulations, and the duty of keeping out of the way is thrown on the unincumbered vessel (*s*), and the incumbered vessel ought to keep her course and speed (*a*). In such cases it is not correct to say that article 19 or 20 does not apply to such an incumbered vessel; either article may apply in full force if such a vessel meets a steam fishing vessel or sailing fishing vessel which is similarly incumbered (*b*); but when such an incumbered vessel meets an unincumbered vessel, article 27 intervenes and makes a departure from article 19 or 20 necessary. Thus it is the duty of a sailing vessel to keep out of the way of a steam trawler engaged in trawling (*c*) or a steam vessel fishing with drift-nets (*d*); and a sailing drifter when not fishing should keep out of the way of a steam drifter which has her nets in the water (*e*). This duty of the unincumbered vessel to keep out of the way applies by day as well as by night, since the steam fishing vessel incumbered over fishing has to carry a fishing signal in day-time under sub-division (k) of this article (*f*). At night the tricoloured lantern of a trawler engaged in trawling is not merely, like the towing lights of a tug, to give information as to the amount of obstruction to be expected from the length of the line of tows astern of her, because the trawl is below the sea, but it indicates that such a trawler cannot keep out of the way (*g*).

Steamers passing among fishing vessels.

Steamers which choose to pass through a fleet of fishing vessels ought to regulate their speed so as to be able to keep out of the way of incumbered fishing vessels (*h*).

(a) "Open boats."

The words "open boats" appear to mean open fishing boats which go to sea, and probably do not include a small open boat, used in a river for pleasure fishing (*i*).

(*s*) *The Grovehurst*, [1910] P. 316, C. A.; *The Tweedsdale* (1889), 14 P. D. 164 (decided under the Sea Regulations, 1884, art. 10, but the principle of this case was approved by the Court of Appeal in *The Grovehurst*, *supra*, as applying under the present art. 9); *The King's County* (1904), 20 T. L. R. 202. As to the nautical reasons for the rule, see, further, *The Dunelm* (1884), 9 P. D. 164, 172, 173, C. A.

(*a*) *The Ragnhild*, [1911] P. 254, 259, 260; *The Tweedsdale*, *supra*, at p. 171; compare *The Upton Castle*, [1906] P. 147, 153.

(*b*) *The Grovehurst*, *supra*, at pp. 333, 334.

(*c*) *The Grovehurst*, *supra*, overruling *The Craigellachie*, [1909] P. 1; and approving *The Tweedsdale*, *supra*; *The Gladys*, [1910] P. 13 (steam trawler hauling her trawl).

(*d*) *The Pitgaveney*, [1910] P. 215; compare *The Grovehurst*, *supra*, at pp. 328, 329 (a steamer crossing the course of a steam trawler engaged in trawling, so as to involve risk of collision, and although on the starboard side of the steam trawler, ought to keep out of the way).

(*e*) *The Pitgaveney*, *supra*.

(*f*) Compare *The Gladys*, *supra*.

(*g*) *The Grovehurst*, *supra*, at p. 333.

(*h*) *The Picton*, [1910] P. 46 (a steamer which passed at a speed of about nine knots through a fleet of fishing smacks engaged in fishing was held to have travelled at a reckless and excessive speed, but in this case a very bad look-out was being kept).

(*i*) Compare M. S. Act, 1894, s. 370; and *Carse* v. *North British Steam Packet Co.* (1895), 22 R. (Ct. of Sess.) 475, where it was held that "every open boat when at anchor," in the Sea Regulations, 1884, art. 10 (f), did

SECT. 2. Regulations for Preventing Collisions etc.

The words "fishing with drift nets" include the case of a vessel shooting her nets (*k*), but possibly not a vessel just about to shoot (*l*). But where a vessel cast off and buoyed her nets, and steamed up to another vessel, she was held to have infringed these Regulations because she still carried the two white lights instead of the under-way lights (*m*).

(b) . . "fishing with drift nets."

(c) . . "engaged in trawling."

554. "Engaged in trawling" is not the same as "trawling," but seems to cover the work of fishing with a trawl from the first shooting until in any case the trawl is got on board again. So it has been held that a vessel is "engaged in trawling" and must carry the trawling lights, not only when she has her trawl down, but when she is shooting or hauling it in (*n*). And "engaged in trawling" even covers the interval after the trawl has been got on board and before the vessel shoots again, if she is going to shoot immediately on the same ground (*o*); or if she is hove-to with the work of trawling not yet completed (*p*). But if she decides to go off to another spot to trawl, then, as soon as she is under command and in a position to go full speed ahead, she ought to shift her lights and put up the under-way lights (*q*).

Judicial notice has been taken of certain nautical facts as to the condition of steam trawlers when trawling; they are extremely helpless and cannot properly execute manœuvres (*r*); trawlers fish at times in rough weather (*s*); trawl fishing must be very slow because the net is on the ground, and if trawlers go at all too fast they tear their nets (*t*); and a steam trawler when hauling her trawl is practically stationary (*a*).

(d) (2) . . "in sufficient time to prevent collision."

555. A flare shown to a steamer when between two and three hundred yards away was held to have been shown in sufficient time, on the ground that, if the steamer could not then avoid collision, this ought to be attributed in the circumstances to her excessive speed (*b*).

(h) . . "stationary."

556. "Stationary" does not denote absolute immobility, as a perfectly stationary condition could not last on water beyond a mere

not include a small open boat for pleasure rowing, which had no sail and did not go to sea, and which was anchored in a river while being used by gentlemen for fishing.

(*k*) *The Pitgaveney*, [1910] P. 215, 222.

(*l*) Compare *The Englishman* (1877), 3 P. D. 18, 22.

(*m*) *The Cockatrice*, [1908] P. 182.

(*n*) *Ibid.*, at p. 188.

(*o*) *Ibid.*

(*p*) *The Picton*, [1910] P. 46.

(*q*) *The Upton Castle*, [1906] P. 147; *The Cockatrice, supra.*

(*r*) *The Dunelm* (1884), 9 P. D. 164, 172, C. A.

(*s*) *Ibid.*, at p. 172 ("vessels do fish in what is not exactly calm sea").

(*t*) *Ibid.*, at p. 173; compare citation in *The Grovehurst*, [1910] P. 316, 336, C. A., "it is told us by experienced persons that the mode of fishing with regard to these trawl-nets, is that the vessels go with the tide, and not against it."

(*a*) *The Upton Castle, supra*, at p. 149.

(*b*) *The Picton, supra;* but in this case the steamer had a very bad look-out. See also *The Orion*, [1891] P. 307 (flare shown at not more than a third of a mile and held sufficient); and as regards "in sufficient time to prevent collision," see under art. 6, pp. 390, 391, *ante*.

point of time. The rational view is that the question is one of degree (*c*). But "stationary" is a strong word, to which full effect should be given (*d*).

"Prescribed for a vessel at anchor" in sub-division (h), when it qualifies "signal," refers to article 11, and therefore, apparently, when it qualifies "light or lights" it also refers to the light or lights prescribed in article 11, not in sub-division (g) of this article.

(h) . . "prescribed for a vessel at anchor."

557. Article 10 of the Sea Regulations, 1910, is as follows:—

Article 10.

Article 10.

A vessel which is being overtaken by another shall show from her stern to such last-mentioned vessel a white light or a flare-up light. (1880)

The white light required to be shown by this Article may be fixed and carried in a lantern, but in such case the lantern shall be so constructed, fitted, and screened that it shall throw an unbroken light over an arc of the horizon of 12 points of the compass, viz., for 6 points from right aft on each side of the vessel, so as to be visible at a distance of at least 1 mile. Such light shall be carried as nearly as practicable on the same level as the side-lights. (1897).

558. This article, like other rules as to lights, aims at giving notice to vessels both of the existence of a vessel where the light is and of its position (*e*).

Object of article.

The first paragraph of article 10 (with "ship" for "vessel") was first introduced in the Sea Regulations, 1880 (*f*), in order to make clear (*g*) the duty to show a light in these circumstances.

(*c*) *The Edith* (1876), 10 I. R. Eq. 345.

(*d*) *The Dunelm* (1884), 9 P. D. 164, 173, C. A. Further, as to the interpretation of "stationary" in previous Sea Regulations, see *The Robert and Ann* v. *The Lloyds* (1864), Holt (ADM.), 55; *The Englishman* (1877), 3 P. D. 18 (sailing trawler just about to let out her trawl held not included in "vessels attached to their nets and stationary").

(*e*) *The Main* (1886), 11 P. D. 132, 135, 137, C. A.

(*f*) By art. 11 of those Regulations; see Table in Appendix, *post*.

(*g*) As to the older cases which show the gradual growth of the idea of a duty on the part of a vessel overtaken to show a light to the vessel overtaking her, see note (*l*), p. 379, *ante*. Under the Sea Regulations, 1863, arts. 2, 17—20, it was held at first in the Admiralty Court that as regards the duty to hoist a light in such circumstances, it was the duty of those who saw any chance of an approaching collision to take all reasonable means to avoid it (*The Hannah Park and The Lena* (1866), 14 L. T. 675; compare S. C., Holt (ADM.), 61). Afterwards it was held that although the overtaken vessel might be in such a position that the overtaking vessel could not see her regulation lights, the overtaken vessel was rarely bound to give a signal or show a light to the other, as such a light was a fancy light not within the Regulations (*The Chanonry* (1873), 1 Asp. M. L. C. 569). In a later case, Sir R. PHILLIMORE, after stating in effect that some great nautical authorities considered the exhibition of a stern light to be a disadvantage, held that a vessel was not required to exhibit a stern light to an overtaking vessel (*The Earl Spencer* (1875), L. R. 4 A. & E. 431, 435; followed in *The Cybele* (1879), 5 Quebec Law Reports, 262). The Privy Council, however, when the question came before them, held it to be the duty of the overtaken vessel if she saw a vessel overtaking her, which she had reason to suppose did not see her, to give some warning, not necessarily by a light, but by firing a gun or otherwise, to call the attention of that vessel (*The Anglo-Indian* (1875), 3 Asp. M. L. C. 1, P. C.). But though it was the duty of a vessel in exceptional cases to keep a look-out astern and give such a signal to an overtaking vessel, the overtaken vessel was not held negligent for not giving such a signal when the night

SECT. 2. Regulations for Preventing Collisions etc.

The second paragraph of this article first appeared in the Sea Regulations, 1897. One object of this paragraph was to give vessels a plain right to carry a fixed stern light (*h*). Another object was to prescribe the proper screening of a fixed stern light and prevent it from showing near at hand in the area of a side light (*i*).

"Being overtaken."

559. Every vessel, coming up with another vessel from any direction more than two points abaft her beam (that is to say, in such a position that at night she would be unable to see either of that vessel's side lights) is deemed to be an overtaking vessel; and notwithstanding any subsequent alteration of the bearing between the two vessels, such a vessel has a duty to keep clear of the overtaken vessel until she is finally past and clear (*k*).

The general object of the rule is that, when a vessel is able to see and ought to see that another vessel is coming nearer to her, and is on such a course as may ultimately lead to a position of danger, and is yet not in a position to see her lights, then the vessel overtaken shall be bound to show a light from her stern (*l*).

The overtaking vessel, if there were no other vessel near her, would have the right to alter her course as she pleased, and she may have to alter her course for good reason; and an alteration of her course cannot be negligent if she has no means of knowing that there is another vessel in front of her. Therefore the duty to show a light may apply although the course of the overtaking vessel does not cross the track of the other, and even if the lights of the overtaking vessel are broadening on the quarter of the overtaken vessel; to deny that the rule may apply although the lights are thus broadening would be to overlook the liberty of action on the part of the overtaking vessel to change her course (*m*).

was such that she could be seen at a sufficient distance for the other vessel if going at a proper speed to avoid her (*The Earl Spencer* (1875), 3 Asp. M. L. C. 4, P. C.). In *The City of Brooklyn* (1876), 1 P. D. 276, C. A., when on a very dark night the overtaken vessel, when she saw the danger, rang a bell and tried to show a light but had not time, the overtaking vessel was held in the Court of Appeal alone to blame for too great speed.

(*h*) A fixed stern light was in practice often carried by vessels before 1897. But there were conflicting decisions as to whether this was contrary to the Sea Regulations, 1884. In *The Imbro* (1889), 14 P. D. 73, it was held to be contrary, and in *The Stakesby* (1890), 15 P. D. 166, not contrary.

(*i*) Compare *The Palinurus* (1887), 13 P. D. 14, and *The Imbro, supra* (where the stern and the red lights of a vessel were alleged to have been taken for the masthead light of a steam vessel and the red of a sailing vessel). Even under the Sea Regulations, 1884, the real intention in prescribing the stern light was to have it so placed that it should not be seen in front of the stern (*The Fire Queen* (1887), 12 P. D. 147, 152).

(*k*) See art. 24, second paragraph, which first appeared in the Sea Regulations, 1897; see p. 461, *post*. But the meaning of "overtaking," as regards the duty of a vessel to show a light to an overtaking vessel, had been laid down previously in similar terms (*The Main* (1886), 11 P. D. 132, 135, 136, C. A.; *The Franconia* (1876), 2 P. D. 8, 12, C. A.), the alternative and rejected constructions being either that a vessel was only "overtaken" when the course of the overtaking ship was such that, if it were left unchanged, a collision would ensue (*The Main, supra*, at p. 135), or that a vessel could be overtaking as well as crossing (*The Franconia, supra*, at p. 12).

(*l*) *The Main, supra*, at p. 136.

(*m*) *Ibid.*, at pp. 137, 138. In this case the overtaken vessel was

Application of rule.

560. A sailing vessel lying-to is bound to show a light under this rule, as being an overtaken vessel (*n*). Even before 1880, when the first paragraph of the rule came in force, a steamer, coming to anchor in a place and manner such that her regulation lights could not be seen by a sailing vessel which was following and ran into her, was held to blame for not giving notice of her position to the other vessel (*o*). Similarly, when a vessel cast off from her moorings in a river and placed herself partly across the fair-way, so that her regulation lights could not be seen by vessels coming up astern of her, it was held that she ought to have given proper warning to such vessels of her position; and a service lantern hung over the rail was held not to be sufficient warning (*p*).

One vessel crossing near the stern of another.

561. Overtaking seems to imply three conditions—greater speed, similar heading within a wide range, and a degree of nearness (*q*). As regards heading, it is difficult to say that one vessel is overtaking another if she is steering to cross the other's course about astern at right angles from a distance at which she cannot see the side lights of the other; and still more difficult, if she is steering a course more divergent to pass about astern. In such circumstances therefore the duty to show a light, if necessary, to a vessel approaching from a position in which the side light was shut out (*r*) would be a matter of good seamanship and not of this rule.

Time for showing the light.

562. The duty to show a light arises under this rule, as already indicated, when a vessel ought to see that an overtaking vessel is approaching her, and is on such a course as might ultimately lead to a position of danger (*s*). The light must be shown at a reasonable time before the overtaking vessel is brought into a position of danger, in order that she may know where the other ship is and so avoid risk of collision (*t*). Whether it has been shown within a reasonable time is a question for the nautical assessors, and must depend on the facts of each case (*u*). The duty does not arise till the

held by the Court of Appeal to have infringed the rule, by not showing a light astern, though she saw the overtaking vessel 3 points on the quarter and the overtaking vessel's green light broadened to about 6 or 7 points on that quarter, the overtaking vessel afterwards wrongly hard-a-porting. In *The Reiher* (1881), 4 Asp. M. L. C. 478, it was held that, as the overtaking steamer first showed her green light and then shut it in and opened her red on the starboard quarter of the overtaken vessel, and was thus in a position to pass clear, there was no necessity for the overtaken vessel to show a flare under this rule, because she had a right to assume that the steamer had seen her. But on this point *The Reiher* (1881), 4 Asp. M. L. C. 478, was overruled by *The Main* (1886), 11 P. D. 132, C. A.

(*n*) *The Reiher, supra; The Nostre Padre* (1880), Pritchard's Admiralty Digest, 3rd ed., p. 244.

(*o*) *The Philotaxe* (1877), 3 Asp. M. L. C. 512.

(*p*) *The John Fenwick* (1872), L. R. 3 A. & E. 500.

(*q*) As regards nearness, see *The Main, supra*, at p. 138.

(*r*) This duty seems to be implied in *The Main, supra, per* Lord ESHER, M.R., at pp. 136, 138.

(*s*) *The Main, supra*, at p. 136.

(*t*) *Ibid.*, at p. 139.

(*u*) *Ibid.*; and see *The Picton*, [1910] P. 46, 49 (a decision upon Sea Regulations, 1897, art. 9 (d) (2), "shall also, on the approach of . . . other vessels, show . . . a white flare-up light . . . in sufficient time to prevent collision").

SECT. 2. Regulations for Preventing Collisions etc.

overtaken vessel has had an opportunity of seeing that the other vessel is in a position to need the light (*a*).

Burden of proof.

563. The burden of proof under this rule lies in the first place on the overtaken vessel which complains that she has been run down; she must prove that she has shown the light properly. If she does not show proper lights it is almost inevitable to find that she is in the wrong. The other vessel is bound to keep a good look-out, and the duty of giving affirmative evidence of it lies with her owner at the trial. But if those on a vessel do not see a light, that does not show conclusively that they were not keeping a good look-out (*b*).

Flare or other intermittent light.

564. When there is no fixed stern light on the overtaken vessel this rule, if taken literally in its most limited sense, would be satisfied by showing a light once at the extreme distance at which it could be seen. But the rule is to be read in a businesslike sense, so as to bring about the result intended (*c*). If a vessel shows a flare or intermittent light, she ought to continue to show it from time to time, because it is intermittent (*d*); and she should go on showing it from time to time, so long as she continues to be overtaken; it is not sufficient to show it once, for two minutes, nine or ten minutes before the collision. The rule is framed to guard not merely against the defects of men's sight, but of their minds and attention (*e*). The vessels may be in such a position that if the flare is shown once it ought to be seen that once, but the question whether the overtaking vessel ought to see one flare depends upon the position of the two vessels both as to bearing and distance (*f*). On the other hand, as against the overtaking vessel, if she has seen a flare once, it is not true in every position of the vessels that she need not take any notice of it because it is not repeated (*g*).

If no proper light (*h*) is shown, and the overtaken vessel alleges that the other vessel ought to have seen her hull or sails in time to avoid collision, the burden of proving this lies upon her; it may be that the hull and sails of a sailing smack, even on a clear night, will not be visible at thirty yards (*i*).

(*a*) *The Main* (1886), 11 P. D. 132, 136, C. A.
(*b*) *The Bassett Hound* (1894), 7 Asp. M. L. C. 467, 468, C. A.
(*c*) *Ibid.*, at pp. 468, 469.
(*d*) *Ibid.*, at p. 469.
(*e*) *The Essequibo* (1888), 13 P. D. 51.
(*f*) *The Bassett Hound, supra*, at p. 469.
(*g*) *Ibid.*, at p. 469 (if one vessel was a quarter of a mile ahead of the other, as a matter of practice it would be said that if the overtaking vessel kept a proper look-out she must have seen it. But if the flare is shown at a very great distance, although ahead, and could be seen, it is not true that it must be negligence not to have seen it).
(*h*) A binnacle light is not a proper light to show by hand even for a time, because of the small scope of light visible from it and for other reasons (*The Patroclus* (1888), 13 P. D. 54). And before 1897, when the second paragraph of the rule was introduced, it was held that the fact that the reflection from a binnacle lamp would pass through a pane of glass in the after-part of the deck-house and be visible astern to overtaking vessels was not a compliance with the duty to show a light under the rule; see *The Breadalbane* (1881), 7 P. D. 186.
(*i*) *The Bassett Hound, supra*, at p. 469.

565. Article 11 of the Sea Regulations, 1910, is as follows:— Article 11.

Article 11.

A vessel under 150 feet in length, when at anchor, shall carry forward, where it can best be seen, but at a height not exceeding 20 feet above the hull, a white light in a lantern so constructed as to show a clear, uniform, and unbroken light visible all round the horizon at a distance of at least 1 mile. (1858) (*k*)

A vessel of 150 feet or upwards in length, when at anchor, shall carry in the forward part of the vessel, at a height of not less than 20, and not exceeding 40, feet above the hull, one such light, and at or near the stern of the vessel, and at such a height that it shall be not less than 15 feet lower than the forward light, another such light. (1897)

The length of a vessel shall be deemed to be the length appearing in her certificate of registry. (1897)

A vessel aground in or near a fairway shall carry the above light or lights and the two red lights prescribed by Article 4 (a). (1897)

566. One object of the Regulations as to anchor lights is to let other vessels which are under way know that the vessel showing such a light is not under way, like a vessel showing the side lights, so that they may direct their course accordingly and need not give her such a wide berth (*l*). Object of the Regulations as to anchor lights.

When it is the duty of a vessel to carry an anchor light, no excuse such as that of taking down the lamp to be trimmed can be admitted (*m*).

(*k*) The first general regulation as to anchor lights was made by the Admiralty Regulations as to Lights, 1848, which ordered that steam vessels should exhibit when at anchor a common bright light. This was repeated in the Admiralty Notice respecting Lights, 1852, which also ordered that sailing vessels at anchor in roadsteads or fair-ways should exhibit a constant bright light at the masthead, when there were no local regulations for other lights. By the Admiralty Notice respecting Lights and Fog Signals, 1858, revoking the last regulations, a regulation was made in much the same terms as the first paragraph of art. 11; except that the regulation was applied to all sea-going vessels in roadsteads or fair-ways, and that, besides stating that the light was to be visible for at least one mile, it was prescribed that it should be in a globular lantern of 8 inches in diameter, and the words "under 150 feet in length" were not inserted. In the Sea Regulations, 1863, art. 7, the regulation remained in practically the same terms as before, except that it applied to ships, whether steamships or sailing ships. In the Sea Regulations, 1879 and 1884, the regulation (art. 8) remained practically the same. In the Sea Regulations, 1897, art. 11, the first words of the regulation were altered to "A vessel, under 150 feet in length," and "forward" was added after "carry," and the direction as to the shape and size of lantern was dropped; and the other paragraphs of the regulation were then added. As to the regulations cited, see Table in Appendix, *post;* and as regards the old cases before 1848 as to the duty of a vessel at anchor in a fair-way to carry a light, see under art. 1, note (*l*), p. 379, *ante*.

(*l*) *The Esk* (1869), L. R. 2 A. & E. 350, 353; compare *The Louisa* v. *The City of Paris* (1864), Holt (ADM.), 15, where a tug coming down a river was held to blame for carrying her side lights so improperly placed that the up-coming steamer was misled into thinking that she was at anchor.

(*m*) *The C. M. Palmer, The Larnax* (1873), 2 Asp. M. L. C. 94, P. C.; *The Hirondelle* (1905), 22 T. L. R. 146, C. A. (torpedo-boat destroyer

SECT. 2, Regulations for Preventing Collisions etc.

"At anchor."

567. The expression "at anchor" is not defined by the Regulations, but it is a nautical phrase which is well understood (*n*). A vessel is at anchor when she is held in a berth by her own anchor or anchors, or something equivalent to an anchor; and also when she is fast to moorings which are secured by an anchor or anchors, or something equivalent (*o*).

First, as regards a vessel riding by her own anchor. The true criterion as to a vessel being "at anchor" in these circumstances is whether she is "holden by and under the control of her anchor" (*p*), which seems to mean, as regards a vessel coming to anchor, that the vessel must be held by her anchor and also that her anchor must be in the ground and must be holding. When a vessel is coming to anchor, the side lights ought to be taken in and the anchor light put up immediately the vessel is brought up by her anchor; and a vessel may be to blame for a collision if those on board wait an appreciable time before doing these things (*q*). A vessel ought to have her anchor light up as soon as she is held by her anchor, and while she is swinging round to it (*r*).

A vessel which is getting up anchor continues to be "at anchor" as long as her anchor holds (*s*), even if she is being towed up to her anchor by a tug (*t*); but the tug towing her is not herself at anchor and ought to carry the under-way lights (*a*).

A vessel which has her anchor down for anchorage purposes, but is not held by it, is not "at anchor" (*b*). And it is still clearer that a vessel is not "at anchor" if she is using her anchor to help her on her course; for instance, a barge dredging down a river with her anchor down to check her way (*c*). If a vessel is riding head to wind in a gale with only her anchor chains out, she is wrong to carry an anchor light, which is misleading, and ought perhaps now to carry the two red lights (*d*).

having no mast to carry an anchor light at the proper height, according to the King's Regulations, carried her anchor lights only 5 and 6 feet above the deck, where they might be obscured; the action of those who sent the ship to sea in such a condition was held to be negligence).

(*n*) *The Dunelm* (1884), 9 P. D. 164, 171, C. A.

(*o*) *Ibid.*, at p. 171.

(*p*) *The Esk* (1869), L. R. 2 A. & E. 350, 353.

(*q*) *The Wega*, [1895] P. 156, 159, 160.

(*r*) *The Wega, supra.*

(*s*) *The Esk, supra.* In this case the vessel getting up anchor was found not to be holden by it, and so was held not to be "at anchor."

(*t*) *The Romance*, [1901] P. 15.

(*a*) *Ibid.* In *The Devonian*, [1901] P. 221, C. A., a tug in the Mersey was connected by a hawser with a vessel in order to hold her up against the tide if her anchors dragged. By the Mersey rule the tug, being "attached for the purpose of towing" a vessel, was bound to carry two white lights and the side lights. The tug carried only one white light, and was held to have broken the rule.

(*b*) *The Esk, supra.* But a vessel dragging her anchors has usually kept up her anchor lights, and has not hitherto been blamed for it in the Admiralty Court. The anchor light may perhaps be justified in the circumstances as the least misleading light.

(*c*) *The Indian Chief* (1888), 14 P. D. 24. This case was before "under way" had been defined in the Sea Regulations, and the barge was held to be neither "at anchor" nor "under way," but it would seem that now such a vessel would be held to be "under way."

(*d*) *The Faedrelandet*, [1895] P. 205, C. A. In *The Buckhurst* (1881),

It is not necessary for a vessel to have an actual anchor down, in order to be "at anchor"; for instance, a vessel is "at anchor" when she is brought up by dropping overboard a heavy stone, as some fishing boats do (*e*).

Secondly, a vessel is "at anchor" when she is fast to moorings, though she has no anchor of her own down; and this is so if the moorings are not fastened by an anchor, but by something else equivalent to it (*f*).

Some further light is thrown on the expression "at anchor" by the definition of "under way" in the preliminary article, namely, that a vessel is under way when she is not at anchor, or made fast to the shore or aground (*g*). It follows that in no case when a vessel is "under way" (*h*) can she be at anchor. On the other hand, in exceptional cases a vessel may be "at anchor" as well as made fast to the shore or aground, but ordinarily a vessel which is in one condition is not in the other, which is doubtless the reason why these conditions are stated as alternative in the definition.

Lights.

"In the forward part of the vessel."

"At or near the stern."

568. An anchor light which is hung on the fore shroud of the fore rigging 72 feet from the stem of a vessel 313 feet long is well before amidships and is "in the forward part of the vessel" (*i*).

An anchor light which is hung on the fore shroud of the main rigging at 100 or 120 feet from the stern of a vessel 455 feet long is not carried "at or near the stern"; and it was held that the owners of the vessel in default had failed to make out that the light as actually shown ought to have been seen by those on the other vessel (*k*).

6 P. D. 152, a sailing ship in a gale, having parted from her anchors, drove before a gale with her anchor light up across the sands and into a brig lying at anchor in Penarth roads. The court found that it would have been misleading for the sailing ship to have put up her side lights, and also that the non-carrying of the side lights or the three red lights could not have contributed to the collision, which was an inevitable accident. The court did not decide whether she ought to have carried the three red lights or not.

(*e*) *The Dunelm* (1884), 9 P. D. 164, 171, C. A.

(*f*) *The Dunelm, supra*, at p. 171.

(*g*) Compare *The City of Seattle* (1903), 9 Canadian Exchequer Reports, 146 (vessel moored to a wharf with her bowsprit projecting 20 feet beyond the end of the wharf is not "at anchor" within art. 11); *The Turquoise*, [1908] P. 148 (vessel moored stem and stern outside another vessel at a wharf was held not to be "at anchor" within this article, and was not to blame for not carrying an anchor light, it not being the custom for vessels lying there to carry the light); *The Titan, The Rambler* (1906), 10 Asp. M. L. C. 350 (it appears that a vessel lying moored to a pontoon which is connected by a bridge with the shore is not really at anchor); *The St. Aubin*, [1907] P. 60 (a dumb barge, fastened only by her headfast to the side of another barge, which was alongside a steamship moored at a tier in a river, so that the dumb barge could swing out across the fairway, was held not to be "at anchor or moored" within the Thames rule, so as to be bound thereby to carry an anchor light. But the dumb barge was held to blame for not, as a matter of good seamanship, having a man on board with a light ready to show to an approaching vessel while the barge was swinging across the fair-way).

(*h*) As to cases of vessels under way, see p. 378, *ante*.

(*i*) *The Philadelphian*, [1900] P. 262, C. A.

(*k*) *S.S. "Gannet"* (*Owners*) v. *S.S. "Algoa"* (*Owners*), *The "Gannet,"* [1900] A. C. 234.

SECT. 2. Regulations for Preventing Collisions etc.

A vessel swinging to her anchor in a river was held not to have performed her duty under a local rule to exhibit a globular light visible all round the horizon in the forward part of the vessel, and at or near the stern "another such light," when the light at the stern was a masthead light showing only over twenty points of the compass, and would not afford proper notice to vessels going up or down (*l*).

"Another such light."

"Aground."

569. A vessel proceeding ahead through mud at a speed of about a knot an hour with her engines working full speed ahead, and sometimes full speed astern to clear the propeller from mud, is not "aground" within this article (*m*).

"Fair-way."

570. Fair-way means a clear passage-way by water. Whenever there is an open navigable passage used by vessels proceeding up and down a river or channel, that may be said to be a fair-way (*n*).

Article 12.

571. Article 12 of the Sea Regulations, 1910, is as follows:—

Article 12.

> Every vessel may, if necessary in order to attract attention, in addition to the lights which she is by these Rules required to carry, show a flare-up light or use any detonating signal that cannot be mistaken for a distress signal. (1897)

The right to show flares.

572. Ships generally, therefore, before 1897 (*a*), could only show

(*l*) *The Wega*, [1895] P. 156, 161.

(*m*) *The Bellanoch*, [1907] P. 170, 174, C. A.; on appeal on another point, [1907] A. C. 269. Compare *The Turquoise*, [1908] P. 148 (a vessel was lying where she would ground on mud at low water, but would float at high water, and was held near high water not to be "aground in or near a fair-way" within this rule); and compare *The Bitinia*, [1912] P. 186 (art. 11 does not apply when the Thames Rules, 1898, art. 30, applies).

(*n*) *The Blue Bell*, [1895] P. 242, 246. In this case a vessel anchored in Sea Reach of the river Thames, inside the buoys marking the deep-water channel, and in a part of the river used by vessels of moderate draught, was held to be "in the fair-way" within the local rule, and bound to ring her bell in fog. And a vessel which had got out of the proper course down the river in thick weather, and was lying at anchor inside the Mussel bank in Long Reach of the river Medway, was held to be at anchor "in the fair-way" within the local rule, and bound to ring her bell in fog (*The Clutha Boat* 147, [1909] P. 36); compare *The Turquoise*, *supra* (a fishing vessel, lying moored outside another vessel at a wharf in an artificial waterway, where vessels had to lie to discharge fish cargoes, was held not to be "aground in or near a fair-way" within this article, nor "fast in a fair-way" within the local bye-law). Even before 1897, when these lights were first prescribed for a vessel aground in or near a fair-way, it was held that those in charge of such a vessel at night were bound, in the absence of any regulation, to take proper measures to apprise other vessels of her position (*The Industrie* (1871), L. R. 3 A. & E. 303, 308). And when a vessel ran aground in the Clyde, and lay across the fair-way partly submerged and hung an anchor light over her stern, and a second vessel came into her, being misled by the light into thinking she could pass inside the first vessel, it was held that the first vessel was bound to adopt every reasonable means in her power to warn other vessels in order to prevent them running into her, and that the single light shown was not sufficient, and that she ought to have kept a better look-out and used other means besides the lights to warn other vessels timeously (*Kidson* v. *McArthur* (1878), 5 R. (Ct. of Sess.) 936).

(*a*) Ships generally, before 1897, had no express permission to show any other than the regulation lights, but by of the Sea Regulations, 1863, art. 9, fishing vessels and open boats, and again by the Sea Regulations,

a flare at the risk of being mistaken for a fishing vessel or an overtaken vessel, and of being responsible for a collision arising from the mistake. This article removed the risk, so that a flare could be shown freely in order to attract attention, and the practice was thus made conformable to the law. The express permission to use a flare was the more necessary under the Sea Regulations, 1897 and 1910, because the prohibition of unauthorised lights was made to some extent more strict in these Regulations, no other lights which might be mistaken for the prescribed lights being allowed to be "exhibited" (*b*).

"Detonating signal that cannot be mistaken for a distress signal."

573. The distress signals are stated in article 31. The words "detonating signal" are not used there. The distress signals in article 31, for which detonating signals which are allowable must not be able to be mistaken, are a gun or other explosive signals fired at intervals of a minute.

Article 13.

574. Article 13 of the Sea Regulations, 1910, is as follows:—

Article 13.

> Nothing in these Rules shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for two or more ships of war or for vessels sailing under convoy, or with the exhibition of recognition signals adopted by shipowners, which have been authorized by their respective Governments and duly registered and published (*c*). (1880)

1884, art. 10 (e), fishing vessels and open boats in certain European waters were allowed to use a flare in addition to their regulation lights. Under the Sea Regulations, 1863, by art. 2, no other light than those specified was allowed to be carried, though by art. 20 nothing in the rules was to exonerate any ship from the consequences of any neglect to carry lights or neglect of any precaution required by the ordinary practice of seamen or by the special circumstances of the case. Under these Regulations it was held that a vessel placing herself across the fairway of a river, so that her regulation lights could not be seen by vessels coming up astern, ought to have shown a special light as a warning (*The John Fenwick* (1872), L. R. 3 A. & E. 500). Under the Sea Regulations, 1884, the two articles last referred to remained in practically the same terms, and by a new art. 11 a ship being overtaken was required to show from her stern a white light or flare. A ship which was not being overtaken, but which showed a flare to a steamer approaching her starboard side, was held not thereby to have infringed these Regulations, on the ground that art. 2, which forbade any other lights to be "carried," referred to fixed lights, and did not mean that no other light should be "shown." In this case the Trinity Brethren stated that a general practice existed among seamen to show a flare if circumstances made it judicious. The court intimated, however, that it would always be a question depending on the circumstances as to whether the showing of the flare was calculated to mislead, as if this was so, and an accident happened in consequence, the blame must be attributed to the vessel showing it; and that as flares had to be shown by fishermen and overtaken vessels, a vessel seeing a flare had to consider whether the vessel was a fishing vessel or an overtaken vessel or not (*The Merchant Prince* (1885), 10 P. D. 139).

(*b*) See art. 1, p. 379, *ante*; and compare the express permission in art. 9 (f), p. 395, *ante*, for other lights to be used by fishing vessels, and in art. 13 for certain lights ordered by the Government of a nation, and for recognition signals.

(*c*) The first part of this article is in the same terms as the Sea Regulations, 1880 and 1884, art. 26, with the substitution of "vessels" for

SECT. 2. Regulations for Preventing Collisions etc.

Ships of the Royal Navy.

575. Ships belonging to His Majesty are not bound by the Sea Regulations, 1910 (*d*). But ships of His Majesty's Naval Service are bound by the King's Regulations and Admiralty Instructions, which contain precisely the same articles (*e*); and there are in addition certain special lights and signals used by ships of His Majesty's Naval Service only, as contemplated by this article (*f*). The result is that as the Regulations which bind the ships of the Royal Navy and merchant vessels are in the same terms for all practical purposes, the navigation of each must be conducted as if the Regulations, together with the exceptions in article 27 as regards special circumstances, which apply to both, were the same (*g*). Therefore when a ship of the Royal Navy and a merchant vessel are manœuvring for each other, if either vessel disobeys an article of the Regulations binding on her, it is a neglect of good seamanship and navigation, and if such negligence causes or contributes to the collision, in the one case the owners of the merchant vessel, or in the other the officer responsible for the navigation of the ship of the Royal Navy, will be held liable (*h*).

Foreign warships.

576. So also ships of war of foreign nations, when they have submitted themselves to the Admiralty Court, have, it seems, always consented to be judged by the Regulations applicable to merchant ships (*i*).

Private signals.

577. If a shipowner desires to use for the purpose of a private code any rockets, lights, or other similar signals, he may register those signals with the Board of Trade, and that Board will give public notice of the signals so registered in such manner as it thinks requisite for preventing those signals from being mistaken for signals of distress or signals for pilots (*k*). The Board may refuse to register any signals which in its opinion cannot easily

"ships" in the phrase "vessels sailing under convoy." The latter part, as to recognition signals, was introduced in 1897. As to the need for the special permission granted by this article, see under art. 12, p. 406, *ante*.

(*d*) M. S. Act, 1894, s. 741. His Majesty's ships were not bound by the collision regulations in M. S. Act, 1854 (17 & 18 Vict. c. 104), ss. 296, 297, or by the Sea Regulations, 1863 (*H.M.S. The Topaze* (1864), 2 Mar. L. C. 38).

(*e*) See King's Regulations and Admiralty Instructions, 1906, as amended 1911, art. 1035.

(*f*) *Ibid.*, arts. 1036, 1040 etc.; and see *H.M.S. Sans Pareil*, [1900] P. 267, 272, C. A.

(*g*) *H.M.S. Sans Pareil, supra*, at pp. 272, 281, 285, 288; compare *H.M.S. Supply* (1865), 2 Mar. L. C. 262 (those on board a sailing vessel approaching a steamer within risk of collision may expect, though for different reasons, the same course to be adopted by the steamer, whether belonging to His Majesty or otherwise).

(*h*) *H.M.S. Sans Pareil, supra*, at p. 273; followed in *The Etna*, [1908] P. 269, 281; compare *The St. Paul*, [1909] P. 43, C. A.

(*i*) *The Lord Byron* (1879), cited to this effect in 1 Maude and Pollock, Law of Merchant Shipping, 4th ed., p. 607, note (k). And where such a ship has submitted to the jurisdiction of the Admiralty Court, the foreign Sovereign has been ordered to give security for damages to a defendant who counterclaimed (*The Newbattle* (1885), 10 P. D. 33, C. A.); and so also a foreign Government has been ordered to give security for costs (*Costa Rica Republic* v. *Erlanger* (1876), 3 Ch. D. 62, C. A.).

(*k*) M. S. Act, 1894, s. 733.

be distinguished from signals of distress or signals for pilots (*l*). When a signal has been thus registered, the use of it by any person acting under the authority of the shipowner in whose name it is registered does not subject any person to any fine or liability under the Merchant Shipping Act, 1894, for using or displaying signals improperly (*m*).

578. Article 14 of the Sea Regulations, 1910, is as follows:— Article 14.

Article 14.

A steam vessel proceeding under sail only, but having her funnel up, shall carry in daytime, forward, where it can best be seen, one black ball or shape 2 feet in diameter. (1897)

579. By the preliminary article (*n*) every steam vessel which is under sail and not under steam is to be considered a sailing vessel, and every vessel under steam, whether under sail or not, is to be considered a steam vessel. Accordingly, when a steam vessel is under sail, other vessels are bound to manœuvre for her as a steam vessel or as a sailing vessel according to whether she is under steam or not. Before 1897 other vessels had to determine as best they could the often difficult question whether such a vessel was under steam or not. Now it is the duty of such a vessel, if she ought to be treated as a sailing vessel, to indicate this by the special signal in this article. Steam vessel under sail.

A steam vessel sailing without steam and hove-to is in all probability "under sail," within the meaning of this article, just as a sailing vessel when hove-to was considered to be "under sail" within the Admiralty Notice respecting Lights, 1852 (*o*).

580. Article 15 of the Sea Regulations, 1910, is as follows:— Article 15.

Sound-Signals for Fog, etc.

Article 15.

All signals prescribed by this Article for vessels under way shall be given:

1. By "steam vessels" on the whistle or siren. (1897)
2. By "sailing vessels and vessels towed" on the fog-horn. (1897)

The words "prolonged blast" used in this Article, shall mean a blast of from 4 to 6 seconds' duration. (1897)

A steam vessel shall be provided with an efficient whistle or siren, sounded by steam or some substitute for steam, so placed that the sound may not be intercepted by any obstruction, and with an efficient fog-horn, to be sounded by mechanical means, and also with an efficient bell (*p*). A sailing vessel of 20 tons gross tonnage or upwards shall be provided with a similar fog-horn and bell. (1880)

(*l*) M. S. Act, 1894, s. 733.
(*m*) *Ibid.*
(*n*) See pp. 373, 374, *ante.*
(*o*) *The City of London* (1857), Sw. 245, 300, P. C.
(*p*) Here the following note is appended in the Sea Regulations scheduled to the original Order in Council of the 13th October, 1910:— "In all cases where the Rules require a bell to be used a drum may be substituted on board Turkish vessels, or a gong where such articles are used on board small sea-going vessels."

SECT. 2. Regulations for Preventing Collisions etc.

In fog, mist, falling snow, or heavy rain-storms, whether by day or night, the signals described in this Article shall be used as follows, viz. :—

(a) A steam vessel having way upon her, shall sound, at intervals of not more than 2 minutes, a prolonged blast. (1880)

(b) A steam vessel under way, but stopped and having no way upon her, shall sound, at intervals of not not more than 2 minutes, 2 prolonged blasts, with an interval of about 1 second between them. (1897)

(c) A sailing vessel under way shall sound, at intervals of not more than 1 minute, when on the starboard tack one blast, when on the port tack two blasts in succession, and when with the wind abaft the beam three blasts in succession. (1880)

(d) A vessel, when at anchor, shall, at intervals of not more than 1 minute, ring the bell rapidly for about 5 seconds. (1880)

(e) A vessel, when towing, a vessel employed in laying or in picking up a telegraph cable, and a vessel under way, which is unable to get out of the way of an approaching vessel through being not under command, or unable to manœuvre as required by these Rules shall, instead of the signals prescribed in sub-divisions (a) and (c) of this Article, at intervals of not more than 2 minutes, sound three blasts in succession, viz.: one prolonged blast followed by two short blasts. A vessel towed may give this signal and she shall not give any other. (1897)

Sailing vessels and boats of less than 20 tons gross tonnage shall not be obliged to give the above-mentioned signals, but if they do not, they shall make some other efficient sound-signal at intervals of not more than 1 minute (*q*). (1897)

Fog signals.

581. The first general regulations as to fog signals were made in 1858 (*r*). The Sea Regulations, 1863 (*s*), directed steamships "under weigh" to use a steam whistle, sailing ships "under weigh" to use a foghorn, and both when "not under weigh" to use a bell, at least every five minutes. In the Sea Regulations, 1880, article 12 was in much the same form as the several paragraphs of the present article which have that year marked against them; the chief differences, which were made in 1897, are the addition of the words

(*q*) Here the following note is appended in the Sea Regulations scheduled as above :—"Dutch steam pilot-vessels, when engaged on their station on pilotage duty in fog, mist, falling snow, or heavy rain-storms are required to make at intervals of 2 minutes at most one long blast with the siren, followed after 1 second by a long blast with the steam whistle and again after 1 second by a long blast on the siren. When not engaged on their station on pilotage duty, they make the same signals as other steamships."

(*r*) By the Admiralty Notice respecting Lights and Fog Signals, 1858, which directed steam vessels under way, and sailing vessels under way and on the port or starboard tack, to sound certain fog signals once at least every five minutes, but which provided no fog signals for a vessel at anchor. Long before any general regulations as to fog signals had been made, foghorns or other means of making a loud sound in fog were in use on board vessels; and in 1853 it was held to be negligence on the part of a sailing vessel in a fog not to give notice by sounding a foghorn, when a steamer came in sight, at a distance of three or four cables' length (*The "Carron"* (1853), 1 Ecc. & Ad. 91).

(*s*) By art. 10.

"of 20 gross tons or upwards" after "sailing vessel," and of the words "heavy rain-storms" after "snow," and that the interval of time between the fog signals both of a sailing vessel under way and of a vessel at anchor has been altered from two minutes to one minute (*t*).

Liability for fog signals not being heard.

582. Judicial notice has often been taken of the difficulties which may prevent those on board a vessel hearing the fog signals of another vessel, even though they are keeping a good look-out. The vagaries of sound in a fog are of the most astonishing character; sometimes where a whistle has been given which it was calculated would be heard at four or five miles, it is not heard at a distance beyond a couple of cables' length (*a*). This particularly applies to foghorns, which are not heard at any very great distance; and in their case there is always this to consider, that when a steamer is sounding her fog whistle, she may drown the sound of a foghorn sounded near her (*b*). The fact that the sound of a foghorn sounded on board one vessel does not reach the ears of those on board a second vessel approaching her is not sufficient to override credible evidence of witnesses from the first vessel that it was being properly sounded (*c*). And it is impossible to infer from the fact that a whistle is not heard in a fog that there is an inefficient look-out on the vessel which does not hear it (*d*). A vessel is not necessarily in fault for not hearing the fog signal of another vessel, even when at anchor, until too late to avoid her, even if no special reason can be given for this; but in such circumstances the collision may be an inevitable accident (*e*). On the other hand, the fact that fog signals are found to have been regularly sounded, and are admitted not to have been heard, may be sufficient in the circumstances to justify the finding that the failure to hear was due to a bad look-out (*f*). It appears proper to ask the nautical assessors in such a case whether it was impossible or highly improbable in the circumstances that those on board the vessel, if keeping a good look-out, should have failed to hear the fog signals of the other vessel before they did (*g*). A vessel which has neglected to sound fog signals cannot be allowed to say that they would not have been heard (*h*).

Look-out in fog.

It has been held that a steamship proceeding in a fog in certain circumstances ought to have a double look-out forward (*i*).

(*t*) The Sea Regulations, 1884, art. 12, was in the same terms as the Sea Regulations, 1880, art. 12; and the Sea Regulations, 1897, art. 15, was in the same terms as the present art. 15, except that in the present article a note as to Dutch steam pilot vessels has been added; see note (*q*), p. 410, *ante*.

(*a*) *The Rosetta* (1888), 6 Asp. M. L. C. 310.

(*b*) *The Merthyr* (1898), 8 Asp. M. L. C. 475, 476.

(*c*) *The Campania*, [1901] P. 289, 292, C. A.

(*d*) *The Rosetta, supra; The Merthyr, supra; The Zadok* (1883), 9 P. D. 114.

(*e*) *The Nador*, [1909] P. 300 (inevitable accident: steamship under way and vessel at anchor); *The "Marpesia"* (1872), L. R. 4 P. C. 212 (inevitable accident: two sailing vessels approaching each other and coming into sight at a distance of about 200 yards).

(*f*) *The Curran*, [1910] P. 184, C. A.

(*g*) *The Merthyr, supra*.

(*h*) *The London*, [1904] P. 355, 359.

(*i*) *The Europa* (1850), 14 Jur. 627.

SECT. 2. Regulations for Preventing Collisions etc.

On the other hand, in a case where the officers of a steamship were keeping a good look-out, the vessel was not held to blame for not having a man stationed exclusively on the look-out (*k*). It is quite as much the duty of a look-out to report fog signals as to report lights (*l*).

Mechanical foghorn.

583. It is a breach of this article for a vessel to use a mouth foghorn if she has not, but ought to have had, a mechanical foghorn (*m*); but if her mechanical foghorn breaks down by accident, the use of a mouth foghorn may be excused (*n*). There is no express obligation on the master of a vessel to have his foghorn overhauled by an expert mechanic every time he leaves port, and where the foghorn appeared to be right and showed nothing to suggest doubt, a master was held not to be negligent either for not having sent it for such an overhaul or, where it broke down and he could not remedy the defect, for blowing a mouth foghorn instead (*o*).

The failure to use a mechanical foghorn may be held not to have contributed to the collision (*p*).

There is no rule that no other fog signals than those specified shall be given, unlike the case of lights (*q*), so probably in special circumstances a fog signal other than those specified may properly be given under article 27 or on general principles (*r*).

"Fog, mist, falling snow."

584. There is fog if the thickness of the weather impairs the protection obtained by sight so far as to render it proper to supplement it by use of the fog signals (*s*).

(*k*) *The Bernard Hall* (1902), 9 Asp. M. L. C. 300, 302 (the steamship was a vessel of 2,715 tons gross).

(*l*) *The King* (1911), 27 T. L. R. 524.

(*m*) *The Love Bird* (1881), 6 P. D. 80.

(*n*) *The Chilian* (1881), 4 Asp. M. L. C. 473.

(*o*) "*Fortunato Figari*" (*Owners*) v. "*Coogee*" (*Owners*) (1904), 29 Victorian Law Reports, 874, 911, 912.

(*p*) *National Steamship Co.* v. *Merry, The Pennsylvania* (1870), 23 L. T. 55, P. C. (where a steamer was proceeding at an excessive speed and wrong orders were given on board after a barque was sighted, although the barque was wrongly sounding a bell instead of a foghorn, and although the foghorn would have been heard farther, yet the failure to use a foghorn was held not to be the cause of the vessels coming into the position which caused the collision, and the steamer was held alone to blame); compare *Lohnes* v. *S.S. Barcelona* (1884), 10 Quebec Law Reports, 305 (where a fishing vessel at anchor was sounding her foghorn instead of her bell, in accordance with the universal custom to do so of fishing vessels sailing from Nova Scotia, this was held to be no excuse, but the fishing vessel was not held liable, on the ground that the steamer which struck her was solely to blame for the collision, either for not seeing or hearing the fishing vessel more than one minute before the collision or for not taking any precaution to avoid her); compare also *The "James Joicey"* v. *The "Kostrena,"* [1908] S. C. 295.

(*q*) See art. 1, which directs that no other lights which may be mistaken for the prescribed lights shall be exhibited; see p. 379, *ante*.

(*r*) Compare *The Merchant Prince* (1885), 10 P. D. 139, where showing a flare was held not to be a breach of the Sea Regulations, 1884.

(*s*) *The Milanese* (1881), Pritchard's Admiralty Digest, 3rd ed., p. 251, H. L., *per* Lord BLACKBURN; compare *The Milanese* (1880), 4 Asp. M. L. C. 318, C. A., where there was a conflict of evidence as to the weather, and it was held by BRETT, L.J. to be clearly a case of fog, as the governing facts were that one vessel was coming to anchor for the weather and the other vessel was shortening sail.

It is not an infraction of this rule for a vessel, not herself in fog, not to sound a fog signal when approaching a bank of fog, but it is a neglect of a proper precaution (*t*), as it is her duty in such circumstances to sound fog signals to apprise vessels in the fog of her presence (*u*). There is a similar duty to sound fog signals when approaching falling snow, though the vessel herself is not in it (*a*). And if a compulsory pilot is in charge when fog signals are not being, but ought to be, sounded, the master, or doubtless the other officer on watch, ought to call his attention to the fact (*b*).

Effect of compulsory pilotage.

585. The signal of two prolonged blasts is a very useful signal, conveying an almost invaluable piece of information; but it is extremely important that it should not be given unless the vessel giving it is lying dead in the water (*c*). She must be absolutely stopped, and it is not sufficient that she should have substantially no way (*d*). As this signal indicates that the vessel is stopped, those on the other vessel are entitled to act on that assumption (*e*), and to manœuvre accordingly to go past (*f*), and a vessel which gives it wrongly may be misleading the other vessel. It can usually be very easily ascertained, by throwing a piece of paper over the side or otherwise, whether the vessel is stopped or not, and it appears to be the duty of the navigating officer to take some such step before sounding this signal (*g*). Negligence in sounding the two long blasts improperly will be immaterial, unless it in fact misleads the other vessel (*h*).

(b). . . "2 prolonged blasts."

586. If a vessel hears the two long blasts, and acts as she has a right to act upon it, and manœuvres to go past the other vessel, there is a duty upon her to advance with such very great caution that, supposing the other vessel comes into sight very close, she shall be able to bring herself up within a very short distance; and a speed of four or five knots on a heavy ship in an extremely dense

Duty of vessel hearing two long blasts.

(*t*) *The N. Strong*, [1892] P. 105.

(*u*) *The Milanese* (1880), 4 Asp. M. L. C. 318, C. A. But where a vessel saw a second vessel approaching in such a position that if both vessels did not alter they would go clear, and a fog then came on and shut out the second vessel, it was held that the first vessel was under no such special obligation to whistle for the second vessel, though the second vessel wrongly starboarded and caused a collision (*The Oravia* (1907), 10 Asp. M. L. C. 434, C. A.).

(*a*) *The St. Paul*, [1909] P. 43, C. A. But in this case it was held that the absence of the sound signals on the steamship did not contribute to the collision, as the vessels saw each other at a sufficient distance and time to enable them with reasonable care to pass each other in safety; compare *The Ape* (1914), 30 T. L. R. 286.

(*b*) *The St. Paul*, *supra*, at p. 54; compare *The Elysia*, [1912] P. 152.

(*c*) *The Castleventry* (1904), *Shipping Gazette*, 16th April.

(*d*) *The Antwerp City* (1912), *Shipping Gazette*, 29th January.

(*e*) *The Matiana* (1908), 25 T. L. R. 51.

(*f*) *The Castleventry*, *supra*.

(*g*) *The Bittern* (1908), *Shipping Gazette*, 2nd April.

(*h*) In *The Castleventry*, *supra*, and *The Matiana*, *supra*, the vessel sounding the two long blasts improperly was held to blame on this account. In *The Antwerp City*, *supra*, the vessel so sounding was held not to blame, as the blasts were alleged by the other vessel wrongly to have been two short blasts, and it was held that the misreading of the signal was sufficient to show that it could not have contributed to the collision.

SECT. 2. Regulations for Preventing Collisions etc.

fog was held in these circumstances to be excessive (*i*). Where a steamer had heard the two prolonged blasts about ahead, although that signal had been wrongly given, she was held entitled to manœuvre by porting her helm (*k*).

(c). . . "Sailing vessel under way."

587. A sailing vessel when tacking must continue to sound the signal for the tack she is on until she actually has the wind on the other side (*l*).

(d). . . "When at anchor."

588. Where a vessel was moored in a fog to a pontoon connected by a bridge to the shore, and it was not usual or reasonable for a vessel in such a position to ring a bell, and to do so might have misled other vessels into thinking she was really at anchor so that they could pass on either side of her, it was held that the vessel was not bound to ring a bell under the local rule by which such a vessel was directed to ring the bell "if and when anchored" (*m*).

(e). . . "When towing."

589. Where a steamship was proceeding in a fog under her own steam sounding prolonged blasts, and a tug was fast to her by a short scope to tow her when it became necessary to do so, but had not in fact begun to tow, it was held that the tug was not "towing" within this article; and it was held that the tug in the circumstances was not bound to sound two prolonged blasts under article 15 (a), because, even if the tug was properly to be regarded as a separate vessel, and would therefore be bound by this article to sound prolonged blasts, which was doubtful, still it was less confusing, from the point of view of warning to others and safe navigation, for the steamship to give her signals unaccompanied by any signals from the tug (*n*).

Article 16.

590. Article 16 of the Sea Regulations, 1910, is as follows:—

Speed of Ships to be Moderate in Fog, etc.

Article 16.

Every vessel shall, in a fog, mist, falling snow, or heavy rain-storms, go at a moderate speed, having careful regard to the existing circumstances and conditions. (1863)

A steam vessel hearing, apparently forward of her beam, the fog-signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case

(*i*) *The Castleventry* (1904), *Shipping Gazette*, 16th April.

(*k*) *Ibid.*

(*l*) *The Constantia* (1889), 6 Asp. M. L. C. 478.

(*m*) *The Titan*, *The Rambler* (1906), 10 Asp. M. L. C. 350; and, as to "at anchor," in art. 11, see pp. 404, 405, *ante*.

(*n*) *The Sargasso*, [1912] P. 192; compare *The "James Joicey,"* *The "Kostrena,"* [1908] S. C. 295 (a steamship with her stern carried away and her forward compartment filled owing to a collision, but with engines and steering gear uninjured so that she was able to proceed and manœuvre slowly, hoisted the two black balls for a vessel not under command, but in a fog sounded signals of one prolonged blast under art. 15 (a), instead of a long and two short blasts under art. 15 (e). She was held not to blame in respect to her fog signals, first, because she was under command and ought not to have hoisted the two black balls and did not come within art. 15 (e); and secondly, because, even if she had been bound to sound the special signal under art. 15 (e), the fact that it was not sounded did not contribute to the collision, which was due to the other steamship not stopping her engines on hearing the fog signal which was sounded).

admit, stop her engines, and then navigate with caution until danger of collision is over. (1897) (*a*)

SECT. 2. Regulations for Preventing Collisions etc.

Application of rule.

591. A vessel approaching a fog bank ahead of her is not within the terms of this article, but it is her duty under the general rules of good seamanship to ease and go at a moderate speed (*b*); and the same applies to a steamer with falling snow ahead (*c*). But a vessel is not bound to go at a moderate speed if there is no fog ahead but only in the vicinity, for instance, at a distance on the port bow (*d*).

A moderate speed.

592. The words "having careful regard to the existing circumstances and conditions" were probably added to make the rule clearer from a popular point of view, since the legal doctrine, that moderate speed was not an absolute term but depended on the circumstances, existed long before (*e*).

The object of imposing moderate speed on vessels is not merely that it will lessen the violence of a collision, but also that their speeds shall give as much time as possible for making any necessary manœuvres in unforeseen circumstances, for in a fog it cannot be told exactly from what quarter the danger may come (*f*). Also each vessel has thus more opportunities of hearing the sound signals of the approaching vessel; a steamer going at slow speed has the chance of hearing about twice as many sound signals from an approaching sailing vessel as compared with what she would hear if going at double the speed (*g*). And the way of a vessel is more quickly taken off by reversing when going at slow speed (*h*).

Circumstances affecting speed: weather; place;

593. What is a moderate speed depends on the circumstances and conditions of each case (*i*), so that what is moderate speed at one time is not moderate at another (*k*). The chief circumstances and conditions are the state of the atmosphere, wind, and sea; the circumstances as regards the place, especially as to whether it is

(*a*) In the Sea Regulations, 1863, art. 16, it was provided that every steamship should when in a fog go at a moderate speed. This was altered in the Sea Regulations, 1880, art. 13, to "Every ship, whether a sailing ship or steamship, shall in a fog, mist, or falling snow go at a moderate speed." The Sea Regulations, 1884, art. 13, was in the same words. In 1897 the first paragraph of the article was altered to its present form, and the second paragraph was added. Long before 1863, however, it was a duty of good seamanship to moderate a vessel's speed in fog (*Perth* (1838) 3 Hag. Adm. 414; *The Lord Saumarez* (1848), 6 Notes of Cases, 600; and see other cases cited in Pritchard's Admiralty Digest, 3rd ed., pp. 222—226). And a similar duty applied in other circumstances, for instance, when the weather was squally, rainy, and dark (*The Emperor* v. *The Lady of the Lake* (1864), Holt (ADM.), 202; and (1865) in Privy Council, *ibid.*, p. 37). Neither this article nor any of the Sea Regulations applies to ships in an artificial navigable channel terminating in locks, like the Manchester Ship Canal (*The Hare*, [1904] P. 331). As to what is fog, see under art. 15, p. 412, *ante*.

(*b*) *The N. Strong*, [1892] P. 105, 110.

(*c*) *The St. Paul*, [1909] P. 43, C. A.

(*d*) *The Bernard Hall* (1902), 9 Asp. M. L. C. 300, 302.

(*e*) See, for instance, *The Zadok* (1883), 9 P. D. 114, 117; *The Ebor* (1886), 11 P. D. 25, 27, C. A.

(*f*) *The Zadok*, *supra*, at p. 115.

(*g*) *The Campania*, [1901] P. 289, 296, 297, C. A.

(*h*) *Ibid.*

(*i*) *Ibid.*, at p. 292; and see the terms of art. 16.

(*k*) *The Ebor*, *supra*.

SECT. 2. Regulations for Preventing Collisions etc.

open sea or narrow waters, whether there are difficulties of tide or current, and whether it is a place where many vessels are likely to be at anchor or under way or not; and the condition of the vessel herself, especially as to whether she is a sailing vessel or a steam vessel, and as to her manœuvring power and her likelihood of doing damage, and in this connexion as to what is her tonnage, and whether she is loaded or light, and if she is a steam vessel, as to what is the power of her engines, and as to whether she is a paddle steamer or a screw steamer with one or more propellers, and what her steering gear is and how well she answers to it (*l*). The facility in handling a steamer, large or small, must be taken into account (*m*); and one of the most important considerations is how soon the way can be taken off a very large ship (*n*). A cargo vessel with a full speed of nine or ten knots can and apparently should as a rule reduce her speed in fog to about three knots (*o*).

condition of vessel.

Condition of atmosphere.

As regards the atmosphere, a moderate speed must depend in a great measure on whether the fog is slight or dense (*p*), whether it is one through which daylight can be seen (*q*), or whether it is such that another vessel can only be seen at a ship's length, so that it may be impossible to see her until a collision is inevitable (*r*).

Vessels in narrow waters.

When the place is a narrow arm of the sea or a river, even if those on board a vessel do not hear a whistle, they should contemplate the probability of meeting other vessels, and that in such a place vessels would meet almost on the same line (*s*). In the Thames, for example, before a whistle is heard, a vessel in a dense fog should be brought as nearly as possible to a standstill, so as only to be just under command (*t*). In a narrow channel or current, owing to danger from such a condition, it might be necessary for a vessel to go at a higher speed (*a*); and on the open sea, where the probabilities of meeting another ship are less, the speed need not be as moderate as if a vessel is navigating a narrow channel (*b*).

Dense fog.

As a rule, at sea in a fog it appears to be proper for a steamship while moderating her speed to leave herself with the capacity of being properly steered (*c*). But a fog may be so dense that it is not possible to see across the ship, and in that case a vessel will probably have to stop her engines (*d*). And even at sea in a fog as dense as it well could be, a steamship, when she had reached a proper anchorage, was held to blame for proceeding dead slow

(*l*) Compare *The Beta* (1884), 9 P. D. 134, C. A.; *The Elysia* (1882), 4 Asp. M. L. C. 540, C. A., *per* COTTON, L.J., at p. 544 (the question of what is a moderate speed might depend on whether a vessel is rapid in answering her helm).

(*m*) *The Campania*, [1901] P. 289, 302, C. A.; *The Elysia, supra.*

(*n*) *The Campania, supra.*

(*o*) *Ibid.*, at p. 297.

(*p*) *Oceanic Steam Navigation Co.* v. *Waterford Steamship Co., The Oceanic* (1903), 9 Asp. M. L. C. 378, H. L.

(*q*) *The Beta, supra.*

(*r*) *The Dordogne* (1884), 10 P. D. 6, 10, C. A.

(*s*) *Ibid.*

(*t*) *Ibid.*

(*a*) *The Campania, supra,* at p. 303.

(*b*) *The Dordogne, supra.*

(*c*) This appears to be the general effect of the decisions; compare *The Zadok* (1883), 9 P. D. 114, 117.

(*d*) Compare *The Campania, supra,* at p. 297.

instead of anchoring (*e*). Still more in a river, a fog may be so thick that it is the duty of a vessel not to get under way (*f*), and if under way to come to anchor as soon as possible (*g*). In a thick fog in a river, if there is an opportunity of coming to anchor, and an attempt to proceed involves danger to property and possibly to life, it is the duty of those who have the control of the steamer to anchor, notwithstanding the convenience and urgency of passengers (*h*). Even a ferry steamer, which proceeds in a river in such a fog, takes upon herself all the responsibility of such a course, and her owners must pay if by so doing she injures life or property (*i*). Those in charge of a vessel in tow were held negligent for not ordering the tug to stop, when proceeding in a dense fog in the river St. Lawrence, when they could not see the river banks (*k*).

It has been held that a steamer overtaken by a dense fog, when going up river on the flood tide, should dredge up stern first with her anchor down, so that she can be brought up at any moment (*l*).

Speed of steam vessel in a fog.

594. When a steam vessel is entitled to proceed in a fog, even at sea, she is not justified necessarily in going at the lowest speed at which she is constructed to go; if she cannot go at a moderate speed, she must take the consequences (*m*).

A steam vessel is not entitled to go at a certain speed merely because it is her lowest continuous speed. If a vessel cannot reduce her speed sufficiently with the continuous action of her engines, and therefore cannot go at a reasonable speed without stopping her engines, it is her duty to stop them (*n*). There is great difficulty in checking a vessel's speed by stopping and taking the way off from time to time, and it has a tendency to throw the vessel out of her course, and it leads to difficulties, but it must be done (*o*). And the fact that it involves loss of position and difficulty and delay and taking precautions to haul out from the coast, if approaching it, is no sufficient reason to justify a higher rate of speed (*p*).

It has been laid down as a rule that a steamer ought not to go so fast in a fog that she cannot pull up in the distance which those on board can see (*q*). This appears to be in substance an application of the much older rule, which applies in all weathers, that no steamer has a right to navigate at such a rate that it is impossible for her to prevent damage, taking all precautions at the moment she sees

(*e*) *The Otter* (1874), L. R. 4 A. & E. 203.
(*f*) *The Aguadillana* (1889), 6 Asp. M. L. C. 390.
(*g*) *Girolamo* (1834), 3 Hag. Adm. 169, 174.
(*h*) *The North American* v. *The Wild Rose* (1865), 2 Mar. L. C. 319.
(*i*) *The Lancashire* (1874), L. R. 4 A. & E. 198, 202.
(*k*) *Smith* v. *St. Lawrence Tow-Boat Co.* (1873), L. R. 5 P. C. 308.
(*l*) *The Aguadillana, supra.* A steamship of 3,700 tons gross which turned round near the entrance to the sea channels leading to the Mersey in a dense fog and drifted up stern first at about a knot an hour on a flood tide, was not blamed for not anchoring (*The Kirby Hall* (1883), 8 P. D. 71, 76).
(*m*) *The Irrawaddy* (1887), cited in *The Campania*, [1901] P. 289, 294, C. A.
(*n*) *The Resolution* (1889), 6 Asp. M. L. C. 363, 364.
(*o*) *The Irrawaddy, supra.*
(*p*) *The Campania, supra*, at p. 301.
(*q*) *The Counsellor*, [1913] P. 70; see *The Campania, supra*, at p. 296 (as a general rule, speed such that another vessel cannot be avoided after being seen is excessive).

SECT. 2. Regulations for Preventing Collisions etc.

danger to be possible (*r*). And in cases where the other vessel when first seen is found to be stopped in the water, or is not going too fast (*s*), the rule is easy to apply.

It has also been held that when a fog comes on it is the duty of a ship, whether a steamer or sailing vessel, to moderate her speed as much as she can, leaving herself with the capacity of being properly steered; but some margin must be allowed for particular circumstances, and the same rule would not exactly apply in mid-ocean (*t*).

Speeds held immoderate.

595. Various rates of speed in the case of steam vessels have been condemned by the courts as immoderate in different circumstances (*u*).

Speed of sailing vessel in fog.

596. A sailing vessel in a fog, when she is rightly under way, is entitled to move at such a rate of speed as will enable her to keep properly under command (*a*). Moderate speed for a sailing vessel is not the same as for a steamer; for instance, a speed of three knots may be moderate for a steamer when it would be dangerous for a sailing vessel to reduce her speed so far (*b*). A

(*r*) *The Europa* (1851), Pritchard's Admiralty Digest, 3rd ed., p. 223, P. C.; in Admiralty Court (1850), 14 Jur. 627; compare *The City of Brooklyn* (1876), 1 P. D. 276, 279, C. A.

(*s*) As in *The Counsellor*, [1913] P. 70.

(*t*) *The Zadok* (1883), 9 P. D. 114, 117.

(*u*) Seven knots in a thick fog 200 miles eastward of Sandy Hook, where there must frequently be a great number of vessels congregated, has been condemned; see *The Pennsylvania* (1870), 3 Mar. L. C. 477, P. C. As regards higher speeds, see *The Oravia* (1905), 10 Asp. M. L. C. 100 (a twin screw steamship off the entrance to the estuary of the river Plate was going at least 10 knots an hour in a fog in which she could not see more than 300 or 400 yards, and her case was held to be hopeless on this account); affirmed on appeal on other points, at *ibid.*, p. 434, in C. A., and at *ibid.*, p. 525, in H. L.; *The Campania*, [1901] P. 289 (a large twin screw mail and passenger steamship was held to blame for going 9 to 10 knots in a dense fog: it was no justification that this was her lowest continuous speed, as she ought to have stopped at times, though this involved delay and might involve loss of position and hauling out from the coast which she was approaching). Other speeds which have been condemned are:—6 or 7 knots over the ground in the Clyde in very foggy weather (*Little* v. *Burns* (1881), 9 R. (Ct. of Sess.) 118); $6\frac{4}{5}$ knots in a dense fog off Shantung Promontory, North China (*The Chinkiang*, [1908] A. C. 251, P. C.); $6\frac{1}{2}$ knots in a thick fog in the channel between the Mull of Galloway and Port Patrick (*The Irrawaddy* (1887), cited in *The Campania*, *supra*, at p. 294); $6\frac{1}{3}$ knots in a thick fog in the Irish Sea, though the steamer could stop her way at that speed in 400 feet (*Oceanic Steam Navigation Co.* v. *Waterford Steamship Co.*, *The Oceanic* (1903), 9 Asp. M. L. C. 378, H. L.); $5\frac{1}{2}$ knots, including $2\frac{1}{2}$ knots tide, in a fog in the North Sea off the coast of Norfolk (*The "James Joicey," The "Kostrena,"* [1908] S. C. 295); 5 knots in a dense fog against a $2\frac{1}{2}$ knot current in the Straits of Gibraltar, when the steamer could have reduced her speed and yet have had steerage way (*The Resolution* (1889), 6 Asp. M. L. C. 363); 4 to 5 knots in the Baltic when another vessel could not be seen more than a ship's length (*The Magna Charta* (1871), 1 Asp. M. L. C. 153, P. C.); $4\frac{1}{2}$ knots in a fog in the Bay of Biscay (*The Counsellor*, *supra*); 3 knots in a thick fog in the North Sea 4 or 5 miles off the Tyne, when the steamer could have gone at $1\frac{1}{2}$ to 2 knots (*The Bromsgrove*, [1912] P. 182). On the other hand, 3 to $3\frac{1}{2}$ knots over the ground in a thick fog in the North Sea off Cromer, before a whistle was heard, was held to be a moderate speed (*The Ebor* (1886), 11 P. D. 25, 28, C. A.).

(*a*) *The N. Strong*, [1892] P. 105, 108.

(*b*) *The Elysia* (1882), 4 Asp. M. L. C. 540, C. A.

sailing vessel in a fog is entitled in some circumstances to go faster than in others; and whether the position of the vessel is in the open sea, or in a river like the Thames, or off a difficult coast, is a matter to be taken into consideration (*c*). She must have way on to fill her sails, otherwise she cannot control her movements; but subject to that, in a fog where she cannot see her way, it is her duty to moderate her speed as much as she can while keeping proper steerage way (*d*). Some margin must be allowed for the particular circumstances, and the same rule does not exactly apply to a sailing vessel in mid-ocean; but the rule applies in a river (*e*); and it applies in the English Channel when a sailing vessel is passing across a course in which it is expected that numerous vessels may be (*f*). If another vessel is coming near, a sailing vessel, if under full sail, ought to take sail off till she brings herself as nearly to a standstill as is consistent with being under command (*g*).

A sailing vessel going at speed in a fog has no right to keep her course and do nothing, merely because she is a sailing vessel (*h*).

A sailing vessel approaching the coast will not be held in the wrong for lying-to in a fog in order to avoid collision or running ashore (*i*).

Speeds held immoderate.

597. Various rates of speed have been held to be moderate or immoderate for sailing vessels in different circumstances (*k*).

(*c*) *The N. Strong*, [1892] P. 105, 108.
(*d*) *The Zadok* (1883), 9 P. D. 114, 117.
(*e*) *The Beta* (1884), 9 P. D. 134, C. A.
(*f*) *The Zadok, supra.*
(*g*) *The Dordogne* (1884), 10 P. D. 6, 12, C. A.
(*h*) *The Zadok, supra* (a barque which was proceeding in a fog at 5 knots in the English Channel, close-hauled in a moderate breeze, ought to have taken precautions against meeting a steamer in a position which required caution, and ought to have had men stationed to work on the braces and put the foresails aback by letting them fly).
(*i*) *The "Attila"* (1879), 5 Quebec Law Reports, 340.
(*k*) A barque in a fog in the English Channel, carrying nearly all the canvas she could, and making more than 5 knots, close-hauled in a moderate breeze, was held not to be going at a moderate speed (*The Zadok, supra*). A schooner in a dense fog in the Bristol Channel, under all plain sail, was held not to be going at a moderate speed, as she had speed more than enough to keep her under reasonable control (*The Beta, supra*). On the other hand, a brig in a fog in the North Sea near Flamborough Head, with all sail set except her foretop gallant sail, which justified her speed on the ground that she was going against the tide and that it was essential for her safety to make the best headway she could, was held not to blame, though it might have been more prudent to take in the studding sails; and the collision was held to be an inevitable accident (*The Itinerant* (1844), 2 Wm. Rob. 236). In a collision in foggy weather off Orfordness a brig was carrying all her sails set except her lower studding sails, and it was found that it would have been more prudent for her to have had no studding sails (*The Lord Saumarez* (1848), 6 Notes of Cases, 600). So also a schooner on an exceedingly misty night in the North Sea, which justified running under a press of sail on the ground that a very large number of vessels were in her wake, and that she carried these sails to avoid the possibility of any of them running into her, was held not to blame; and the collision was held to be an inevitable accident (*The Ebenezer* (1843), 2 Wm. Rob. 206). A brig in the Atlantic Ocean under all plain sail, and going 5 knots in a fog, when vessels ought to have been seen more than 200 to 300 yards, was held to be going at a moderate speed (*The Elysia* (1882), 4 Asp. M. L. C. 540, C. A.). A barque off the Longships at Land's End making about 4

SECT. 2. **Regulations for Preventing Collisions etc.**

598. A dumb barge in a river, which has no duty to carry an anchor and has no means of bringing up, is entitled to go on in a fog until she comes in contact with something to which she can make fast (*l*).

Article 16 qualifies other articles.

599. Although article 21 is a general rule, it is qualified by the second paragraph of article 16, so that a steamer which hears a whistle and believes that she is on the starboard bow of the other steamer and is crossing her, must not keep her speed under article 21, but must stop her engines under this article (*m*), though she may afterwards have to aid in averting collision under the note to article 21 (*n*); and similarly, when a steamer hears a whistle of another steamer on her starboard bow and the vessels are, in fact, crossing, the first steamer will not be justified in manœuvring to keep out of the way under article 19, but must stop her engines (*o*); and it has been held that articles 19 and 21 only apply when the vessels are in sight of each other (*p*).

The object of the rule that a steam vessel shall stop her engines is to lessen the danger (*q*), to stop as much as possible all sound from throbbing engines, rush of water or rush of air, and give opportunity for accurate observation of sound (*r*), so as to enable those on board to hear better than when the noise of the engines and propeller is going on, and so as to call their special attention, that they may be more acute to hear a second whistle and to locate it if possible (*a*).

Vessel in neighbourhood of fog.

600. This rule applies to a vessel even if she is not herself in a fog; for the danger arising from a fog signal forward of the beam may be as great and exactly of the same kind whether the steamer which hears it is herself in a fog or not, and the terms of this rule, that she shall stop her engines, apply in either case (*b*).

knots in a fog was held not to blame (*The N. Strong*, [1892] P. 105, 108). But a barque making 7 knots an hour in a fog over fishing grounds on the Banks of Newfoundland was held to be going at an improper speed (*The "Frank"* (1876), 2 Quebec Law Reports, 295).

(*l*) *The Rose of England* (1888), 6 Asp. M. L. C. 304 (a barge came in contact with the fluke of the anchor of a steamer, which was improperly out of the water; the barge was sunk, and the steamer was held alone to blame).

(*m*) *The Cathay* (1899), 9 Asp. M. L. C. 35.

(*n*) *Crawford* ("*Warsaw*") v. *Granite City Steamship Co., Ltd.* ("*Linn o' Dee*") (1906), 8 F. (Ct. of Sess.) 1013, *per* Lord STORMONTH-DARLING, at p. 1023. Art. 21 is to be read with art. 16, so far as it will live with it, as to aiding in averting collision in case of thick weather (*ibid.*).

(*o*) *The King* (1911), 27 T. L. R. 524.

(*p*) *Ibid.*

(*q*) *The Koning Willem I.*, [1903] P. 114, 122. As to the duty to stop on hearing the whistle of another vessel before this rule existed, see *The Knarwater* (1894), 63 L. J. (P.) 65, C. A.; *S.S.* "*Lebanon*" (*Owners*) v. *S.S.* "*Ceto*" (*Owners*), *The* "*Ceto*" (1889), 14 App. Cas. 670.

(*r*) *Crawford* ("*Warsaw*") v. *Granite City Steamship Co., Ltd.* ("*Linn o' Dee*"), *supra*, at p. 1021.

(*a*) *The Rondane* (1900), 9 Asp. M. L. C. 106.

(*b*) *The Bernard Hall* (1902), 9 Asp. M. L. C. 300 (when a steamer was not in a fog and the weather was tolerably clear ahead of her and on her starboard bow, but there was a fog on her port bow out of which a fog whistle came, and she slowed instead of stopping her engines, she was held to blame for a breach of the rule).

"Ascertained."

601. The question at times arises: when is the position of a vessel (the fog signal of which is heard apparently forward of the beam) "ascertained," so as to justify a steamer which hears it in not stopping her engines? "Ascertained" in this connexion seems to mean ascertained not to involve any reasonable risk of collision. And to ascertain for this purpose where another vessel is in a fog seems to mean learning, at any rate to some extent, her distance and bearing and, if under way, her course.

The effect of the decisions under this rule is that, if both vessels are in the open sea, and if nothing is known about the other vessel beforehand, the first fog signal heard apparently forward of the beam cannot tell those on board one vessel enough of the circumstances to make the position of the other vessel "ascertained" under the rule. It is not true to say that because a whistle sounds distant those on the ship hearing it are entitled to treat it as distant; many a case in the Admiralty Court has shown that an apparently distantly sounding whistle has really been close at hand (*c*). It is not correct, again, to say that, a whistle having been heard, it can be located so as to be certain it is at a precise bearing on the bow; case after case in the Admiralty Court shows that that is not true (*d*).

But when a peculiar whistle was heard in a fog overtaking and passing ahead, and was then heard for the first time where it would be expected forward of the beam, the position of the vessel was held to be "ascertained" (*e*); and when the weather had been clear and one steamer had seen another far off in a position of safety, namely, on an opposite course port to port and broadening, and the steamer then passed into a fog and heard a whistle bearing, as expected, from the other vessel, she was held not bound to stop her engines, as the position of the other was "ascertained" (*f*). When two steamers are in a narrow artificial channel like the Manchester Ship Canal the position of one vessel probably is "ascertained" by the other under this rule (if the rule applies at

(*c*) *The Britannia*, [1905] P. 98, 103 (where those on board a steamer in a fog heard the whistles of two other steamers, one on each bow, and while these two vessels were drawing clear to pass astern, they heard a long way off the whistle of a third steamer, with which they came into collision, but did not stop their engines because the whistle sounded a long way off and because the whistles of the first two steamers enabled them to judge the situation and distance of the third steamer, and they afterwards made out her whistle to be one and a half points on their starboard bow; it was held that this was wrong and that the engines of the steamer ought to have been stopped). In this case GORELL BARNES, J., said (at p. 104): "I do not desire to be any party to weakening the effect of that rule. If this court were to hold that, upon hearing a whistle which sounded to be distant, a vessel was justified in not stopping, every case in this court would be that the whistle sounded such a long way off that the ship was justified in not stopping."

(*d*) *The Britannia*, *supra*, at p. 104; *The Dordogne* (1884), 10 P. D. 6, 11, C. A.; *The "James Joicey"* v. *The "Kostrena,"* [1908] S. C. 295, 305 (a steamer in a dense fog heard one whistle and believed it to be broadish on the port bow, and she had several other vessels around her blowing foghorns; it was held that these circumstances were no excuse for the steamer porting her helm without stopping her engines).

(*e*) *The Geelong*, *Shipping Gazette* (1908), 5th March, C. A.

(*f*) *S.S. Oravia* (*Owners*) v. *S.S. Nereus* (*Owners*), *The Oravia* (1907), 10 Asp. M. L. C. 525 H. L.

SECT. 2. Regulations for Preventing Collisions etc.

all in a place so shut off from the sea) on hearing the first whistle, so that the steamer need not be to blame for not stopping her engines (*g*).

"Shall, so far as the circumstances of the case admit, stop her engines."

602. Those in charge of a steamer will have to show very strong circumstances to justify themselves if they do not stop their engines on hearing such a whistle (*h*). If stopping the engines would cause a danger of stranding or probable risk of collision with another vessel, this would naturally be a good reason against it, but such cases are only likely to occur in confined waters, and in the open sea it is not easy to imagine circumstances in which a vessel could not stop her engines (*i*).

When in the case of tug and tow the tug can without difficulty stop her engines sufficiently to let the way run off her tow it is her duty to do so (*k*).

Failure to stop.

603. If a steamer fails to stop under this rule, it will be difficult for her to escape liability on the ground that she stopped at a later period for a considerable time, and that therefore her failure to stop at the first whistle made no difference; because if she had stopped in the first instance she might not have reached the place of collision, and the results would have been altogether different (*l*).

When those on board a steamer hear the first fog signal (*m*) of another vessel, the circumstances may be such that articles 22 and 23 apply, so that it will be the duty of the steamer, if the circumstances of the case admit, to avoid crossing ahead of the other vessel, and, if approaching her, and if necessary, to reverse her engines (*n*). But a steamer in a fog, hearing the first whistle of

(*g*) *The Hare*, [1904] P. 331.

(*h*) It is a bad excuse for not doing so that another vessel is following close astern (*The Rondane* (1900), 9 Asp. M. L. C. 106), even if the steamer herself is loaded aft with dynamite (*The Star of New Zealand* (1899), *Shipping Gazette*, 7th November), because stopping engines does not at once stop a vessel's way, and it will be the duty of the vessel following to check her speed. It is a worse excuse that there is a vessel at some distance away on the quarter (*The Britannia*, [1905] P. 98, 102). It was held to be no excuse for not stopping her engines on the part of a vessel stemming the tide at the mouth of the Humber in a dense fog that there was a vessel at anchor 100 yards astern of her (*The Ariadne* (1911), 27 T. L. R. 304).

(*i*) *The Rondane, supra.*

(*k*) *The Challenge and Duc d'Aumale*, [1905] P. 198, C. A.

(*l*) *The Britannia, supra*, at p. 104.

(*m*) As to the navigation of a steamer after hearing the signal of two prolonged blasts from another steamer, see under art. 15; pp. 413, 414, *ante*.

(*n*) *The Merthyr* (1898), 8 Asp. M. L. C. 475, 477. A steamer in a dense fog in the North Sea was on a course of N. by W. ½ W., and the wind was about S., and a foghorn sounding a single blast was heard on the port bow; it was held that those on the steamer must have known that the sailing vessel was crossing their bows on the starboard tack, and that as a foghorn cannot carry far, especially against the wind, the sailing vessel could not be very far from them; and it was held that in such a position, which is a common position, the steamer ought at once to have reversed her engines and taken the whole of her way off. The court did not accept the excuse given by the master of the steamer for not reversing at once, namely, that he was afraid that the sailing vessel might be more ahead of him than she appeared to be, and that she might cant towards his vessel if she got more towards the starboard bow, and that he did not know her exact position; and the steamer was held to blame on this account alone,

another steamer on her starboard bow, is not bound to treat her as a crossing vessel and therefore reverse her engines (*a*).

"Navigate with caution until danger of collision is over."

604. A steamer having stopped her engines must keep them stopped, until she can, by hearing further signals, ascertain the position of the other vessel (*b*). But the object of the rule is not to keep two vessels permanently stationary in a fog ; move they often must, even in the densest fog, as when they know they are near a dangerous shoal (*c*). A steamer will be justified in some circumstances in going slow ahead when she hears a second whistle (*d*).

On the other hand, when the indications for a considerable time are that the other vessel is approaching and not broadening, the steamer ought not to proceed and keep on even at dead slow, but ought to stop, at any rate from time to time, when by giving an occasional touch ahead she can keep on her course and under control (*e*).

Duty to reverse.

605. The duty of a steamer to reverse when another vessel approaches dangerously close in a fog appears to be the same under this article as it was when the article as to reversing (*f*) applied to steamers in fog. A steamer ought to be brought to a standstill at once by reversing when in a dense fog the first whistle of an approaching steamer is heard in close proximity on the bow (*g*). When one steamer is approaching near another steamer in

although her engines had been stopped on hearing the first blast of the foghorn, and were reversed on hearing the second blast.

(*a*) *Crawford* ("*Warsaw*") v. *Granite City Steamship Co., Ltd.* ("*Linn o' Dee*") (1906), 8 F. (Ct. of Sess.) 1013.

(*b*) *The Rondane* (1900), 9 Asp. M. L. C. 106.

(*c*) *The Vaderland* (1907), *Shipping Gazette*, 28th November, H. L.

(*d*) A steamer going dead slow off the Goodwin Sands in a dense fog heard a whistle about two points on her starboard bow, apparently a long way off, and stopped her engines, and about a minute later heard it a second time three to four points on that bow, and then went slow ahead again, as she was losing steerage way ; she was held to have navigated with caution in that place, where she might at any moment have had to manœuvre for another vessel ; see *The Vaderland, supra ;* and in the Admiralty Court (1907), *Shipping Gazette*, 27th February. A steamer in foggy weather off the coast of Spain, going slow against a strong head sea, heard a bright-toned whistle a little on the port bow, and stopped for five minutes, and then, hearing the same whistle again slightly on the starboard bow, went dead slow ahead for ten minutes without hearing anything, raising her speed to about a knot or a knot and a half ; she was held to have navigated with caution, as against such sea it was prudent to keep the vessel under command ; see *The Byron* (1905), *Shipping Gazette*, 9th February.

(*e*) *The Aras*, [1907] P. 28 (in the English Channel in foggy weather, when the court found the indications were not such as to show distinctly and unequivocally that, if both vessels continued to do what they appeared to be doing, they would pass clear without risk of collision, the steamer proceeding and keeping on at dead slow was held to blame). When a steamer in a fog had brought herself to a standstill in the water before she heard a fog signal, it was held that while she was entitled on hearing a whistle on the port bow to get such way on her as would put her under command, she was not justified in keeping on for four minutes at thirty-five revolutions with helm hard-a-port (*The Earl of Dumfries* (1885), 5 Asp. M. L. C. 329, n.).

(*f*) Sea Regulations, 1863, art. 16 ; Sea Regulations, 1880 and 1884, art. 18.

(*g*) *The Kirby Hall* (1883), 8 P. D. 71.

SECT. 2. Regulation for Preventing Collisions etc.

a dense fog, and there is a succession of whistles, and the indications to the officer in charge of one steamer are that the other is coming substantially nearer, and he cannot tell the direction in which she is coming, it has been held that before the other steamer comes in sight the engines of this steamer ought to be reversed until her way is stopped (*h*). A steamer ought to reverse when in a fog several whistles are heard on the bow from a steamer approaching in the vicinity and not broadening (*i*). When two steamships invisible to each other in a thick fog find themselves gradually drawing nearer to each other until they are within a few ship's lengths, each is bound to reverse unless the fog signals of the other distinctly and unequivocally indicate that she will pass clear without involving risk of collision (*k*). A steamer ought to reverse in a fog when another steamer approaches her on the bow within what would be hailing distance if they were stopped, and ought not to wait till she comes in sight (*a*). When in a fog the whistle of a vessel is heard ahead, the officer in charge of a steamer should act sooner than if heard from any other quarter, and should take extreme precautions; and if a second whistle shows the vessel is approaching, probably it is his duty to reverse (*b*).

Keeping course.

It is a sound rule that when two vessels are approaching one another in a fog without any sufficient indication to justify action, neither vessel ought to alter her course for the other, but each, while complying with the regulations as to speed, should keep the course on which she is proceeding (*c*). What indications are sufficient to warrant a change of course for the other vessel is a question of fact which must depend on the circumstances of each case (*d*). There is no rule that a vessel having only the indication

(*h*) *The Dordogne* (1884), 10 P. D. 6, 11, 12, C. A.; *The Ebor* (1886), 11 P. D. 25, 29, C. A.; *S.S. "Lebanon"* (*Owners*) v. *S.S. "Ceto"* (*Owners*), *The "Ceto"* (1889), 14 App. Cas. 670; *Morton* v. *Hutchinson, The "Frankland" and The "Kestrel"* (1872), L. R. 4 P. C. 529; *The Kirby Hall* (1883), 8 P. D. 71.

(*i*) *The John McIntyre* (1884), 9 P. D. 135, C. A.

(*k*) *S.S. "Lebanon"* (*Owners*) v. *S.S. "Ceto"* (*Owners*), *The "Ceto,"* *supra*, at p. 686.

(*a*) *Morton* v. *Hutchinson, The "Frankland" and The "Kestrel,"* *supra*, at p. 534.

(*b*) *The Ebor supra*, at pp. 27, 29.

(*c*) *S.S. "Vindomora"* (*Owners*) v. *Lamb and S.S. "Haswell"* (*Owners and Owners of Cargo etc.*), *The "Vindomora,"* [1891] A. C. 1, 4, 8.

(*d*) *Ibid.*, at p. 8. Before 1897, when the duty to stop on hearing a whistle forward of the beam was laid down by the second paragraph of this article, the question arose in some cases as to whether a steamer was right in altering her course on hearing the first whistle of another steamer. When a steamer going dead slow in a dense fog in the North Sea heard a whistle three and a half to four points on her starboard bow, and apparently from half a mile to a mile distant, she was held not to blame for starboarding her helm on hearing this first whistle (*S.S. "Vindomora"* (*Owners*) v. *Lamb and S.S. "Haswell"* (*Owners and Owners of Cargo etc.*), *The "Vindomora," supra*; compare *Morton* v. *Hutchinson, The "Frankland" and The "Kestrel," supra*, at p. 533). But when in the Straits of Gibraltar in a dense fog a steamer was proceeding to the northward of the ordinary course and starboarded on hearing the first whistle two and a half points, as she alleged, on her starboard bow though she ought to have known that in all probability she was crossing the course of other vessels, her starboarding was held to be wrong (*The Resolution* (1889), 6 Asp. M. L. C. 363). As to keeping the wrong side of

of a single whistle is never justified in altering her course for the other vessel (*e*).

606. The steering and sailing rules in the Sea Regulations, 1910, are as follows:—

Steering and sailing rules.

Steering and Sailing Rules.

Preliminary—Risk of Collision.

Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist. (1897)

Article 17 (*f*).

Article 17.

When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, viz.:— (1884)

(a) A vessel which is running free shall keep out of the way of a vessel which is close-hauled. (1884)

(b) A vessel which is close-hauled on the port tack shall keep out of the way of a vessel which is close-hauled on the starboard tack. (1884)

(c) When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other. (1884)

(d) When both are running free, with the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward. (1884)

(e) A vessel which has the wind aft shall keep out of the way of the other vessel. (1884)

607. Under the steering and sailing rules, in two cases (article 18, end on, and article 23, narrow channel), both vessels have to manœuvre, but the scheme of the rest of the rules is to pick out one of the two vessels, throw upon her the general duty of keeping out of the way, dictate certain manœuvres which she is to make, and oblige the other vessel to keep her course and speed. In general.

In manœuvring under these rules, it is an accepted principle that each vessel is bound to act on the presumption that the rules will be obeyed by the other, otherwise the confusion would be endless (*g*). And although one vessel has been disobeying the rule, for

a river in a fog in violation of a local rule, see *Russian S.S. "Yourri"* v. *British S.S. "Spearman"* (1885), 10 App. Cas. 276, P. C.; *The Raithwaite Hall* (1874), 2 Asp. M. L. C. 210.

(*e*) *S.S. "Vindomora"* (*Owners*) v. *Lamb and S.S. "Haswell"* (*Owners and Owners of Cargo etc.*), *The "Vindomora,"* [1891] A. C. 1, 4, 8. In a dense fog in the North Sea the master of a steamer heard the fog signal of a brigantine which he knew was crossing his course from port to starboard, and on hearing it again more ahead and nearer he reversed his engines and hard-a-ported his helm; he was held not to blame for hard-a-porting, as it was done to keep his ship straight, and was therefore advisable; see *The Merthyr* (1898), 8 Asp. M. L. C. 475.

(*f*) These rules for sailing vessels were introduced in the Rules of 1884, in their present form, except that "vessel" was substituted in 1897 for "ship." But in some respects they may be traced back to the Trinity House Regulations, 1840 (see Table in Appendix, *post*), and even earlier; see note (*p*), p. 372, *ante*.

(*g*) *The Mangerton* (1856), Sw. 120, 124; *The "Jesmond" and The "Earl of Elgin"* (1871), L. R. 4 P. C. 1 (the anticipation of a default of

SECT. 2. Regulations for Preventing Collisions etc.

instance, to keep out of the way, the other vessel has generally a right to expect that she will not continue in her obstinacy (*h*).

Conflict of rules.

608. Occasionally some of the steering and sailing rules come into conflict with one another. Two rules may apply at the same time in such circumstances that they conflict, and then one rule must override the other. Thus where both the crossing and the narrow channel rules apply, the crossing rule may override the narrow channel rule, and then the steamer having the other on her starboard side should keep out of the way and not cross ahead on to her starboard side, while the other steamer, instead of porting on to her own starboard side, should keep her course (*i*).

Again, when one rule has applied, there is the question whether a conflicting rule can come into force. On this point it is certain that when the overtaking rule has once applied, so as to cast on one vessel the duty to keep out of the way, it continues to apply till she is finally past and clear, and the crossing rule cannot come in so as to shift the duty of keeping out of the way (*k*). And the converse, that the crossing rule cannot be superseded by the overtaking rule, so as to shift the burden of keeping out of the way, seems to be true, as otherwise there would be confusion. But it cannot be said that the same principle would always apply to the rules for sailing vessels, when there might be changes of wind.

Effect of wrongful act of one of two approaching vessels.

609. It seems clear also that when vessels are approaching each other in a condition of safety, one vessel cannot by wrongful action throw the duty of keeping out of the way on the other vessel under these rules. For instance, if two steamers are approaching starboard to starboard, and one wrongly ports, the other vessel's duty appears to be regulated by the dictates of good seamanship and not by article 19 etc. But a steamer approaching another in a condition of safety port to port may bring in the crossing rule by wrongly starboarding, so as to throw on herself the duty of keeping out of the way, and give the other vessel the benefit of keeping her course and speed subject to the note in article 21 (*l*).

the other vessel in not porting under the end-on rule was not an element which could be reasonably imported into the risk of collision); and see p. 365, *ante*.

(*h*) *The Beryl* (1884), 9 P. D. 137, 142, C. A. In *Wilson, Sons & Co.* v. *Currie*, [1894] A. C. 116, 119, 120, two steamers were approaching end on or nearly so, and the first blew her whistle and ported and saw the second steamer coming towards her and not porting, and so again blew her whistle and again ported, and did not reverse her engines till afterwards; it was held not to be true that the first steamer ought to have seen that there was risk of collision when she saw the other steamer not porting and herself ported again, as she was not bound to assume that, though the other steamer disregarded the first whistle, she would pay no attention to the second.

(*i*) See under art. 19, pp. 436 *et seq.*, *post*; *The Leverington* (1886), 11 P. D. 117, C. A.; *The Ashton*, [1905] P. 21. Compare *The Annie*, [1909] P. 176 (two sailing vessels were beating down a river tacking from side to side, and one vessel gradually came up with the other; the question of which should keep out of the way was held to be decided by the port tack rule, art. 17 (b), and not by the overtaking rule, art. 24).

(*k*) Art. 24; and this was so under the less complete terms of art. 20 of 1884 (*The Molière*, [1893] P. 217).

(*l*) See under art. 21, p. 445, *post*; *The Boynton* (1898), *Shipping Gazette*,

Circumstances authorising departure from rule.

610. Again, sometimes the circumstances of the case may make a departure from these rules necessary under article 27, or may prevent a rule coming into operation at all. Thus the narrow channel rule (article 25) will not come into operation when vessels have to manœuvre for one another in a very narrow place, unless there is adequate room for them to pass at that place, but the incoming vessel may have to give way to the outgoing vessel (*m*). Or again, neither the narrow channel rule nor the crossing rule may come into operation in very confined waters, but it may be right on the footing of good seamanship for the vessel going against the tide to give way to the other (*n*).

"Risk of collision."

611. What constitutes risk of collision must always be decided according to the circumstances of each case (*o*). It is a matter partly of nautical experience (*p*) and partly of law.

On the one hand, when two vessels are approaching to pass at all near to one another, there is always a possible chance or risk of collision. This is not the "risk of collision" contemplated in the rules. It never was intended that a vessel should begin to change her course because there is a possibility of collision (*q*). If two steamers are meeting one another end on or nearly end on so as to involve risk of collision, and one of them at a proper distance ports sufficiently to put her on a course to pass clear of the other port to port, the "risk of collision" referred to in the rules is determined, so that she is no longer approaching the other so as to involve "risk of collision" (*r*); though in these circumstances the "risk of collision" will be revived again if the other steamer starboards (*s*). Two vessels are not approaching so as to involve "risk of collision" when the giving-way vessel is in sight of the other vessel, but has not reached the point where she would manœuvre for her (*t*).

21st January; *The Ornen* (1900), 16 T. L. R. 149, C. A.; reversed on the facts (1901), 17 T. L. R. 359, H. L.

(*m*) *Taylor* v. *Burger* (1898), 8 Asp. M. L. C. 364, H. L.; *The Kaiser Wilhelm der Grosse*, [1907] P. 259, C. A.

(*n*) *The Prince Leopold de Belgique*, [1909] P. 103.

(*o*) *The Mangerton* (1856), Sw. 120, 123.

(*p*) Compare *The Mangerton*, *supra*.

(*q*) *The Ericsson* (1856), Sw. 38; *H.M.S. Inflexible* (1856), Sw. 32, 35; *The "Sylph"* (1854), 2 Ecc. & Ad. 75, 83 (a rule referring to risk of collision does not apply "where two vessels are sailing properly, and there is no chance of a collision").

(*r*) *The "Jesmond" and The "Earl of Elgin"* (1871), L. R. 4 P. C. 1.

(*s*) *Ocean Steamship Co., S.S. "Hebe" (Owners)* v. *Apcar & Co., S.S. "Arratoon Apcar" (Owners)*, *The "Arratoon Apcar"* (1889), 15 App. Cas. 37, P. C.

(*t*) *The Bellanoch*, [1907] P. 170, 180, C. A.; compare *The Banshee* (1887), 6 Asp. M. L. C. 221, C. A. (a vessel which was being overtaken ported four minutes before the collision, and when there was a distance of 800 yards between her and the overtaking vessel; she was held to have acted before there was "risk of collision" and before the regulation that she should keep her course had begun to apply); see also similar cases cited under art. 21, p. 446, *post*. As to risk of collision in a river, where there is a rule for vessels approaching each other with risk of collision to pass port to port, and another rule for a vessel navigating against the tide to wait above a point, see *The Libra* (1881), 6 P. D. 139, C. A. In effect, by the rules in the M. S. Act, 1854, a steamship or sailing ship meeting another ship, so that if both were to continue their courses they would pass so near as to involve risk of collision, was

SECT. 2. Regulations for Preventing Collisions etc.

On the other hand, a time comes when the risk of collision is immediate or imminent. This, again, is not the moment to look at; it is too late. The rules referring to "risk of collision" are all applicable "at a time when the risk of collision can be avoided," and not "when the risk of collision is already fixed and determined" (*a*).

The time to look at is, therefore, intermediate between the time when collision is a mere possibility and the time when the risk is immediate. The rules referring to risk of collision apply as soon as there is a reasonable probability of risk of collision (*b*).

The object of these rules is not merely to prevent collision (*c*), but to prevent the risk of collision (*d*) and, if it has arisen, to terminate it.

The risk must appear.

612. The "risk of collision" contemplated by these rules means a state of things which calls for action. It can only apply when one vessel has come within sight or sound, or has in some way knowledge, of another vessel; the conduct of persons in unknown circumstances cannot be provided for (*e*). The consideration must always be not the mere fact that the terms of one of these rules applied, or in other words that there was risk of collision, but whether the circumstances were such that it was or ought to have been present to the mind of the person in charge that there would be risk if nothing was done to prevent it (*f*). The question is what ought to have appeared to be the facts to a navigating officer of ordinary skill and reasonable care in the circumstances in which he was placed (*g*).

How risk may arise.

613. The risk of collision may arise from uncertainty as to the course of the other vessel (*h*) or as to the action of those on

bound to port her helm; a sailing ship running up the English Channel saw the green light of a steamer between three and four points on her starboard bow distant about a mile and a half, and as a matter of precaution starboarded her helm; she was held justified (*The Sylph* (1857), Sw. 233).

(*a*) *The Beryl* (1884), 9 P. D. 137, 140, C. A.

(*b*) *The Cleopatra* (1856), Sw. 135, 136; *The Dumfries* (1856), Sw. 63, 65; *The Duke of Sussex* (1841), 1 Wm. Rob. 274, 276 (whenever there is a reasonable probability that by standing on a collision may ensue); *The "Sylph"* (1854), 2 Ecc. & Ad. 75, 83 (as soon as the risk of collision has become a reasonable chance).

(*c*) *The Beryl, supra*, at p. 138.

(*d*) *Ibid.*

(*e*) *Ibid.*, at pp. 138, 139.

(*f*) *The Bellanoch*, [1907] P. 170, C. A., *per* KENNEDY, L.J., at p. 192; *The Beryl, supra*, at p. 139.

(*g*) *The Beryl, supra*, at p. 139; *The Benares* (1883), 9 P. D. 16, 17, C. A.; *Baker* v. *"Theodore H. Rand"* (*Owners*), *The "Theodore H. Rand"* (1887), 12 App. Cas. 247, 250 (a sailing vessel at night was running free, and the navigating officer of the other ship, who did not know that she was running free, and therefore that the risk of collision existed, and who acted for her as close-hauled, was held not to blame).

(*h*) Thus, a steamer going eight or nine knots observed a sailing vessel ahead distant about three miles and apparently coming end on, with no light visible, and the steamer ported for her; it was held that this was wrong, and that the steamer should either have slackened her speed on the ground that there was risk of collision, or should have waited, before taking the decided step of porting, to ascertain on which side of her the sailing vessel was going (*Beal* v. *Marchais, The "Bougainville" and*

board (*i*). If in all probability a vessel has done something which, if in fact she has done it, will produce risk of collision, a person who is aware of the fact of this probability of risk ought to consider that there is risk (*k*).

Cutting fine or delaying.

614. The vessel which has to act for risk of collision must not cut things fine or delay her action; if there is a reasonable chance of collision, that is sufficient to call for action (*l*). For instance, it is the duty of the giving-way vessel to make certain of avoiding the other, and she has no right to make a nice calculation which must be attended with some risk (*m*). A vessel is not entitled to run the matter very fine, and to go on till the last moment before stopping and reversing (*n*).

Duty to observe bearing of approaching vessel.

615. A navigating officer ought to ascertain in the daytime whether an approaching vessel keeps the same bearing from his vessel, or whether her bearing narrows or broadens, and from this he ought to draw conclusions as to the risk of collision. The bearing of the other vessel can be ascertained accurately by compass. If the bearing remains the same long enough, as the two vessels continue approaching, it is certain that there must be a collision, and that is why the preliminary paragraph before article 17 was put in (*o*). If the bearing narrows, this means that the other vessel is crossing ahead. And if the bearing begins to narrow when the vessels are at a short distance apart, there will usually be considerable risk of collision.

Similar conclusions ought to be drawn at night from a light on a vessel remaining on the same bearing or narrowing (*p*). It is the duty of those who are navigating a ship to observe a light on a vessel approaching them, to see whether it appreciably changes its position. If they see a masthead light, they are not left to wait until

The "James C. Stevenson" (1873), L. R. 5 P. C. 316, 323; *The James Watt* (1844), 2 Wm. Rob. 270 (a steamer going down a river at night and discovering a sailing vessel coming up with an adverse wind ought not immediately to port her helm before she discovers what course the other vessel is upon, but will act with greater prudence by slackening speed). A steamer approaching another, of which she could only see the smoke, was held to blame for not slackening speed, as she could not tell whether the other steamer was nearly end on or crossing or at what speed she was going (*The Rona, The Ava* (1873), 2 Asp. M. L. C. 182, P. C.).

(*i*) The master of one steamer saw the white and green lights of another steamer on her starboard bow coming more into line, apparently showing that she was porting, which if done would produce risk of collision; it was held that he was bound to consider that there was risk of collision (*The Stanmore* (1885), 10 P. D. 134, C. A.).

(*k*) *The Stanmore, supra.*

(*l*) Compare *The "Sylph"* (1854), 2 Ecc. & Ad. 75, 82; and in this case with reference to the risk of collision under the port helm rule in the M. S. Act, 1854 (see Table in Appendix, *post*), it was said: "This chance of collision is not to be scanned by a point or two."

(*m*) *The Colonia* (1844), 3 Notes of Cases, 13, n. (in daylight and fair weather a brig with the wind free kept her course to within a cable and a half of another brig, while she had the power to adopt, long before the collision, manœuvres which would render it impossible; she was held to blame).

(*n*) *Wilson, Sons & Co.* v. *Currie*, [1894] A. C. 116, 120.

(*o*) *The City of Berlin*, [1908] P. 110, 120, C. A.

(*p*) *Ibid.*, at p. 123.

they see a green or red light, but they ought to look and see if the masthead light alters its position, and they should deal with it by compass bearing (*q*).

Observation of relative position of steamer's lights.

616. Conclusions also as to risk of collision may be drawn with certainty from the additional white light of a steamer coming more into line with, or farther apart from, her masthead light. With regard to the conclusions as to risk of collision which are sometimes drawn from a side light coming more into line with the masthead light, the fact that the side light of an approaching vessel is drawing more into line with the masthead light may mean that she is altering her course towards the observer's vessel and causing risk of collision, or it may mean that she is proceeding to pass clear (*r*). It depends entirely upon the relative position of the masthead and coloured lights whether the closing together of the masthead light and the coloured light shows risk of collision, and a master who does not draw the conclusion that there is risk of collision merely from such closing together is not necessarily to blame on that account (*a*).

"Close-hauled," "running free," and "wind aft."

617. Of the three descriptions of vessels contained in article 17, namely, close-hauled, running free, and having the wind aft, no one is applicable with rigid exactitude; but vessels the courses of which vary materially may nevertheless fall under the same definition. In each case it is a question of fact, to be determined upon the evidence or balance of evidence, to which of the three definitions the vessel most nearly answers (*b*). In each case the solution may be approached by comparing the evidence upon the trim of the sails, the mode of working the ship and the direction of the wind. Testimony as to the actual trim of a vessel's sails, and as to the mode in which she was being navigated, being evidence of facts and doings capable of accurate description, which cannot without false swearing be to any great extent misrepresented, will generally

(*q*) *The President Lincoln*, [1911] P. 248, 251.

(*r*) The lights cannot come quite into line to a vessel ahead. The distance between any two lights looks greatest when a line joining them is at right angles to the gaze of the observer. Most steamships carry their side lights not abreast of but abaft the masthead light. In such a case the masthead and side light, to a vessel approaching on a parallel course from almost ahead will at first come farther apart, then for a short time probably remain at about the same distance, and will afterwards draw more into line as the vessel comes past the observer's vessel. If the side light is carried forward of the masthead light, the two lights will close in more quickly to a vessel approaching on a parallel course, and will actually come into line some time before the vessel carrying them is abeam of the observer's vessel.

(*a*) *The Albis* (1895), 8 Asp. M. L. C. 92 (decided under the Sea Regulations, 1884). On the other hand, under the same Regulations, when two steamers were green to green, and the master of one steamer concluded from the white and green lights of the other steamer coming more into line that this steamer was altering her course towards his vessel, which was the case, it was held that he ought to have considered that there was risk of collision and acted accordingly, and that he was to blame for not doing so (*The Stanmore* (1885), 10 P. D. 134, C. A.). But it may be that he would not be held to blame under the present Regulations if the other steamer had not indicated her alteration by whistle, as she would now be bound to do under art. 28.

(*b*) *The "Privateer"* (1881), 9 L. R. Ir. 105, 111, C. A.

be found more trustworthy than evidence purporting to state with mathematical accuracy the point of the compass from which the wind was blowing. It must be much more difficult to observe the precise angle at which the wind is crossing the ship than to observe her condition and working. The wind may be variable, compasses vary somewhat, the ship must be somewhat unsteady, and different ships vary considerably in their ability to keep close to the wind. For these reasons greater weight should be given to evidence as to the ships themselves than to statements of the direction of the wind by compass, or inferences from its direction at different times and places (*c*).

(a) . . . "running free."

618. A vessel "running free" may be distinguished from a vessel "close-hauled" (*d*); but no clear line has been or apparently can be drawn between a vessel "running free" and a vessel which "has the wind aft" under rule (e) (*e*).

Duty of vessel running free.

619. Under this rule a vessel running free ought to make certain of avoiding the other, and not make a nice calculation attended with risk (*f*). Her duty is not to shave too closely, and the question is whether she acted as soon and effectually as she ought to have done (*g*).

By article 22 (*h*) the vessel running free, like all other vessels which have to keep out of the way under these rules, must, if the circumstances of the case admit, avoid crossing ahead of the other vessel.

(b) . . . "close-hauled."

620. A sailing vessel is "close-hauled" within this rule although she is not jammed close to the wind, that is to say, not as close-hauled as she can be. If she is half a point off this, she is still clearly close-hauled, and perhaps so if a point or a point and a half off (*i*). A barque heading within seven points of the wind has

(*c*) *The "Privateer"* (1881), 9 L. R. Ir. 105, 111, 112, C. A.

(*d*) As to "close-hauled," see the text, *infra*.

(*e*) *The "Privateer," supra*, at pp. 119, 120. When a vessel was steering W. by N. with the wind E.N.E. or S.E., it was held that she was "running free" within rule (a), and "had the wind aft" within rule (e). Under the Sea Regulations, 1863, when a vessel running free in the English Channel was being overtaken by a vessel close-hauled, the rule (art. 12) was held to apply which directed the vessel running free to keep out of the way, and not the rule (art. 17) which directed the overtaking vessel to do so; see *The Peckforton Castle* (1877), 2 P. D. 222; affirmed (1878), 3 P. D. 11, C. A., where, on appeal, the court found that in fact the vessel close-hauled was not overtaking, but was on the bow of the other vessel, so that the point did not then arise; and apparently the same decision would be given under the present Regulations; compare *The Annie*, [1909] P. 176.

(*f*) *The Colonia* (1844), 3 Notes of Cases, 13, n. (when in daylight and fair weather a brig with the wind free kept her course to within a cable and a half of another brig, in the hope that the vessels might pass each other, she was held to blame).

(*g*) *The John Brotherick* (1844), 8 Jur. 276; *The Mobile* (1856), Sw. 127, P. C. (when a vessel running free and crossing a schooner and brig, which were on her port side both close-hauled on the starboard tack, kept on so long that she was unable, on the schooner coming round in stays, to avoid the brig, she was held to blame).

(*h*) See pp. 453, 454, *post*.

(*i*) *The Earl Wemyss* (1889), 6 Asp. M. L. C. 407, C. A. A vessel is close-hauled although she could be put a quarter of a point nearer to the wind (*Chadwick* v. *City of Dublin Steam Packet Co.* (1856), 6 E. & B. 771, 777).

SECT. 2. Regulations for Preventing Collisions etc.

been held to be close-hauled, or sufficiently close-hauled to be within this rule (*k*); and the same has been held of a barque which was sailing not more than a point or two free with the wind at farthest on her beam (*l*). On the other hand, it appears that a vessel which is sailing two points or more off the wind is not close-hauled (*m*); and a brig on a course of S. by E. with the wind W. by N. has been held not to be close-hauled (*n*).

Duty of keep-on vessel.

621. When any of the rules (a)—(e) of article 17 applies, so that one vessel has to keep out of the way, it is the duty of the other vessel under article 21 to keep her course and speed, though when, in consequence of thick weather or other causes, such vessel finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also must take such action as will best aid to avert the collision (*o*). The giving-way vessel and the keep-on vessel must also, under article 27, have due regard to all dangers of navigation and collision, and to any special circumstances which may render a departure from these rules necessary in order to avoid immediate danger (*p*).

(b) ... "Close-hauled on the port tack."

622. A vessel hove-to on the port tack appears to be "close-hauled on the port tack" within this rule (*q*), and bound to keep out of the way.

(*k*) *The "Singapore" and the "Hebe"* (1866), L. R. 1 P. C. 378. A ship sailing within seven and a half points of the wind has been described as close-hauled (*The Breadalbane* (1881), 7 P. D. 186).

(*l*) *The "Privateer"* (1881), 9 L. R. Ir. 105, C. A.

(*m*) *The Earl Wemys*, (1889), 6 Asp. M. L. C. 407, C. A. A practice of sailors to call a ship in the trade winds close-hauled when she is really free does not make her close-hauled within the rule (*The Earl Wemys, supra*).

(*n*) *The "Blenheim"* (1854), 1 Ecc. & Ad. 285, 287. It was held under art. 12 of the Sea Regulations, 1863, that a vessel running free ought to keep out of the way of a vessel lying-to in the ordinary sense and making little way or almost stationary; and when a brig was lying-to on the starboard tack with her foreyard aback, driving to leeward at between two and three knots an hour, a vessel running free, which ought to have seen her in time to avoid her, was held alone to blame; see *The Eleanor* v. *The Alma* (1865), 2 Mar. L. C. 240.

(*o*) As to this duty under art. 21, see that article and the cases there cited, pp. 445 *et seq.*, *post*.

(*p*) As to this duty under art. 27, see that article and the cases there cited, pp. 471 *et seq.*, *post*. The duty of the close-hauled vessel to keep her course only arises if those in charge of her with ordinary skill and reasonable care could have ascertained that the other vessel was running free, and therefore that the rule applied. And when at night the navigating officer of a ship close-hauled on the port tack believed that a vessel crossing his course was close-hauled on the starboard tack, when she was in fact running free, and put his helm hard-a-port so that a collision occurred, he was held not to have been negligent, as it was not shown that with ordinary skill and reasonable care he could have ascertained that she was running free (*Baker* v. *"Theodore H. Rand"* (*Owners*), *The "Theodore H. Rand"* (1887), 12 App. Cas. 247); and see p. 361, *ante*.

(*q*) A vessel hove-to on the port tack is usually lying as close to the wind as she can, and vessels hove-to on the port tack are in fact in the habit of keeping out of the way of vessels close-hauled on the starboard tack. A ship hove-to on the port tack was held bound to keep out of the way of a ship close-hauled on the starboard tack under the Sea Regulations, 1863, art. 12: "When two ships are crossing so as to involve risk of collision, then, if they have the wind on different sides, the ship with the wind on the port side shall keep out of the way of the ship with the wind on the

A vessel close-hauled (*r*) on the port tack will not be excused for not seeing and keeping out of the way of a vessel close-hauled on the starboard tack on the ground that she was furling her sail (*a*).

When two vessels are beating down a river and one is overhauling the other, and they meet in mid-river, the vessel overhauling being on the starboard tack and the other vessel on the port tack, the overtaking rule (article 24) does not apply, but article 17 (b) applies, and the vessel on the port tack which is being overhauled must keep out of the way of the other (*b*).

(c), (d) .. "running free."

623. A vessel "running free" in rules (c) and (d) has the same meaning as in rule (a) (*c*).

(e) .. "the wind aft."

624. A vessel may "have the wind aft" although it is not blowing precisely at right angles to her beam (*d*). A vessel which had the wind almost certainly not more than three points from her course, and in all probability more nearly aft, was held to have the wind aft (*e*). If the wind is abaft the beam and at any less angle than forty-five degrees with the line of the vessel's keel, it is a wind aft within the meaning of the rule (*f*).

Article 18.

625. Article 18 of the Sea Regulations, 1910, is as follows:—

Article 18 (*g*).

When two steam vessels are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her

starboard side," unless one is close-hauled and the other free (*The Rosalie* (1880), 5 P. D. 245). See also *The Eleanor* v. *The Alma* (1865), 2 Mar. L. C. 240, cited in note (*n*), p. 432, *ante*. In *The James* (1856), Sw. 60, P. C., two vessels lying-to and meeting were held to be within the rule in M. S. Act, 1854, s. 296 (see Table in Appendix, *post*), and each was bound to port her helm. Similarly in *The "Blenheim"* (1854), 1 Ecc. & Ad. 285, a vessel lying-to on the port tack with her hands furling the sails in tempestuous weather was held not to be excused from porting her helm under the rule in the Steam Navigation Act, 1851 (14 & 15 Vict. c. 79), s. 27 (see Table in Appendix, *post*), to avoid a vessel close-hauled on the starboard tack.

(*r*) As to the meaning of "close-hauled," see pp. 431, 432, *ante*.

(*a*) *The City of Carlisle* (1864), Brown. & Lush. 363, 366.

(*b*) *The Annie*, [1909] P. 176; compare *The Peckforton Castle* (1877), 2 P. D. 222; affirmed (1878), 3 P. D. 11, C. A.; see note (*e*), p. 431, *ante*.

(*c*) See p. 431, *ante*.

(*d*) *The "Privateer"* (1881), 9 L. R. Ir. 105, 111, C. A. (decided under the Sea Regulations, 1880, art. 14, which was practically in the same terms as the present art. 17 (e)).

(*e*) *The "Privateer,"* *supra*, at p. 116.

(*f*) *Ibid.*, at p. 117. In *The Spring* (1866), L. R. 1 A. & E. 99 (decided under the Sea Regulations, 1863, art. 12), a sloop which was sailing with the wind four points from right astern was held to be a ship which "has the wind aft."

(*g*) This article, which reached almost its present form in 1868, was a development from the rule in stat. (1846) 9 & 10 Vict. c. 100, s. 9, as to every steam vessel "meeting" or passing any other steam vessel, and the rule in the Steam Navigation Act, 1851 (14 & 15 Vict. c. 79), s. 27, as to a vessel which "meets" another, and from the rule which superseded this under the M. S. Act, 1854, s. 296. The rule in the Steam Navigation Act, 1851 (14 & 15 Vict. c. 79), s. 27, applied both to sailing vessels and steam vessels. There was no rule in the Trinity House Regulations, 1840, as to steam vessels meeting, but only as to steam vessels crossing; see Table in Appendix, *post*.

As regards the rule in the M. S. Act, 1854, s. 296, it was held in *The*

SECT. 2. Regulations for Preventing Collisions etc.

course to starboard, so that each may pass on the port side of the other. (1863) (*h*)

This article only applies to cases where vessels are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two vessels which must, if both keep on their respective courses, pass clear of each other. (1868) (*i*)

Cleopatra (1856), Sw. 135, that this rule applied when one steamer saw the green and white lights of another two points on her starboard bow, the two vessels being on opposite courses. In *The Arthur Gordon and The Independence* (1861), Lush. 270, 277, P. C., it was held that the rule applied only to a case where vessels met in opposite directions end on, or nearly so. In *General Iron Screw Co.* v. *Moss, The Araxes and The Black Prince* (1861), 15 Moo. P. C. C. 122, 131, it was held that the rule must be obeyed even if each vessel saw the light of the other slightly on the starboard bow, and if a collision might equally have been avoided if both vessels had starboarded, and if there might in such case have been less risk of their coming into contact, and though many nautical men of great skill and experience were of opinion that the rule might be modified with advantage.

The Sea Regulations, 1863, art. 13, which superseded the rule under the M. S. Act, 1854, s. 296, was: "If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other." The similar art. 11 of the Sea Regulations, 1863, applied to sailing ships: "If two sailing ships are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other." As regards steamships, it was held that art. 13 was a rule of prudence and safety (*The Esther* v. *The Concordia* (1866), Holt (ADM.), 142, P. C.); and that to excuse a vessel from porting it must be quite clear that there was a difference of three points from end on, and not less (*The Thames* v. *The Stork* (1866), Holt (ADM.), 151, 153, P. C.). There were difficulties in deciding whether this article, thus broadly interpreted, or the crossing rule applied (*The Golden Pledge* v. *The Cognac* (1865), Holt (ADM.), 133; *The Fruiter* v. *The Fingal* (1865), Holt (ADM.), 158; see also *The Lucia Jantina* v. *The Mexican* (1864), Holt (ADM.), 130; *The Amazon* v. *The Osprey* (1867), Holt (ADM.), 137). As regards sailing vessels, it was held that when a sailing vessel close-hauled on the port tack heading W.N.W. was approaching another sailing vessel close-hauled on the starboard tack heading S.E. by E., the vessels were crossing and not meeting end on, so that the port tack rule applied, and not art. 11 (*Dean* v. *Mark, The "Constitution"* (1864), 2 Moo. P. C. C. (N. S.) 453); so also where the headings were N.N.E. ½ E., and S.W. ½ W. (*Henry St. Cyran* (1864), 12 W. R. 1014).

(*h*) This paragraph first appeared as the Sea Regulations, 1863, art. 13, but the words "ships under steam" were there used instead of "steam vessels" and "the helms of both shall be put to port" instead of "each shall alter her course to starboard." The latter words were introduced in the Sea Regulations, 1880, art. 15, owing to the directions to the helm of "port" or "starboard" in certain foreign countries having the contrary meaning to what they have in this country.

(*i*) The Additional Regulations, 1868, which were substantially the same as the three latter paragraphs of the present article, were made to remove doubt and misapprehension concerning the effect of art. 13, and the similar art. 11 of the Sea Regulations, 1863, which then applied to sailing vessels; see Order in Council of the 30th July, 1868 (*London Gazette*, 4th August, 1868). The explanation of the origin of the Additional Regulations, 1868, given in *The Odessa* (1882), 4 Asp. M. L. C. 493, C. A., in the argument, is not correctly stated; they were not made in consequence of *The Cleopatra* (1856), Sw. 135.

Since 1868 the interpretation of "end on or nearly end on" has depended on the three latter paragraphs of the article, so that the earlier decisions on this point do not directly apply.

The only cases to which it does apply are when each of the two vessels is end on, or nearly end on, to the other; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own; and, by night, to cases in which each vessel is in such a position as to see both the side-lights of the other. (1868) (*j*)

It does not apply, by day, to cases in which a vessel sees another ahead crossing her own course; or by night, to cases where the red light of one vessel is opposed to the red light of the other, or where the green light of one vessel is opposed to the green light of the other, or where a red light without a green light, or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead. (1868) (*j*)

"End on or nearly end on."

626. The precise meaning of the words "end on or nearly end on," since 1868, when the last three paragraphs of this article were introduced, has not been decided. It seems probable that two steam vessels will not come within this article, if each has the other more than a point on her bow (*k*).

Steam vessels cannot be within this article when neither can see the other, nor when only one can see the other (*l*).

When steam vessels are "meeting end on or nearly end on" within the meaning of this article, and one of them at a proper distance ports her helm sufficiently to put her on a course on which she would have gone clear of the other port to port, if the other had even kept her course, the risk is determined, so that the vessels are no longer approaching so as to involve risk of collision (*m*).

In circumstances in which this article applies each vessel is entitled to assume that the other will port, as these rules for the safety of navigation are all framed on the supposition that navigators will depend on each other for the observance of them (*n*).

(*j*) See note (*i*), p. 434, *ante*.

(*k*) In *The Aberdonian*, [1910] P. 225, 227, it was held to be a vessel's duty to port, under this article, when the other vessel was about a point on her bow, and sheering slightly, sometimes to starboard and sometimes to port. Compare *The Rona*, *The Ava* (1873), 2 Asp. M. L. C. 182, P. C. ("It is clear that two vessels so steering" (one S.S.W., and the other between N.E. and N.E. by N.) "could not be considered as vessels each having the other not more than a point on her bow, or as meeting end on within the rule"). In *Little* v. *Burns* (1881), 9 R. (Ct. of Sess.) 118, 135, however, it was held, *per* Lord SHAND, following decisions before 1868, that the rule was to have a large interpretation put upon it as being a rule of caution and safety; and where two vessels were approaching in foggy weather in the estuary of the Firth of Clyde, and came in sight within 200 or 230 yards of each other, and the second was half a point on the starboard bow of the first, and the first was half a point on the port bow of the second, it was held that they were at least "nearly end on" within this article. In *The "Jesmond" and The "Earl of Elgin"* (1871), L. R. 4 P. C. 1, two steamships were held, in the Admiralty Court and the Privy Council, to be meeting end on or nearly end on. Their pleaded courses were N.N.W. and S.E., but it does not appear that these courses were accepted by the courts.

(*l*) *The Rona*, *The Ava*, *supra*.

(*m*) *The "Jesmond" and The "Earl of Elgin,"* *supra*. A steamer which had thus ported was held not bound to slacken her speed under the Sea Regulations, 1863, art. 16, on the ground that that article only applied where there was a continuous approaching of the two ships (*The "Jesmond" and The "Earl of Elgin,"* *supra*).

(*n*) *Little* v. *Burns*, *supra*, at p. 135.

SECT. 2. Regulations for Preventing Collisions etc.

This article has been applied in the river St. Lawrence (*o*). It may be subject to qualifications in special circumstances in narrow channels (*p*). It appears not to apply in narrow winding rivers (*q*). If one vessel sees that the other is lying dead in the water and unable to help herself, she will not be justified in porting into her (*r*).

Article 19

627. Article 19 of the Sea Regulations, 1910, is as follows:—

Article 19.

When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other. (1863) (*s*)

"Crossing rule."

Application in general.

628. A vessel is not within the terms of this rule, usually called "the crossing rule," if she is not properly to be considered as "under steam" (*t*). A tug with a vessel in tow has been held bound, from the time when this rule was first introduced, to keep out of the way in accordance with it (*a*).

This rule, like the other steering and sailing rules, only applies when there is "risk of collision." It appears that steam vessels are not crossing so as to involve risk of collision when the giving-way vessel is in sight of the other vessel, but has not reached the point where she should manœuvre for her (*b*).

Application in open waters and at sea.

629. The application of the crossing rule in open waters and at sea is generally simple. It applies to vessels at sea, and if two vessels, not end on or one overtaking the other, are seen, keeping the courses to be expected with regard to them respectively, to be likely to arrive at the same point at or nearly at the same moment, they are vessels crossing so as to involve risk of collision, but they

(*o*) *The Corinthian*, [1909] P. 260, 270, C. A.

(*p*) Compare *The Prince Leopold de Belgique*, [1909] P. 103, 104.

(*q*) Compare *General Steam Navigation Co.* v. *Hedley*, *The "Velocity"* (1869), L. R. 3 P. C. 44, 49, where the end on rule was admitted not to apply in the river Thames under the Sea Regulations, 1863, and the Additional Regulations, 1868.

(*r*) *The Concordia* (1866), L. R. 1 A. & E. 93, 97.

(*s*) This rule first appeared as art. 14 in the Sea Regulations, 1863, except that the words then were: "If two ships under steam . . . , the ship . . ." The rule remained the same in the Sea Regulations 1880 and 1884, and the words above were altered to their present form in the Sea Regulations, 1897. In 1863 the crossing rule, then art. 14 and now art. 19, was first differentiated from the meeting rule, then art. 13 and now art. 18. In the Trinity House Regulations, 1840, there was a rule as to steam vessels crossing, but none as to steam vessels meeting. In the Act of 1846 there was a rule as to a steam vessel meeting or passing any other steam vessel; and in the Acts of 1851 and 1854 there were rules as to a vessel or ship which "meets" another, which applied to steam vessels; but there was no rule in any of these Acts as to steam vessels crossing; see Table in Appendix, *post*.

(*t*) See "under steam" in the preliminary article, p. 377, *ante*, and the cases there referred to: see also *The Helvetia* (1868), 3 Asp. M. L. C. 43, n., P. C.; *The Broomfield* (1905), 10 Asp. M. L. C. 194; *The Jennie S. Barker* (1875), 3 Asp. M. L. C. 42; *Port Jackson Steamboat Co.* v. *Llewellyn*, *The Brig Byron* (1879), 2 New South Wales Law Reports, Admiralty Cases, 1.

(*a*) *The Fruiter* v. *The Fingal* (1865), Holt (ADM.), 158; *The Milo* v. *The William Hunter* (1866), Holt (ADM.), 161.

(*b*) *The Bellanoch*, [1907] P. 170, 180, C. A. (a decision on the overtaking rule, art. 24 (see p. 462, *post*); but the principle seems to apply by analogy in other cases). See, further, as to "risk of collision" under art. 17, p. 427, *ante*.

are not so crossing if the course which is reasonably to be attributed to either vessel will keep her clear of the other (*c*).

This principle has been invoked, for instance, when two steamers have been steering on crossing courses to the same point in order that each may take a pilot (*d*), for the crossing rule applies to such a case when there is risk of collision, and the fact that each vessel is manœuvring to take a pilot is not a "special circumstance" which justifies departure from it under article 27 (*e*). Each vessel in ordinary course will slow down as she approaches the pilot vessel. But the master of the vessel which has to keep out of the way cannot rely upon any supposition as to the reduction of the other vessel's speed (*f*); nor is he entitled to rely upon the other vessel keeping the actual heading and speed at which she is approaching, for the other vessel is entitled to reduce her speed in order to take the pilot on board, and is only bound to such course and speed as are properly involved in following out the nautical manœuvre in which she is engaged (*g*).

The crossing rule does not apply unless each vessel can see the other and know how she is heading, and, therefore, it does not apply in case of fog, when article 16 applies (*h*).

630. This rule, if not ousted by a local rule (*i*), applies in

Application in narrow waters.

(*c*) *S.S. Albano* v. *Allan Line Steamship Co., Ltd., Union Dampfschiffsrhederei Actiengesellschaft* v. *S.S. Parisian*, [1907] A. C. 193, 205, P. C., citing *Norwegian S.S. "Normandie"* (*Owners*) v. *British S.S. "Pekin"* (*Owners*), *The "Pekin,"* [1897] A. C. 532, P. C.; *The Olympic and H.M.S. Hawke*, [1913] P. 214, C. A.

(*d*) *S.S. Albano* v. *Allan Line Steamship Co., Ltd., Union Dampfschiffsrhederei Actiengesellschaft* v. *SS. Parisian, supra*, at p. 205.

(*e*) *Ibid.*, at p. 206; *The Ada, The Sappho* (1873), 2 Asp. M. L. C. 4, P. C. In these circumstances the steamer which has had the duty of keeping out of the way under the crossing rule has occasionally alleged that she had stopped her engines and was lying more or less motionless waiting for her pilot, and that the other steamer was under a duty of good seamanship not to keep on so as to strike her (see *ibid.*). And if it could have been proved that she was in fact motionless at a considerable distance from the other vessel, it appears that this would have made the crossing rule inapplicable, as the vessels could not then be reasonably regarded as crossing; see *S.S. Albano* v. *Allan Line Steamship Co., Ltd., Union Dampfschiffsrhederei Actiengesellschaft* v. *SS. Parisian, supra*, at pp. 206, 208.

(*f*) *Ibid.*, at p. 208.

(*g*) *The Roanoke*, [1908] P. 231, C. A.

(*h*) *The King* (1911), 27 T. L. R. 524; compare *The Cathay* (1899), 9 Asp. M. L. C. 35. As to cases in which it is the duty of a merchant ship not to cross the course of warships proceeding in a fleet, see under art. 27, p. 471, *post*. And it appears that the crossing rule may not apply where one vessel is turning round in open waters; compare *The Chittagong, S.S. Kostroma* (*Owners*) v. *S.S. Chittagong* (*Owners*) (1901), 9 Asp. M. L. C. 252, P. C. (when a steamer, which was outward bound and had been lying at anchor on the western side of the Bosphorus, steamed slowly ahead and turned short round, opening her green and masthead lights on the port bow of a second steamer which was coming up the Bosphorus, and the first steamer afterwards starboarded and the second ported, and there was a collision, it was held that the first steamer was to blame for making too short a turn and for her manœuvre of starboarding, and that the second steamer was right in porting, and it appears to have been held that the crossing rule did not apply).

(*i*) See art. 30, p. 477, *post*.

SECT. 2. Regulations for Preventing Collisions etc.

narrow waters, and most of the difficulties in applying it have arisen with regard to such waters.

Soon after 1863, when this crossing rule was first introduced, the question arose as to whether it applied to certain cases in a winding river. When one steam vessel is proceeding up a river and another down, and they are approaching one another round a sharp bend in the river, they will usually, for a time, bear from one another as if on crossing courses, and yet their courses may not in fact cross and the crossing rule may not apply. To apply it to a vessel whose course is continually varying as she has to follow the turns and windings of the river would lead to doubt and perplexity, and accordingly, in such cases, the crossing rule does not apply (*k*).

Certain decisions (*l*) relating to such circumstances explained and illustrated the distinction which exists in the effect of this rule as regards vessels navigating the open sea and those passing along the winding channels of rivers. The crossing referred to in this article is "crossing so as to involve risk of collision," and it is obvious that while two vessels in certain positions and at certain distances in regard to each other in the open sea may be crossing so as to involve risk of collision, it would be completely mistaken to take the same view of two vessels in the same positions and distances in the reaches of a winding river in which the vessels must follow, and must be known to intend to follow, the curves of the river bank. But vessels may, no doubt, be crossing vessels within this article in a river. It depends on their presumable courses. When in a river two vessels, not end on or one overtaking the other, are seen, keeping the courses to be expected with regard to them respectively, to be likely or not likely to arrive at the same point at or nearly at the same moment, the same rule, as stated above with regard to the open sea, applies to them. The question, therefore, always turns on the reasonable inference to be drawn as

(*k*) Thus a steamer going down a river on the north side, her own port side, of the river, and rounding a bend in the river under starboard helm, showed her red light for a time a little on the starboard bow of a steamer coming up river in mid-channel. It was usual for vessels going down the river to keep on the north side, and the second vessel had no special reason to assume that the first vessel was in the act of crossing the river. The second vessel, however, argued that the crossing rule applied, and, therefore, that the first vessel was bound to keep her course and follow the direction in which her head happened to be turned at the time when she was first seen by the second vessel, that is, that she was bound to proceed across the river. The second vessel therefore ported her helm to keep out of the way, assuming that the other vessel would cross the river, while the second vessel starboarded to keep along the north side, and a collision occurred. It was held that the crossing rule did not apply in the circumstances; see *General Steam Navigation Co.* v. *Hedley, The "Velocity"* (1869), L. R. 3 P. C. 44; compare *Malcomson* v. *General Steam Navigation Co., The "Ranger" and The "Cologne"* (1872), L. R. 4 P. C. 519 (a very similar case occurring in about the same place). And see *The Carlotta*, [1899] P. 223, 226 (no Thames bye-laws were cited in *General Steam Navigation Co.* v. *Hedley, The "Velocity," supra*, or *Malcomson* v. *General Steam Navigation Co., The "Ranger" and The "Cologne," supra*, because no steering or sailing rules then existed in the Thames). Compare *The Oceano* (1878), 3 P. D. 60, C. A. (decided under the Thames rule, which was in practically the same terms as this article), and *The Bywell Castle* (1879), 4 P. D. 219, C. A., *per* BRETT, L.J., at p. 224.

(*l*) See the cases cited in note (*k*), *supra*.

to a vessel's future course from her position at a particular moment, and this greatly depends on the nature of the locality where she is at that moment (*m*).

From this statement of the principle two conclusions appear to follow with regard to two vessels proceeding one up and another down a bend in a river and bearing from one another as if on crossing courses. First, it appears that the crossing rule can only apply when the lines of the courses to be expected with regard to the two vessels will in fact cross, and when there is risk of collision, that is to say, when both vessels will come to the point of crossing at or nearly at the same moment. Secondly, it appears that the two vessels will not come within the crossing rule, whatever their bearings from one another while rounding the bend may be, when there is no indication that either vessel is in fact crossing the river, and when they are keeping on opposite sides of the channel or one is keeping in mid-channel, so that the vessels, on the courses to be reasonably attributed to them, will pass clear of each other.

Similarly two vessels proceeding one up and the other down a river will not come within the crossing rule, although one vessel turns out of her way to avoid any third vessel (*n*) or an obstacle (*o*) with the result that the two vessels bear from one another for the time as if on crossing courses, if this vessel is to be expected to turn back to her original course in the channel and the future line of this course will not cross the future line of the course of the other vessel; and it may be the duty of the vessel thus to turn back into her original course, if her way in that direction is open and clear (*p*).

Application to vessels in river on opposite courses.

631. When, however, in the case of two vessels bound respectively up and down a river, one vessel is in fact crossing the river so as to cross the course of the other, and there is risk of collision, this article applies unless it is ousted by a local rule under article 31 (*q*); but there may be a question in such a case as to whether the vessel crossing the river is justified in doing so, for if the two vessels with safety would have gone clear of each other provided each held on her course in the channel, one vessel will *primâ facie* not be justified in crossing the course of the other so as to bring them into the position of vessels crossing so as to involve risk of collision (*r*).

(*m*) *Norwegian S.S.* "*Normandie*" (*Owners*) v. *British S.S.* "*Pekin*" (*Owners*), *The* "*Pekin*," [1897] A. C. 532, 536, P. C.; compare *The Kjobenhavn* (1874), 2 Asp. M. L. C. 213, 217, P. C. (as to vessels in a river on courses which point across each other but do not cross).

(*n*) *General Steam Navigation Co.* v. *Hedley, The* "*Velocity*" (1869), L. R. 3 P. C. 44, 51.

(*o*) *The Oceano* (1878), 3 P. D. 60, 63, C. A.

(*p*) *Ibid.*, at p. 62.

(*q*) *Ibid.*; *Norwegian S.S.* "*Normandie*" (*Owners*) v. *British S.S.* "*Pekin*" (*Owners*), *The* "*Pekin*," *supra*; see also *The Bywell Castle* (1879), 4 P. D. 219, 226, C. A., *per* BRETT, L.J. (when two steam vessels are rounding a bend in a river from opposite directions, and one under a starboard helm crosses so that her red light is on the port bow of the other, it may be that the vessels should pass port to port, as it may be dangerous for her to starboard back).

(*r*) *The* "*Esk*" *and The* "*Niord*" (1870), L. R. 3 P. C. 436, 441, 442. See also *The Bywell Castle, supra, per* BRETT, L.J., at pp. 224, 225, as to

SECT. 2. Regulations for Preventing Collisions etc.

Steam vessels passing at canal or harbour entrance.

632. When two steam vessels, one going out and the other coming in, have to pass each other near the entrance of a canal or harbour where the narrow channel rule applies, they should each keep to the starboard side so as to pass clear of each other port to port; and the crossing rule will not apply, although for a time during the operation they are bearing from one another as if on crossing courses (*s*).

River with two channels.

633. It often happens that a river at a certain point is divided into two narrow channels, naturally by land or artificially by a buoy or otherwise, the two channels being of similar importance, or else one of the channels remaining the main channel and the other being a smaller channel. In these circumstances when two steamers, one bound up and the other down one of the two channels, have to pass each other near the point where the two channels join into one channel, difficulties arise in the interpretation of the crossing rule, not only from the usual bend or bends in the river at that point, but also from the existence of the two channels, and from the provisions of articles 22, 23 and 25 (the narrow channel rule), which may apply.

When, near a place where two narrow channels join into one, two steam vessels going in opposite directions are about to pass each other, and it is reasonable to assume that the vessel coming out of the single channel will either pass down that one of the other two channels in which her course will not cross the course of the other vessel, or will pass down the other of the two channels in such circumstances that she will pass well ahead or astern of the other vessel, although at first, as they approach, they may bear from one another as if on crossing courses, they will be bound not by the crossing rule but by the narrow channel rule, and each should keep to her starboard side so as to pass port to port (*t*).

On the other hand, where two narrow channels join into one, it

navigating for the tide in a river when there is no rule to prevent it. In local regulations there are sometimes, for instance, in the Tyne, special regulations as to vessels crossing a river; see pp. 479 *et seq.*, *post*.

(*s*) *The Kaiser Wilhelm der Grosse*, [1907] P. 36, 44, 259, 263, C. A.; *The Knaresbro* (1900), [1907] P. 38, n.; compare *The Harvest* (1886), 11 P. D. 14; but see *The Winstanley*, [1896] P. 297, C. A. (the crossing rule was applied in this case in the Admiralty Court on the ground that there was no defined channel to which the narrow channel rule could apply; and in the Court of Appeal it was held that the *Govino* had entered the harbour on the wrong side and had then crossed on to her right side, and that those on the *Winstanley* seeing her thus crossing ought to have stopped in order to let her go by, and ought not to have starboarded on to their wrong side, where the collision took place, and so they were wholly in fault for the collision).

(*t*) *Norwegian S.S. "Normandie"* (*Owners*) v. *British S.S. "Pekin"* (*Owners*), *The "Pekin,"* [1897] A. C. 532, 537; 8 Asp. M. L. C. 367; it would appear that the *Pekin* was proceeding up the outside channel as stated in the latter report, and not the inside channel as stated in the former report; otherwise she would not have had the line of buoys on her starboard side, and her course would not, as stated in the judgment, have crossed the course of the *Normandie* if that vessel proceeded for the inside channel. Compare *The Prince Leopold de Belgique*, [1909] P. 103, 106 (if one vessel comes to the point of intersection reasonably in advance of the other, she must keep on, and the other must wait till she has passed).

may be that the course of the steamer proceeding from the single channel will intersect the course of the steamer proceeding from one of the other two channels so that they will meet at about the point of intersection. In such a case both the narrow channel rule and the crossing rule apply. It is then the duty of each vessel to keep to the starboard side of the channel in which she is, otherwise she will ordinarily be to blame (*a*). It is also the duty of the vessel which has the other on her starboard side to keep out of the way, and, under article 22, not to cross ahead of the other (*b*): she may do this either by porting or by stopping (*c*), and it is her duty under article 23 to stop and reverse her engines if necessary for this purpose (*d*); or, though this will be in most cases less advisable, she may keep out of the way by starboarding if she can starboard without danger (*e*). It is also the duty of the vessel which has the other on her port side to keep her course and speed, and to cross ahead of the other vessel if necessary on to her starboard side of the new channel, and she will be to blame if she ports unnecessarily (*f*).

In such cases, however, under article 27, difficult circumstances may prevent the crossing rule from operating to its full extent; and it seems that where there is much tide, it may be reasonable that the vessel going against the tide, though ordinarily under a duty to keep her course and speed, should wait till the other has passed (*g*).

(*a*) *The Glengariff*, [1905] P. 106; *The Ashton*, [1905] P. 21, 28 (a steam trawler coming into Grimsby came into collision close to the Clee Ness buoy with a steamship going out from there: held that the steam trawler was to blame under the narrow channel rule for being on the wrong side of the channel and for porting to the green light of the other vessel instead of keeping her course, and that the steamship was to blame under arts. 19 and 22 for starboarding when there was risk of collision and so attempting to cross ahead of the trawler, as well as for not reversing her engines); and see *The Winstanley*, [1896] P. 297, C. A., where the incoming vessel entered on the wrong side of the channel. But in difficult circumstances it may be unsafe and impracticable for a steamer to remain on her starboard side of the channel, and it will be wrong for her to do so if she is improperly forcing the other vessel out of her position; see *The Try Again* (1908), *Shipping Gazette*, 2nd June.

(*b*) *The Ashton, supra.* Before art. 22 was introduced, it had been held that the vessel which had to keep out of the way was entitled to increase her speed and cross ahead (*The Leverington* (1886), 11 P. D. 117, C. A.).

(*c*) *The Ashton, supra*, at p. 31; *The Try Again, supra* (where it was held that the *Scotia* could have safely ported and have passed out of what she alleged to be the channel and have gone to the southward of the inner shoal buoy).

(*d*) *The Try Again, supra.*

(*e*) *The Ashton, supra*, at p. 31; *The Try Again, supra.*

(*f*) *The Leverington, supra; The Ashton, supra*, at p 28; *The Try Again, supra;* compare *The Ship Cuba* v. *McMillan* (1896), 26 Supreme Court (Canada), 651.

(*g*) See *The Prince Leopold de Belgique*, [1909] P. 106; *The Olympic and H.M.S. Hawke*, [1913] P. 214, 265, 269, C. A., *per* KENNEDY, L.J., as to the duties of two steam vessels in a buoyed channel approaching each other on converging courses being sometimes regulated by the rules of good seamanship, and not by art. 19; compare *The Clan Cumming*, [1907] P. 311, C. A., as to the duty of a vessel, which has the right of way in the Suez Canal, to act reasonably and keep herself well in hand so as not to approach too near while the giving-way vessel is tying up. But a steamer crossing a channel towards the entrance to a dock is not excused from keeping out of the way, under the crossing rule, of a steamer coming down the channel,

SECT. 2. Regulations for Preventing Collisions etc.

Exclusion of rule in special circumstances.

634. In some special circumstances, when vessels have been on courses which will cross and when there has been risk of collision, it has been held that the crossing rule did not apply. It was held not to apply when a steamer came at full speed out of a dock entrance at the side of a river, showing her port side close to, and on the starboard side of, a tug and tow proceeding down about one-third of the breadth of the river from that side (*h*). The crossing rule was held not to apply owing to the nature of the place in a confined space of water about 1,000 yards long by 300 yards wide at the widest with three or four dock entrances leading from it, when one steamer was proceeding out from one of the dock entrances into it, and the other was proceeding in it towards another dock entrance, and the steamer coming out was held bound to wait for the other (*i*).

Article 20.

635. Article 20 of the Sea Regulations, 1910, is as follows :—

Article 20.

When a steam vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, the steam vessel shall keep out of the way of the sailing vessel. (1863) (*a*).

Reason for rule.

636. The reasons for this rule are the same as were given for the old rule of 1840 (*b*), under which a steamer, considered as in the light of a sailing ship having the wind free, was bound to give way to a sailing vesssel on either tack. A steamer, when unincumbered by tow or otherwise, is, as compared with a sailing vessel, nearly independent of the wind. She can turn out of her course, and turn into it again with little difficulty or inconvenience. She can slacken or increase her speed, stop or reverse her engines, and can move in one direction or the other with the utmost facility (*c*).

because she herself is bound for the dock and is carrying the docking signal of two bright lights hoisted aft; see *The St. Audries* (1886), 5 Asp. M. L. C. 552.

(*h*) *The Sunlight*, [1904] P. 100; *The Llanelly* (1913), 30 T. L. R. 154.

(*i*) *The Red Cross* (1907), 10 Asp. M. L. C. 521; compare *The Hazelmere*, [1911] P. 69, C. A. (where a steamship proceeding towards Barry Dock came into collision with a steamship which was on her port side and which was proceeding out between the breakwaters; and it was held that the steamship proceeding out was not to blame under this article and art. 23 for not reversing, as that was impracticable; and it was queried, *per* Lord ALVERSTONE, C.J., as to whether the Sea Regulations applied in such circumstances). As to the case of two steam vessels which turned into the same channel on crossing courses and came into collision, where it was alleged that the one which was showing her port side on the starboard side of the other should have passed clear by following a certain course in the channel, see *The Olympic and H.M.S. Hawke*, [1913] P. 214, C. A. As to whether the crossing rule can come in when two steamers are approaching safely green to green, or red to red, and one improperly ports or starboards, see under art. 17, p. 426, *ante*.

(*a*) This article is substantially the same as the Sea Regulations, 1863, art. 15. The effect of the previous general rules in the M. S. Act, 1854, and the Steam Navigation Act, 1851 (14 & 15 Vict. c. 79), was that when a sailing ship and a steamship met, so as to involve risk of collision, both should port so as to pass port to port; and under the Trinity House Regulations, 1840, the recognised rule was that a steam vessel, considered as a vessel with a fair wind, should give way to a sailing vessel on either tack; see Table in Appendix, *post*.

(*b*) Trinity House Regulations, 1840; see note (*a*), *supra*.

(*c*) *The Arthur Gordon and The Independence* (1861), Lush. 270, 278, P. C

A tug hove-to in a fair-way waiting for employment is "a steam vessel proceeding" within this article, and is bound to keep herself in readiness to get out of the way. A tug in these circumstances was held to blame because her engineer was not ready to carry out an order to the engines (*d*).

Application of rule.

637. A steam vessel is bound to keep out of the way under this article, subject to due regard to dangers of navigation and collision, and to special circumstances rendering a departure from the rule necessary in order to avoid immediate danger (*e*). In order to condemn a steamer for an omission under this or any other article, it must be proved, first, that the thing omitted to be done was clearly within the power of the steamer to do; secondly, that if done it would in all probability have prevented collision; and, thirdly, that it was an act which would have occurred to any officer of competent skill and experience in command of the steamer (*f*).

Duty of steam vessel under the rule.

A steamer may perform her duty of keeping out of the way of a sailing vessel at a distance when there is risk of collision by decreasing her speed or by altering her helm so as to pass astern; but she should not alter her helm to a sailing vessel approaching from a distance at night if she cannot see her lights owing to their improper position or otherwise and is in doubt as to the course the sailing vessel is pursuing and on which side she is going to pass (*g*). A prudent master of a steamer, if in doubt as to the course

(*d*) *The Jennie S. Barker* (1875), 2 Asp. M. L. C. 42; compare *Port Jackson Steamboat Co.* v. *Llewellyn, The Brig Byron* (1879), 2 New South Wales Law Reports, Admiralty Cases, 1 (a tug lying on the edge of a fair-way without sufficient steam up to keep out of the way was struck by a brig in tow of another tug; the first tug and the brig were both held to blame, the tug for lying where she was without being able to move, and the brig because her tug steered a course which made a close shave of it); and see "under steam" in the preliminary article, p. 377, *ante*, and the cases there cited. So also a steam trawler in the open sea which was showing the fishing signal of a basket, and was stationary and practically immovable, being engaged in hauling her trawl, and, it being impracticable in the circumstances for her to go ahead or astern, was held not to be "proceeding" within the meaning of this article, and it was the duty of a sailing vessel proceeding on a course to keep out of her way (*The Gladys*, [1910] P. 13). A steam drifter shooting her nets and sailing with a little mizen sail at about one knot an hour, and with steam up but unable to go ahead or astern without fouling her propeller, is either not "proceeding" under art. 20, or is relieved by art. 27 from the duty under this article of keeping out of the way of a sailing vessel proceeding on her course, and the latter vessel should keep out of the way (*The Pitgaveney*, [1910] P. 215).

(*e*) See art. 27, p. 471, *post; Union Steamship Co.* v. "*Aracan*" (*Owners*), *The* "*American*" *and The* "*Syria*" (1874), L. R. 6 P. C. 127, 131.

(*f*) *Inman* v. *Reck, The* "*City of Antwerp*" *and The* "*Friedrich*" (1868), L. R. 2 P. C. 25, 34. This statement of what it is necessary to prove against the steamer must be taken as qualifying the more absolute terms earlier in the judgment (*ibid.*, at p. 30) as to the duty of the steamer: "It is undoubtedly true, in cases of collision between a sailing ship and a steamer, that, although the sailing ship may be found to have been guilty of misconduct, or not to have observed the sailing regulations, yet the steamer will be held culpable if it appears that it was in her power to have avoided the collision. It cannot be too much insisted on that it is the duty of a steamer, where there is risk of collision, whatever may be the conduct of the sailing vessel, to do everything in her power that can be done consistently with her own safety, in order to avoid collision."

(*g*) *Beal* v. *Marchais, The* "*Bougainville*" *and The* "*James C.*

SECT. 2. Regulations for Preventing Collisions etc.

of the sailing vessel, and if it is necessary to act, ought to wait by slackening speed or stopping (*h*) until he can ascertain her course (*i*).

Tug and tow.

638. A tug or other steamer with another vessel in tow is subject, under the terms of articles 20 and 27, to the same duty as a steamer without a tow (*k*). It is only in exceptional cases that a tug towing a vessel is relieved under article 27 from keeping out of the way under this article (*l*), and the fact that a tug is towing a heavily-laden ship against a strong wind is not sufficient to relieve her under article 27 (*m*).

Application to fishing vessels.

639. Another class of cases arises in which a departure from this article becomes necessary under article 27, when a sailing vessel unincumbered and a steam fishing vessel incumbered over fishing are proceeding in such directions as to involve risk of collision (*n*).

Stevenson" (1873), L. R. 5 P. C. 316, 323; *The General Lee, of Dublin* (1869), 19 L. T. 750.

(*h*) Under art. 23; see p. 454, *post.*

(*i*) *Beal* v. *Marchais, The* "*Bougainville*" *and The* "*James C. Stevenson*" (1873), L. R. 5 P. C. 316, 323.

(*k*) *Union Steamship Co.* v. "*Aracan*" (*Owners*), *The* "*American*" *and The* "*Syria*" (1874), L. R. 6 P. C. 127, 131; *The Warrior* (1872), L. R. 3 A. & E. 553. Under the rules in force before 1863 a distinction was drawn between the relations towards a sailing vessel of a steamer incumbered with a tow and an unincumbered steamer (*The Arthur Gordon and The Independence* (1861), Lush. 270, P. C., *per* Lord KINGSDOWN, at p. 278; compare *The Cleadon* (1860), Lush. 158); and it was held to be a question of circumstances whether a tug incumbered with a tow ought to keep out of the way of a sailing vessel on either tack, or whether the sailing vessel ought to keep out of their way, and it depended upon the state of the wind and weather, the direction in which the tug was towing, and what were the impediments in her course (*The Kingston-by-Sea* (1850), 3 Wm. Rob. 152, 154); and when the tug and tow were proceeding against wind and tide, and the sailing vessel might without any difficulty and with very little loss of time have got out of the way, it was the sailing vessel's duty to have done so (*The Arthur Gordon and The Independence, supra*). Since the Sea Regulations, 1863, it has been no longer a question of convenience whether the tug with a vessel in tow or the sailing vessel should keep out of the way, and a tug can only justify her failure to keep out of the way by proof of necessary departure from the rule under art. 27. But, in considering this question of necessity, the distinction above referred to between the relations of an incumbered and an unincumbered steamer is manifestly a just one and still applicable (*Union Steamship Co.* v. "*Aracan*" (*Owners*), *The* "*American*" *and The* "*Syria*," *supra*, at p. 131). It necessitates allowances being made in particular circumstances for the comparatively disabled condition of the incumbered steamer, and imposes upon the sailing vessel approaching her the duty of additional caution (*ibid.*). It is difficult to understand the statement in this judgment, *ibid:* "But the rule of navigation, though formulated, can scarcely be said to have been altered by the regulations," *i.e.*, the Sea Regulations, 1863. There is no doubt that the rule of navigation as between a sailing vessel and a steamer, whether towing or not, was altered by the Sea Regulations, 1863, the obligation of the steamer to keep out of the way except in case of necessity being introduced and substituted for the rule, to the effect that a steamship and sailing ship meeting so as to involve risk of collision should each port her helm (M. S. Act, 1854, s. 296).

(*l*) *The David Cannon* (1865), 2 Asp. M. L. C. 353, n.

(*m*) *The Warrior, supra;* compare *Union Steamship Co.* v. "*Aracan*" (*Owners*), *The* "*American*" *and The* "*Syria*," *supra.*

(*n*) As to these cases, see, further, under art. 9, pp. 393 *et seq.*, *ante.*

It is the duty of a sailing vessel to keep out of the way of a steam trawler engaged in trawling (*a*), or of a steam vessel fishing with drift-nets (*b*); and a sailing drifter, when not fishing, must keep out of the way of a steam drifter which has her nets in the water (*c*). This duty of the unincumbered vessel to keep out of the way applies by day as well as by night, since the steam fishing vessel when fishing has to carry a fishing signal in daytime (*d*). At night the tricoloured lantern of a steam trawler engaged in trawling indicates that such a trawler cannot keep out of the way of an unincumbered vessel (*e*). A steam trawler which has got her trawl on board and has decided to go off to another spot to trawl ought to change her fishing lights for ordinary lights as soon as she is under command and in a position to go full speed ahead, and ought then to keep out of the way of a sailing vessel (*f*).

Sailing vessel overtaking steamer.

640. Notwithstanding this article, a sailing vessel overtaking a steamer is bound to keep out of her way under the overtaking rule (*g*).

Other duties of a sailing vessel and a steamer navigating to avoid risk of collision are considered elsewhere (*h*).

Article 21.

641. Article 21 of the Sea Regulations, 1910, is as follows:—

Article 21.

Where by any of these Rules (*i*) one of two vessels is to keep out of the way, the other shall keep her course and speed. (1863) (*k*)

Note.—When, in consequence of thick weather or other causes, such vessel finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avert collision. (See Articles 27 and 29). (1897)

(*a*) *The Grovehurst*, [1910] P. 316, C. A., overruling *The Craigellachie*, [1909] P. 1, and approving *The Tweedsdale* (1889), 14 P. D. 164; see also *The Gladys*, [1910] P. 13 (steam trawler hauling her trawl).

(*b*) *The Pitgaveney*, [1910] P. 215.

(*c*) *The Pitgaveney*, *supra*.

(*d*) Art. 9 (k); p. 395, *ante*; and see *The Gladys*, *supra*.

(*e*) *The Grovehurst*, *supra*, at p. 333.

(*f*) *The Upton Castle*, [1906] P. 147.

(*g*) See art. 24, first paragraph, p. 461, *post*. Even before 1880, when in substance this paragraph was added, it was generally accepted that the overtaking rule applied to a fast sailing vessel overtaking a slow steamer; see *The Philotaxe* (1877), 3 Asp. M. L. C. 512, in argument.

(*h*) As to the duty of a sailing vessel to keep her course and speed, when the steamer has to keep out of the way under this article, see art. 21, *infra*. As to the duty of a sailing vessel in tacking, and as to other duties of good seamanship, see pp. 492, 493, *post*. As to the duty of a sailing vessel under the Thames bye-laws to keep out of the way of a steam vessel, when it is unsafe and impracticable for the steam vessel to keep out of her way and she has given the signal of four blasts or more, see *The Longnewton* (1888), 6 Asp. M. L. C. 302. As to the duties of a sailing vessel in a fog, see under arts. 15 and 16, pp. 409 *et seq.*, 414 *et seq.*, *ante*.

(*i*) The Rules referred to in this article, which require one of two vessels to keep out of the way, are, as regards steam vessels, arts. 19, 20 and 24, and as regards sailing vessels, arts. 17, 24 and 26.

(*k*) The Sea Regulations, 1863 (art. 18), 1880 (art. 22), and 1884 (art. 22), provided: "Where, by the above rules, one of two ships is to keep out of the way, the other shall keep her course"; and this was subject to the article as to departure from the rules for special circumstances, now art. 27. In 1897 this article took its present form with the addition of the note.

SECT. 2. Regulations for Preventing Collisions etc.

Interpretation of the rule.

642. The result of the alterations in 1897 (*l*) in this article and in article 23 is that the keep-on vessel since that date is, in the first instance, as much bound to keep her speed as her course; that she is no longer bound by any article to slacken speed or stop and reverse, if necessary, when approaching the other vessel so as to involve risk of collision; and that the moment when it becomes her duty to take action is defined as it never had been before, and is postponed to a later period, namely, when collision can no longer be avoided by the action of the giving-way vessel alone.

Article 21 does not come into force until it is the duty of the giving-way vessel to keep out of the way, and that duty does not arise until there is risk of collision (*m*) within the meaning of the rules. This article, therefore, has no application till the two vessels have reached the position where the giving-way vessel ought to act for the keep-on vessel (*n*).

"Course and speed."

643. The words "course and speed" in this article mean course and speed in following the nautical manœuvre in which, to the

(*l*) The Sea Regulations, 1897, made a great alteration in this article by the addition of the words "and speed" and the Note; and it is to be remembered in this connexion that by an alteration of the same date in art. 23 the duty under that article ceased to apply to the keep-on vessel. Under previous Sea Regulations, the keep-on vessel was bound to keep her course, but was not bound to go on at the same pace, as the art. 22 then in force and similar to the present art. 21 had nothing to do with speed (*The Beryl* (1884), 9 P. D. 137, C. A., *per* BRETT, M.R., at p. 140); on the other hand, the keep-on steam vessel at that time was subject to the duty under another article (the Sea Regulations, 1880 and 1884, art. 18) to slacken her speed, or stop and reverse, if necessary, when approaching another ship so as to involve risk of collision. The effect of these two articles of the previous Regulations was that the keep-on steam vessel was bound to keep her course, and at first was free as regards speed; but she was bound to slacken her speed, or stop and reverse, if necessary, before the collision became unavoidable by the action of the giving-way vessel alone, and even before the giving-way vessel could no longer avoid her without difficulty (*The Beryl, supra*, at pp. 142, 143; *The Oporto*, [1897] P. 249, C. A.); and if the giving-way vessel was failing to keep out of the way and running it fine, it was the duty of the keep-on vessel to slacken speed if the risk of collision as a whole would thereby be decreased, even if in one event the slackening of speed might increase the risk (*Liverpool, Brazil, and River Plate Steam Navigation Co.* v. *Campanhia Bahiana de Navegacio a Vapor, The Memnon* (1889), 6 Asp. M. L. C. 488, 489, H. L.).

(*m*) As to "risk of collision," see under art. 17, pp. 427, 428, *ante*.

(*n*) *The Bellanoch*, [1907] P. 170, 180, C. A.; *The Roanoke*, [1908] P. 231, 241, 245, C. A. (when the keep-on steamer put her engines to half-speed the crossing and giving-way steamer was three-quarters of a mile away on her port side and could have found no real difficulty in avoiding her, and therefore the slackening of speed was not a violation of art. 21, because no risk of collision was then involved (*ibid., per* KENNEDY, L.J., at p. 245). A steam vessel which was being overtaken ported four minutes before the collision and when there was a distance of 800 yards between her and the overtaking steam vessel, and it was held that she acted before the rule as to keeping her course applied (*The Banshee* (1887), 6 Asp. M. L. C. 221, C. A.; compare *The Sylph* (1857), Sw. 233). A schooner, seeing a steamer's masthead and red lights about two miles off and about a point on the starboard bow, ported enough to bring these lights a little on the port bow; this porting, having regard to the distance and its degree, was held to be at the least an innocent manœuvre (*The Norma* (1876), 3 Asp. M. L. C. 272, P. C.; but see *The Great Ship Co.* v. *Sharples, The "Great Eastern"* (1864), 3 Moo. P. C. C. (N. S.) 31).

knowledge of the other vessel, the keep-on vessel is at the time engaged (*o*); and they mean the course and speed which the vessel would take naturally and independently of the presence of the other vessel, as the proper method of her navigation at the particular time and place (*p*).

Thus the keep-on vessel which is going to take up a pilot is entitled to reduce her speed for this purpose (*q*); but the duty of the giving-way vessel is to keep out of the way, and her master cannot in such a case rely on a supposition that the other vessel will slow down and stop entirely (*r*). If the proper course of navigation for the keep-on vessel in getting a pilot is to turn at the place where the pilot vessel is, and follow a course up river, she is not to blame for doing so and keeping headway for this purpose (*s*).

Keeping course in a winding river.

A steam vessel approaching another in a winding river is bound to keep her course and speed under this article, if the crossing rule (article 19) applies, that is to say, if the vessels keeping the courses reasonably to be expected of them are likely to arrive at the same point at or nearly at the same moment (*t*). But "keeping course" in a winding river does not necessarily mean keeping the head of the vessel in the direction in which it was turned when the other vessel was sighted, but it means keeping the course reasonably to be attributed to the vessel, that is, her proper course in the river and round a bend, altering as necessary from time to time to avoid other vessels and obstacles (*a*).

(*o*) *The Roanoke*, [1908] P. 231, C. A., *per* Lord ALVERSTONE, C.J., at p. 239.

(*p*) *Ibid.*, *per* KENNEDY, L.J., at p. 247.

(*q*) *Ibid.*

(*r*) *S.S. Albano* v. *Allan Line Steamship Co., Ltd., Union Dampfschiffsrhederei Actiengesselschaft* v. *S.S. Parisian*, [1907] A. C. 193, 207, 208, P. C.

(*s*) *The Ada, The Sappho* (1873), 2 Asp. M. L. C. 4, 5, P. C.

(*t*) *Norwegian S.S. "Normandie"* (*Owners*) v. *British S.S. "Pekin"* (*Owners*), *The "Pekin,"* [1897] A. C. 532, 536, P. C.; *General Steam Navigation Co.* v. *Hedley, The "Velocity"* (1869), L. R. 3 P. C. 44. In both these cases it was held that the crossing rule did not apply and that there was no duty to keep course under this article. The argument in *General Steam Navigation Co.* v. *Hedley, The "Velocity,"* *supra*, that the crossing rule applied whenever the direction of one vessel's head was crossing the direction of the other vessel's head when they came in sight of each other, and that the keep-on vessel was then bound to "keep her course" by following the direction in which her head happened to be turned at the time, was rejected; and it was held that, in considering whether the two vessels were within the crossing rule, not merely the relative positions of the vessels when they came in sight of each other must be regarded, but also other circumstances, including the bend of the river, the usual track of vessels, and the necessity to turn out of the way to avoid other vessels; and it was held that if the crossing rule could have applied, the keep-on vessel would only have been bound to keep her course down river on her proper side.

(*a*) *The Oceano* (1878), 3 P. D. 60, C. A.; *Norwegian S.S. "Normandie"* (*Owners*) v. *British S.S. "Pekin"* (*Owners*), *The "Pekin,"* *supra*; *General Steam Navigation Co.* v. *Hedley, The "Velocity,"* *supra*. In *The Olympic and H.M.S. Hawke*, [1913] P. 214, C. A., where two steam vessels were rounding into a channel, it was argued unsuccessfully that the *Olympic*, the giving-way vessel under art. 19, was justified in inferring that as a matter of good seamanship the other vessel would round into the channel

SECT. 2. Regulations for Preventing Collisions etc.

Primâ facie, however, in ordinary circumstances, when no alteration of helm or engines is required by the manœuvre which the vessel is carrying out, the first duty of the keep-on vessel under this article is not to make any alteration in either, but to keep her course (*b*) and speed as long as this will enable the other vessel to keep out of the way (*c*); and the giving-way vessel is entitled to rely on this being done, especially if she hears no signal under article 28.

When departure from rule justified.

644. Departure from this rule may be justifiable on the general principles governing the observance of the Regulations (*d*), and particularly by article 27 (*e*). But a vessel which seeks to justify alteration during this period takes upon herself the obligation of showing both that the departure from the rule was necessary when it took place in order to avoid immediate danger, and also that the course adopted by her was reasonably calculated to avoid that danger (*f*). If it is necessary for her to manœuvre for a danger to her navigation, she ought not to deviate more than is necessary to avoid immediate danger (*g*). There is nothing which would be more likely to lead to mischievous consequences than to suppose that a vessel whose duty it is to keep her course should anticipate that another will not give way, and so give way herself; the consequence would be that there would be no certainty (*h*). The keep-on vessel is not justified in altering her course because the other vessel is cutting it fine, since the other vessel's action is guided by the presumption that the keep-on vessel will keep her course (*i*).

An important instance of necessary departure from this article

on such a course as would keep her clear, and that the other vessel was to blame for not doing so.

(*b*) The duty to keep course is not satisfied merely by not altering the helm or engines; see *The Farewell* (1882), 8 Quebec Law Reports, 87 (two sailing vessels were in tow of a tug in a river, the light one being injudiciously placed in front of the heavier one and steering badly. When a steamer was passing, the heavier vessel sailed up under a high wind, struck the lighter one, and drove her into collision with the steamer. The light sailing vessel was held to blame for not keeping her course under the article, apparently on the ground that she was responsible for the mode of sailing).

(*c*) Compare *The Ranza* (1898), 79 L. J. (P.) 21, n.

(*d*) See pp. 363 *et seq.*, *ante*.

(*e*) It was said that art. 19 (compare art. 18) of the Sea Regulations, 1863, which was similar to the present art. 27, was framed for the purpose of the protection of a vessel that was required to keep her course, and for no other purpose (*The David Cannon* (1865), 2 Asp. M. L. C. 353, n.; and see *The Allan* v. *The Flora* (1866), 2 Mar. L. C. 386).

(*f*) *The "Agra" and "Elizabeth Jenkins"* (1867), L. R. 1 P. C. 501, 504.

(*g*) *The Saragossa* (1892), 7 Asp. M. L. C. 289, C. A.

(*h*) *The Test* (1847), 5 Notes of Cases, 276; *The Vivid* (1849), 7 Notes of Cases, 127 (similar observations were made in this case with special reference to a vessel on the port tack taking upon herself, on seeing a steamer, to deviate from her course to get out of the way); *The Superior* (1849), 6 Notes of Cases, 607 (where a brig, according to the Regulations, ought to have ported her helm for a second vessel, but as a previous vessel had, rightly or wrongly, passed her to starboard, she expected the second vessel to do the same; so the brig starboarded, the other vessel ported, and the brig was held alone to blame).

(*i*) *The Highgate* (1890), 6 Asp. M. L. C. 512. In *The Franconia* (1876),

may arise when the vessel, which would ordinarily have to keep out of the way, is one of a fleet of warships steaming in company. In this event another vessel, which ordinarily under this article should keep her course and speed, may be bound to avoid crossing the bows of the warship (*k*), as this state of things may constitute "special circumstances" (*l*) under article 27. This duty, to avoid crossing the course of the warship in such circumstances instead of keeping course and speed, has been applied in the case of a steamship (*m*), and with still more force in the case of a tug and tow (*n*); and when a merchant vessel was on a course to cross the course of one of a column of five vessels, part of a flotilla of ten torpedo boat destroyers (*o*); and in cases of larger fleets; and when a merchant vessel was crossing the line of warships at a fine angle, the steamship heading E. by N. and the warships about W. ½ N. (*p*). On the other hand, one of a squadron of three warships was held to blame for not keeping out of the way of a crossing steamship (*q*). The officer in charge of the warship, though he may be bound to keep out of the way of the other vessel, is also bound by the King's Regulations not to change the course without directions from the captain, unless to avoid immediate danger, and this should be borne in mind in considering whether his manœuvre was taken in time (*r*).

When the keep-on vessel finds herself so close that collision

2 P. D. 8, 13, C. A., it was held that an overtaken steamer, when the other steamer on her port quarter came within three lengths and ported, was not to blame for yielding a point and afterwards hard-a-porting; and in *The Olympic and H.M.S. Hawke*, [1913] P. 214, C. A., where two crossing vessels were rounding into the same channel, it was held that the keep-on vessel, by porting away from the other vessel the small amount of ten degrees, did not show bad navigation.

(*k*) *H.M.S. Sans Pareil*, [1900] P. 267, 282, 283, C. A.; *The Hero*, [1911] P. 128, 132, C.A.; and see the other cases cited in subsequent notes. The Board of Trade Notice, 1897 (see *H.M.S. Sans Pareil, supra*, at p. 275), warned single vessels against approaching a squadron of warships so closely as to involve risk of collision, or attempting to pass ahead of, or through, or to break the line of, such squadrons, and bade them keep out of the way. This notice was also relied on in *The Etna*, [1908] P. 269, where the officer in charge knew of it; but it was held not to be available against a foreigner who did not know of it, in *H.M.S. King Alfred* (1913), 30 T. L. R. 102.

(*l*) *H.M.S. Sans Pariel, supra.*

(*m*) *S.S. Hero* (*Owners*) v. *Commissioners for Executing the Office of Lord High Admiral of the United Kingdom*, [1912] A. C. 300.

(*n*) *H.M.S. Sans Pareil, supra.*

(*o*) *The Etna, supra.*

(*p*) *The Colstrup* (1908), *Shipping Gazette*, 22nd October.

(*q*) *The Melampus* (1903), *Shipping Gazette*, 22nd December. In this case the leading warship had the second warship about six cables on her port beam, and the third warship about three cables astern. The steamship sighted these vessels about on her port beam showing their masthead and green lights on a crossing course, and they began to draw ahead, and she kept her course. The first warship, instead of going under her stern, unwisely starboarded and ported to avoid her, and the third warship, following the first one, failed to keep out of the way of the steamship and was held alone to blame; and see *H.M.S. Sutlej* (1905), 21 T. L. R. 325, C. A.

(*r*) *H.M.S. Sutlej, supra, per* BRETT, M.R., at p. 328. The officer in charge of the warship was held to blame in *H.M.S. Sans Pareil, supra*, and *The Melampus, supra;* he and the merchant vessel were held to blame in *Hero* (*Owners*) v. *Commissioners for Executing the Office of Lord High Admiral of the United Kingdom, supra; The Etna, supra;* and *The*

SECT. 2. Regulations for Preventing Collisions etc.

cannot be avoided by the action of the giving-way vessel alone, she also is bound to take such action as will best aid to avert collision. It has been said in reference to this duty that article 21 is the most difficult of all the regulations to understand and obey (*s*).

The duty of the keep-on steam vessel to assist at the last in avoiding collision has been frequently discussed in recent cases (*t*). It is quite impossible to determine mathematically the point at which the keep-on vessel must act; these rules have to be construed so that men may act reasonably upon them (*a*). Where good seamanship would assume that collision cannot be avoided by the action of the giving-way vessel alone, the case falls within the exception, even though in fact the giving-way vessel could by her own action have averted collision (*b*). The burden of taking action and departing from the rule cannot be pressed very severely in any case. If the officer in charge is found to have been watching the other vessel and doing his best to make up his mind when to act, he ought not to be held to blame for waiting a moment too long before acting (*c*). In determining the duty to act, there are always many ingredients, such as the light, the clearness of atmosphere, the speed and course of the other vessel, from which an estimate must be formed as to where the courses will meet, and the difficulty of detecting at night the moment when the giving-way vessel may be altering her course (*d*). The obligation to act is more imperative and immediate in daytime, when it can be seen

Cambridge (1903), cited at [1911] P. 146, 147; and the merchant vessel was alone to blame in *H.M.S. Sutlej* (1905), 21 T. L. R. 325, and in *The Colstrup* (1908), *Shipping Gazette*, 22nd October.

(*s*) *The Bruxellesville* (1907), *Shipping Gazette*, 23rd November, *per* BUCKNILL, J.

(*t*) "It must always be a matter of some difficulty for the master of" a keep-on vessel "to determine when the time has arrived for him to take action, for if he act too soon he may disconcert any action which the other vessel may be about to take to avoid his vessel, and might be blamed for so doing, and yet the time may come at which he must take action. Therefore he must keep his course and speed up to some point and then act, but the precise point must be difficult to determine, and some little latitude has to be allowed to the master in determining this" (*S.S. Albano* v. *Allan Line Steamship Co., Ltd., Union Dampfschiffsrhederei Actiengesellschaft* v. *S.S. Parisian*, [1907] A. C. 193, 207, P. C.).

(*a*) *The Ranza* (1898), 79 L. J. (P.) 21, n.

(*b*) *The Olympic and H.M.S. Hawke*, [1913] P. 214, C. A., *per* VAUGHAN WILLIAMS, L.J., at p. 245.

(*c*) *The Ranza*, *supra*. In this case the master of the keep-on vessel reversed his engines too soon, but was held not to blame; whether the distance at which he reversed was a quarter of a mile, or 400 or 500 yards, it was impossible to say. In *The Ornen* (1901), 17 T. L. R. 359, H. L., the keep-on steamer was held not to blame in the House of Lords, though both courts below had blamed her for keeping her speed too long. In *The Bruxellesville*, *supra*, a giving-way vessel crossing at an angle of $2\frac{1}{2}$ points tried to cut across the bows of the other vessel, and at the last moment, when very near, ported; the officer in charge of the keep-on vessel first blew a long warning blast to her, and afterwards, when she was in line with his vessel and was swinging under a port helm but before he could know that she was porting, starboarded and reversed and went off a point to starboard, and it was held that he was justified in his action.

(*d*) *The Huntsman* (1911), 11 Asp. M. L. C. 606. Two steamers were approaching with risk of collision on courses crossing at an angle of about four points, and the giving-way vessel came on without taking any steps; the officer in charge of the keep-on vessel believed the other vessel would

what the vessel is and how she is manœuvring, than at night, when the only information as to her position or movement is derived from the lights exhibited (*e*). A vessel which acts under the note to article 21, but neglects to signal under article 28, does not take such action as best aids to avert collision (*f*).

Meaning of "keeping her course" for a sailing ship.

645. As regards sailing vessels, the same general principles apply. The rule that a sailing vessel is to keep her course has been enforced very strictly; it is only where a clear case of necessity for departing from the rule is made out that the captain of a vessel can excuse himself for not following the rule (*g*). If a close-hauled vessel is sailing half a point off being jammed close to the wind, and comes up only half a point, it cannot be said that she is not keeping her course. It has not been decided whether, if she is sailing a point off and comes up the whole point, she would be altering her course (*h*). When a close-hauled vessel luffed to an extent which was doubtful but was not proved to be more than half a point, and did not luff so much as to lose headway, it was held that she substantially kept her course (*i*). If the luffing is not more than is necessary for the vessel to maintain the course which she is following, she is not to blame (*k*). It is the duty of a close-hauled vessel to keep close to windward (*a*). But if a vessel comes up until she is more than close-jammed and until her sails are shaking, and so reaches a point that she must go off again before the wind before she can sail, then she does not keep her course and breaks the rule (*b*); or if, being two points free, she luffs up until she is close-hauled (*c*).

When a vessel is hove-to, apparently getting her under way on the same tack is no breach of the duty to keep her course (*d*), and it may be a proper precaution to take.

port eventually, and so, shortly before the collision, he slowed his engines in order to keep his vessel more under command, and he was held not to blame. So also a keep-on vessel, a steam trawler, has been held not to blame for not altering course or speed till within one and a half lengths of another steam trawler, and then porting, the other vessel never altering at all (*Beucker* v. *Aberdeen Steam Trawling and Fishing Co.*, [1910] S. C. 655). But this case and the last were before the Maritime Conventions Act, 1911. When two steamships were on courses crossing at an angle of half a point, and the giving-way vessel had just crossed on to the starboard bow of the other, and had come green to green at a very short distance ahead, and then suddenly ported, the Court of Appeal treated art. 21 as still applicable in considering the duty of the keep-on vessel as regards reversing (*The Koning Willem II.*, [1908] P. 125, C. A.; and see under art. 19, pp. 436 *et seq.*, *ante*).

(*e*) *Ship "Tasmania"* (*Owners and Owners of Freight*) v. *Smith and Ship "City of Corinth"* (*Owners*), *The "Tasmania"* (1890), 15 App. Cas. 223, 226.

(*f*) *The Annie* (1912), *Shipping Gazette*, 2nd February, C. A., *per* FARWELL, L.J.

(*g*) *The Highgate* (1890), 6 Asp. M. L. C. 512.

(*h*) *The Earl Wemys* (1889), 6 Asp. M. L. C. 407, C. A.

(*i*) *The Aimo*, *The Amelia* (1873), 2 Asp. M. L. C. 96, P. C.

(*k*) *The Water Nymph* v. *The Carlisle* (1865), Holt (ADM.), 121, 123.

(*a*) *The Marmion* (1872), 1 Asp. M. L. C. 412, P. C.

(*b*) *The Earl Wemys*, *supra*. But this did not apply to action which it was the duty of the vessel to take just before the collision (*The "Singapore" and the "Hebe"* (1866), L. R. 1 P. C. 378, 383).

(*c*) *The Earl Wemys*, *supra*, *per* BUTT, J.

(*d*) *The General Lee*, *of Dublin* (1869), 19 L. T. 750 ("it is very

SECT. 2. Regulations for Preventing Collisions etc.

A keep-on sailing vessel is wrong to go about unnecessarily to get out of the way of a steamer (*e*).

When sailing vessel justified in departing from rule.

646. It is, however, sometimes the duty of a sailing vessel, which in ordinary circumstances ought to keep her course and speed under this article, to depart from the rule and keep out of the way of the other vessel owing to special circumstances. For instance, a sailing vessel, which should ordinarily keep on under the rule, will be to blame for running down another sailing vessel, which should ordinarily keep out of the way, if, as the keep-on vessel learns in sufficient time, the giving-way vessel has thrown herself into stays and is helpless, although she has failed to take proper steps in her helpless state, and is also to blame (*f*). But it has been held in certain circumstances that it is not the duty of a

questionable whether the mere getting the cutter under way on the same tack, would not, nautically speaking, be keeping her course").

(*e*) *The General Lee, of Dublin* (1869), 19 L. T. 750; and see *The Monson* v. *The Neptune* (1865), 2 Mar. L. C. 289. A barque in Margate Roads at night, wearing round to come to anchor as she had failed to stay, showed first her green light and then both lights, and then her red to an approaching steamer, which starboarded for her and afterwards eased her engines, but collided with her; the barque was charged with not keeping her course, but was held not to blame. And as to the duties of good seamanship on the part of a sailing vessel going about, see pp. 492, 493, *post.*

(*f*) *Wilson* v. *Canada Shipping Co.* (1877), 2 App. Cas. 389, P. C., where two ships were beating up the river St. Lawrence, and one coming round on the port tack was lying in stays; the vessel on the starboard tack was held to blame for not porting her helm when she received a warning hail from the other ship, though she could not see the state of the canvas of the other ship, and though the other ship was also to blame for not giving herself sternway so as to avoid the collision; compare *The Rosalie* (1880), 5 P. D. 245. In *The Ida* v. *The Wasa of Nicolaistadt* (1866), 15 L. T. 103, a vessel close-hauled on the starboard tack kept her course and ran into a vessel which was in stays coming round on the port tack, and the first vessel could easily have avoided the collision, and the second vessel could do nothing; the first vessel was alone to blame. In *The Lady Anne* (1850), 15 Jur. 18, two schooners, which were close-hauled on opposite tacks, came in sight of each other at night at a short distance, and the schooner on the port tack did all she could, by porting her helm and easing her main sheet, but could not avoid collision; it was held that the schooner on the starboard tack ought to have ported and eased off her head sheets. In *The Paramatta* (1891), Stockton's Vice-Admiralty Reports (New Brunswick), 192, a schooner was drifting hove-to on the port tack in foggy weather, and at a distance of a quarter to half a mile came in sight of a barque close-hauled on the starboard tack and making between four and five knots an hour, and had no time to swing off and clear the barque; it was held that the barque ought to have seen that the schooner was helpless to manœuvre, and that the barque could easily have swung off one or two points to clear her, and was alone to blame. In *The General Gordon* (1892), 7 Asp. M. L. C. 317, H. L., a fishing smack was lying-to on the starboard tack with one hand on deck and helm lashed a-lee, when another fishing smack crossed ahead of her on the port tack and, coming round on the starboard tack, came off the wind and struck the smack, which took no steps to avoid the collision. The first smack was charged with negligence in not having two hands on deck so that the foresail sheet could have been let go, and the helm put down; but there was held to be no evidence that this smack had in any way contributed to the collision, and the other smack was alone to blame. In *The Aimo, The Amelia* (1873), 2 Asp. M. L. C. 96, P. C., a ship close-hauled on the port tack had her headgear carried away and could not bear up, and the other ship, in ignorance of this, kept her course; the collision was held to be an inevitable accident. Compare *The Zadok* (1883), 9 P. D. 114 (on a barque in fog, when a steamer's whistle was heard, hands

sailing vessel to alter her course to avoid crossing the bows of one of a fleet of warships sailing in formation (*g*).

It is the duty of a sailing vessel to take action, under the note to this article, when she finds herself so close that the other vessel cannot by herself keep out of the way. Large allowance, however, should be made for the officer in charge, as in the case of a keep-on steam vessel, and very clear proof of contributory negligence should be required; because the other vessel which is charging negligence has caused the difficulty, and the decision has to be made suddenly and almost in the agony of collision, when perfect nerve and presence of mind ought not to be required by the court, and no alteration should be made as long as there is any reasonable probability of the other vessel keeping out of the way, since otherwise action may counteract the manœuvres of the other vessel and cause collision (*h*).

When a vessel sailing close-hauled, whose duty it is to keep on, is compelled to alter her course to assist in avoiding collision, she should do so as a rule not by going off, but by luffing up to the wind and thereby stopping her way and mitigating the effect of a collision (*i*).

Article 22.

647. Article 22 of the Sea Regulations, 1910, is as follows :—

Article 22.

Every vessel which is directed by these Rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other. (1897)

Application of rule.

648. This article applies to all vessels which should keep out of the way under articles 17, 19, 20, 24, and 26.

Under this article it can never be right for the giving-way vessel when there is risk of collision to cross ahead of the keep-on vessel, if the circumstances admit of her passing astern (*k*).

should have been stationed ready to work the braces etc., so as to help to throw off the ship's head if necessary when the steamer came in sight).

(*g*) *H.M.S. Sutlej* (1905), 21 T. L. R. 325, C. A., where a fleet of eight warships was proceeding at night in two columns of four; a sailing vessel was approaching to pass between the third and fourth vessels of the port column, and was alone in fault for a collision through not keeping her course and speed.

(*h*) Compare *Ship "Tasmania"* (*Owners and Owners of Freight*) v. *Smith and Ship "City of Corinth"* (*Owners*), *The "Tasmania"* (1890), 15 App. Cas. 223, 226, 235, 238. Before 1897, when the note to this article was introduced, a keep-on sailing vessel was bound to take action when she ought to have concluded that the other vessel was not going to keep out of the way; see *The William Frederick, The Byfoged Christensen* (1879), 4 App. Cas. 669, 672, P. C. As soon as it was, or ought to have been, obvious that to keep her course would involve immediate danger, the officer in charge was not only justified in departing from it, but bound to do so, and to exercise his best judgment to avoid the danger (*Ship "Tasmania"* (*Owners and Owners of Freight*) v. *Smith and Ship "City of Corinth"* (*Owners*), *The "Tasmania," supra*, at p. 226). If she could then reasonably have made some effort to avoid the collision, and did not do so, but pertinaciously kept her course, she was to blame (*The William Frederick, The Byfoged Christensen, supra; The Commerce* (1850), 3 Wm. Rob. 287, 298; *The Rosalie* (1880), 5 P. D. 245). But she was only required to act in a very clear case of necessity (*The William Frederick, The Byfoged Christensen, supra*); and she was wrong if she acted before there was immediate danger (*The Spring* (1866), L. R. 1 A. & E. 99).

(*i*) *The "Agra" and "Elizabeth Jenkins"* (1867), L. R. 1 P. C. 501, 505.

(*k*) Before this article was introduced it was well established that a

SECT. 2. Regulations for Preventing Collisions etc.

Under this article a steam vessel should port to a red light on her starboard bow approaching with risk of collision. If there are difficulties of navigation which prevent this, she should stop and wait till the red light has crossed her bows, or she may run away under a hard-a-starboard helm, although that will be in most circumstances a much less advisable course (*l*).

Article 23.

649. Article 23 of the Sea Regulations, 1910, is as follows :—

Article 23.

> Every steam vessel which is directed by these Rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse. (1863) (*m*)

Object of rule.

650. The object of this article is to obviate the risk and minimise the results of collision ; and the more imminent the risk, the more imperative is the necessity for implicit obedience to the rule (*n*). Slackening speed, or stopping or reversing, not only directly avoids collision in some cases, but also in other cases indirectly assists to avoid both collision and even the risk of it by allowing more time and space for manœuvres.

Application of rule.

651. The rules referred to in this article are articles 19, 20, and 24. When any of the rules imposes on a steam vessel the duty to "keep out of the way," there is a correlative duty on the other

giving-way vessel when there was risk of collision was entitled to keep out of the way by crossing ahead or astern, and even if necessary by increasing her speed in order to cross ahead (*The Leverington* (1886), 11 P. D. 117, C. A.).

(*l*) *The Ashton*, [1905] P. 21, 31; *The Try Again* (1908), *Shipping Gazette*, 2nd June.

(*m*) The Sea Regulations, 1863, art. 16, which corresponded to this article, was : "Every steamship, when approaching another ship so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse, and every steamship shall, when in a fog, go at a moderate speed." The Sea Regulations, 1880, art. 18, was : "Every steamship, when approaching another ship, so as to involve risk of collision, shall slacken her speed or stop and reverse, if necessary." The Sea Regulations, 1884, art. 18, was in the same words. Four important changes were made in this article in 1897. First, by an alteration in the earlier words of the article it became no longer applicable to the keep-on vessel, and was confined to a giving-way vessel ; the former rule (art. 16 of 1863 and art. 18 of 1880 and 1884) was unique in applying to both of two vessels on all possible occasions when approaching so as to involve risk of collision, and was described as a rule "wholly independent" of the other rules ; see *The Beryl* (1884), 9 P. D. 137, 140, C. A. Secondly, the words "so as to involve risk of collision" were omitted. Thirdly, the position of the words "if necessary" was altered so as more clearly to qualify the obligation to slacken speed as well as the other obligations. Fourthly, the words "stop and reverse" were altered to "stop or reverse." Also in 1911 the principle of presumption of fault in case of infringement, which had greatly affected the interpretation of this article (see, for instance, *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1880), 5 App. Cas. 876), was done away with by the Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 4 (1).

(*n*) *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.*, *supra*, *per* Lord WATSON, at pp. 903, 904; compare *Maclaren* v. *Compagnie Française de Navigation à Vapeur* (1884), 9 App. Cas. 640, *per* Lord WATSON, at pp. 651, 652; compare *The Zadok* (1883), 9 P. D. 114, 115, as to the similar object of stopping under art. 16.

vessel under article 21 to keep her course and speed; and therefore article 23 only comes into force when this correlative duty exists. Thus it does not apply to vessels which come under the end-on rule (article 18), and the duty of such vessels to slacken speed or stop or reverse depends on the dictates of good seamanship.

This article does not apply to vessels which have to keep their course and speed under article 21, and their duty to slacken speed or stop or reverse depends on that article (*o*). Nor does it apply to vessels in fog, for in such cases the fog rules (articles 15 and 16) apply; this and the other steering and sailing rules are only intended to be applicable when the vessels are in sight of each other (*p*).

Burden of proof.

652. The burden of proving a breach of this article is upon those who allege it (*q*).

"On approaching her."

653. "On approaching her" only means when there is a continuous approaching of the two vessels, if they are approaching one another at a considerable distance in fine weather (*r*).

From the omission of the words "so as to involve risk of collision" from the present article it may be inferred that it was intended to leave the duty under the article more at large; the obligation under it, both

(*o*) See art. 21, p. 445, *ante*. The cases decided under the Sea Regulations, 1863, 1880, and 1884, as to the vessel which had the duty to keep her course obeying also the rule to stop and reverse which applied to her under those Regulations, have no longer any direct application; see *The Beryl* (1884), 9 P. D. 137, C. A.; *Liverpool, Brazil, and River Plate Steam Navigation Co.* v. *Campanhia Bahiana de Navegacio a Vapor, The Memnon* (1889), 6 Asp. M. L. C. 488, H. L.; *The Oporto*, [1897] P. 249, C. A.

(*p*) *The King* (1911), 27 T. L. R. 524; compare *The Cathay* (1899), 9 Asp. M. L. C. 35. In the Sea Regulations, 1863, the rule as to slackening speed or stopping and reversing, and the rule as to moderate speed in a fog, were included in the same article. And when the two rules were placed in different articles in the Sea Regulations, 1880 and 1884, they remained closely connected. Thus, in circumstances in which moderate speed in a fog meant going as slowly as possible, a breach of the rule as to moderate speed when approaching another ship, so as to involve risk of collision, involved a breach of the rule as to slackening speed; see *The Ebor* (1886), 11 P. D. 25, 29, C. A. As to cases decided with regard to reversing in fog under the Sea Regulations, 1863, art. 16, and the Sea Regulations, 1880 and 1884, art. 18, see under art. 16, p. 414, *ante*.

(*q*) *Steamship "Lebanon" (Owners)* v. *Steamship "Ceto" (Owners), The "Ceto"* (1889), 14 App. Cas. 670, *per* Lord SELBORNE, at p. 676. When the master of a steamer testified that the engines were stopped and reversed as soon as ordered by the compulsory pilot, but the pilot testified to the contrary, and the engineer was not called as a witness, the steamer was held to blame (*The Ripon* (1848), 6 Notes of Cases, 245).

(*r*) Compare *The "Jesmond"* and *The "Earl of Elgin"* (1871), L. R. 4 P. C. 7 (decided on the Sea Regulations, 1863, art. 16). When a barge steering S.E. by S., a little above the Nore light in the river Thames, saw on her port bow the red light of a steamer steering west, the barge was not "approaching or being approached by any other vessel," so as to be bound to show a light under the Admiralty Notice respecting Lights, 1852; see *The Ceres* (1857), Sw. 250. It was held that an overtaken steamship could not be "approaching" the overtaking ship within the meaning of the Sea Regulations, 1863, art. 16; see *The Franconia* (1876), 2 P. D. 8, 13, C. A.

SECT 2. Regulations for Preventing Collisions etc.

as regards time and as regards a breach not involving a statutory presumption of fault, appears to be less stringent than formerly (*s*).

"If necessary."

654. The words "if necessary" now apply to slackening speed as well as to stopping or reversing (*t*).

"Necessary" is a word of flexible meaning to be interpreted according to the circumstances (*a*). It does not allow the officer in charge of the steam vessel to wait till the last moment. It does not mean that the situation is such that without stopping or reversing a collision will take place; "necessary" means rather "prudent" or "expedient" (*b*). The question is whether the facts were such that, as a prudent and reasonable person, the officer who is responsible for the navigation of the ship should have acted under the rule (*c*). The necessity must be such as would be apparent to a seaman of ordinary skill and prudence with the knowledge which he possesses at the time (*d*). It does not depend upon the state of facts afterwards ascertained, unless there was enough to tell him at the time what the condition of facts was (*e*). Thus the important consideration is not whether the rule was in fact applicable, but whether the circumstances were such that it ought to have been present to the mind of the person in charge that it was applicable (*f*); for a regulation can hardly be said to have been infringed by him till he knows, or ought to have known, and but for his negligence would have known, of the change of circumstances which brings the regulation into force (*g*).

If the officer in charge is uncertain whether it is his best course to keep on at full speed or to reverse, he should obey the rule and reverse (*h*). A man is not bound to exercise his judgment instantaneously as to stopping and reversing his engines; a short,

(*s*) Compare *The Boynton* (1898), 14 T. L. R. 173.

(*t*) The original words in 1863 were "slacken her speed or, if necessary, stop and reverse." In 1880 and 1884 these words became "slacken her speed or stop and reverse, if necessary"; but under these words it was still held that the slackening of speed was imperative when there was risk of collision, whereas the act of stopping and reversing was only required when there was necessity for it; see *Steamship "Lebanon"* (*Owners*) v. *Steamship "Ceto"* (*Owners*), *The "Ceto"* (1889), 14 App. Cas. 670, *per* Lord WATSON, at p. 684.

(*a*) *Ibid.*, at pp. 670, 676, 690, *per* Lord SELBORNE and Lord FITZGERALD (a dissenting judgment).

(*b*) *Ibid.*, at p. 689, *per* Lord BRAMWELL (as to art. 18 of the Sea Regulations, 1884).

(*c*) *Ibid.*, at pp. 673, 693, 694, *per* Lord HALSBURY, L.C., and Lord HERSCHELL.

(*d*) *Ibid.*, *per* Lord HERSCHELL, at p. 694.

(*e*) *Ibid.*, *per* Lord HALSBURY, L.C., at p. 673. The suggestions in *The Beryl* (1884), 9 P. D. 137, 144, 145, C. A., that the necessity might mean actual necessity or necessity determined by the event, are thus negatived.

(*f*) *The Beryl*, *supra*, *per* BRETT, M.R., at p. 139. "The rules can only apply to circumstances which must or ought to be known to the parties" (*ibid.*, *per* BRETT, M.R., at p. 138).

(*g*) *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1880), 5 App. Cas. 876, at pp. 894, 902, *per* Lord BLACKBURN and Lord WATSON; compare *Baker* v. *"Theodore H. Rand"* (*Owners*), *The "Theodore H. Rand"* (1887), 12 App. Cas. 247, 250.

(*h*) *Windram* v. *Robertson* (1905), 42 Sc. L. R. 602, 606.

but a very short, time must be allowed him for this purpose (*i*). A master has been held in fault for delaying to stop and reverse for about a minute (*k*), but not for a delay of a few seconds (*l*). Full speed astern is an emergency order, and according to the practice of engineers should be executed with extreme promptitude; more so, as a matter of seconds, than the order full speed ahead when a vessel is moving slowly ahead (*m*).

Duty of giving-way vessel.

655. A giving-way vessel appears to be entitled to keep out of the way of the other vessel by using her helm when at a sufficient distance without altering her engines under this article (*n*).

Rule is continuous.

656. This article relates to three operations, namely, slackening speed or stopping or reversing, and therefore comes into operation from time to time whenever the circumstances existing at the time make it necessary that the article should be acted on (*o*). A vessel which has properly slackened speed under it has been held to blame for not obeying it by reversing (*p*).

Distinction between rule and obligations of good seamanship.

657. A difference appears to exist between the obligation to slacken speed or stop or reverse under this article, and the similar obligation under the dictates of good seamanship. This article is a general rule to be adopted in certain circumstances by all persons in charge of the navigation of vessels, for the sake of the safety of their own vessel, and of the vessel approaching at a distance commanded by a man who has no right or reason to suppose that the other person will break the rule (*q*). Hence, even if it would, in the absence of such a positive rule, be better seamanship to

(*i*) *The Emmy Haase* (1884), 9 P. D. 81; *S.S. "Kwang Tung"* (*Owner*) v. *S.S. "Ngapoota"* (*Owners*), *The "Ngapoota,"* [1897] A. C. 391, P. C.

(*k*) *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1880), 5 App. Cas. 876, 882, 888, 898.

(*l*) *S.S. "Kwang Tung"* (*Owner*) v. *S.S. "Ngapoota"* (*Owners*), *The "Ngapoota," supra.*

(*m*) *Stephen & Sons, Ltd.* v. *Allan Line Steamship Co., Ltd.*, [1911] S. C. 836, 844.

(*n*) Under the Sea Regulations, 1863, a steamship, which was bound to slacken her speed when approaching another ship so as to involve risk of collision, was not bound to slacken her speed if she had determined the risk of collision by porting (*The "Jesmond" and The "Earl of Elgin"* (1871), L. R. 4 P. C. 1 (in this case the end-on rule applied)). And under the Sea Regulations, 1880, art. 18, by which a steamship was bound when approaching another ship, so as to involve risk of collision, to stop and reverse if necessary, a steamship which was coming round a point and saw the masthead and red lights of another steamship about a mile off on her starboard bow, hard-a-ported and only stopped and reversed when it was perceived that her helm would not answer owing to an eddy tide, and was held not to blame (*Scicluna* v. *Stevenson, The "Rhondda"* (1883), 8 App. Cas. 549, P. C.). Under a later rule in the same terms it was held not to be necessary for two approaching steamers to stop and reverse until it became apparent to the eye that if they continued to approach they would in all likelihood either shave close or collide (*Steamship "Lebanon"* (*Owners*) v. *Steamship "Ceto"* (*Owners*), *The "Ceto"* (1889), 14 App. Cas. 670, *per* Lord WATSON, at p. 686).

(*o*) *The Beryl* (1884), 9 P. D. 137, C. A., *per* FRY, L.J., at p. 145.

(*p*) *Ibid.*

(*q*) *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co., supra, per* Lord HATHERLEY, at p. 909 (as to the Sea Regulations, 1863, art. 16).

SECT. 2. Regulations for Preventing Collisions etc.

keep way on the ship in order to make her more manageable, the opposite course has been prescribed when prudent and must be followed (*r*). Thus it appears that a vessel may be held in fault for not reversing under the rule when, if there had been no rule, she might not have been in fault. This difference of obligation, however, cannot be pressed very far, and probably in many cases it makes no difference whether the rule exists or not (*s*).

It is the duty of the officer in charge of a steamer, whether under this rule or the duty of good seamanship, to slacken speed on approaching close to a vessel at night when he is uncertain as to her course (*t*).

A steamer ought not to proceed at full speed when the wind is such that her smoke is blown over her bows so that she cannot properly see or be seen by other vessels; and a steamer approaching another steamer, of which only the smoke can be seen, so that it cannot be known whether she is end-on or passing clear or crossing, ought to slacken her speed (*a*).

An overtaking steamer has been held to blame for starboarding only and not reversing, when the overtaken steamer, a length and a half on the starboard bow and about a length in advance, wrongly starboarded across her bows (*b*).

(*r*) *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1880), 5 App. Cas. 876, *per* Lord BLACKBURN, at p. 895.

(*s*) Compare *Steamship "Lebanon"* (*Owners*) v. *Steamship "Ceto"* (*Owners*), *The "Ceto"* (1889), 14 App. Cas. 670, *per* Lord WATSON, at p. 686.

(*t*) At night the master of a steamer, going at eight and a half or nine knots, observed a sailing vessel three miles off a little on his starboard bow, and owing to not being able to see her light was uncertain what was her course, and ported and hard-a-ported seven points off his course, and afterwards came into collision; he was held in fault for not slackening speed until he could ascertain her course (*Beal* v. *Marchais, The "Bougainville" and The "James C. Stevenson"* (1873), L. R. 5 P. C. 316, 323). Owing to the defective light of a sailing vessel, the officer in charge of a steamer saw something on his starboard bow but could not tell what, and he had a small space of time to act; he was held in fault for starboarding and keeping on at full speed instead of stopping and reversing (*Windram* v. *Robertson* (1905), 42 Sc. L. R. 602, 605). Those on board a steamer, having passed several fishing boats, mistook the light of a vessel sailing on the port tack for that of a fishing boat at her nets, and starboarded; though the mistake was not an unreasonable one, the steamer was held to blame for not adopting the more prudent measure of easing or stopping (*The Birkenhead* (1848), 3 Wm. Rob. 75; compare *The James Watt* (1844), 2 Wm. Rob. 270, 277). The master of a steamer steering N.E. saw a light a little on the starboard bow, and did not exactly know what it was, but thought it was a green light of a vessel standing away from him, when it was in fact the white light of a pilot cutter hove-to and heading S.W.; he starboarded and kept on for ten minutes at full speed, and afterwards the pilot cutter put her helm down and the steamer ported and came into collision; the steamer was held to blame for not slowing and stopping until the position of the other vessel had been ascertained (*The General Lee, of Dublin* (1869), 19 L. T. 750).

(*a*) *The Rona, The Ava* (1873), 2 Asp. M. L. C. 182. When a steamer was proceeding with the wind aft, and her smoke obscured a vessel approaching her until almost in contact, she was held to blame for not slackening speed, (*The Vivid* (1849),7 Notes of Cases, 127). As to steamers slackening speed, see, further, pp. 487, 488, *post*.

(*b*) *S.S. "Nord Kap"* v. *S.S. "Sandhill," The "Sandhill,"* [1894] A. C. 646.

658. There are sometimes good excuses for not stopping or reversing. Thus, when the crossing rule applied, the giving-way vessel has been excused for not reversing owing to want of room (*c*). Similarly a trawler may be excused from reversing if she has her trawl down (*d*). A tug, however, with a tow will be to blame for not stopping under the article when this is practicable (*e*). A vessel is excused from reversing if the other vessel is so close when the danger arises that the only chance of avoiding collision is by continuing the vessel's speed (*f*); but when the officer in charge of a steamer at night saw something on his starboard bow, but could not tell what, the fact that as the screw was right-handed the head of his steamer would have tended to go to starboard was held to be no excuse for starboarding and keeping on instead of reversing (*g*). Similarly, the fact that reversing the left-handed screw would have deadened the effect of the proper port helm was held to be no excuse for not reversing (*h*).

When departure from rule justified.

The officer in charge of a steamer has been excused for taking the wrong step in the agony of collision. A ship has no right by her own misconduct to put another ship into a situation of extreme peril and difficulty, and then charge that other ship with misconduct (*i*). But this principle only applies when the first vessel's negligence leads directly to the second vessel breaking the rule (*k*).

A vessel has been held not to blame when she ought to have reversed immediately before the collision and did not do so, but if she had it would not have made the slightest difference to the collision (*l*).

659. Quite apart from this article there is a duty upon a steam vessel to slacken her speed or stop or reverse when good seamanship requires it (*m*); and since 1897 this duty has applied to vessels in

Similar obligation of good seamanship.

(*c*) *The Hazelmere*, [1911] P. 69, C. A.

(*d*) *The Tweedsdale* (1889), 14 P. D. 164, 168.

(*e*) *The Challenge and Duc d'Aumale*, [1905] P. 198, C. A. (a decision upon art. 16).

(*f*) *The Benares* (1883), 9 P. D. 16, C. A.

(*g*) *Windram* v. *Robertson* (1905), 42 Sc. L. R. 602, 606. If a vessel has a right-handed propeller, that is, one which revolves from left to right when looked at from astern, her head is apt to cut to starboard when her engines are put full speed astern; and there is an opposite tendency with a left-handed propeller.

(*h*) *Ocean Steamship Co., S.S. "Hebe" (Owners)* v. *Apcar & Co., S.S. "Arratoon Apcar" (Owners), The "Arratoon Apcar"* (1889), 15 App. Cas. 37, 40, P. C.

(*i*) *The Bywell Castle* (1873), 4 P. D. 219, 223, C. A. (the wrong step in this case was porting to a green light); *The Olympic and H.M.S. Hawke*, [1913] P. 214, 280, C. A.

(*k*) *Windram* v. *Robertson*, *supra*, *per* Lord DUNEDIN, L.P., at p. 605.

(*l*) *The Harton* (1884), 9 P. D. 44.

(*m*) See *The "Trident"* (1854), 1 Ecc. & Ad. 217, before the introduction of the article in 1863. (In this case a steamer, going down the Thames against the tide and coming round Blackwall Point, after stopping her engines came into collision with a barge in mid-channel; she was held to blame for not reversing). A steamer on a dark and thick night, proceeding across a channel near the entrance to the river Thames in order to come to anchor, was held to blame for not easing her engines (*The Ceres* (1857), Sw. 250). As to the rule in the river Thames for a vessel navigating

SECT. 2. Regulations for Preventing Collisions etc.

many circumstances which would have come within the wider terms of the article before that date.

General duty to stop or reverse engines.

660. It is a seaman's reasonable duty to stop and reverse when the circumstances are such that it must be apparent to the eye that if the vessels continue to approach they will in all probability either shave close or collide (*n*).

Duty arising from incorrect behaviour of other vessel.

661. There is often a duty to stop or reverse when two vessels have been approaching safely and one alters so as to cause danger (*o*); on the other hand, the officer in charge of a steam vessel need not stop or reverse if he has a right to suppose that the other vessel, though she acted wrongly, will not continue in her obstinacy (*p*), but will take proper steps to clear (*q*).

against the tide to wait before rounding certain points until any other vessels rounding the point with the tide have passed clear, see *The Libra* (1881), 6 P. D. 139, C. A.

(*n*) *The Archtor* (1908), *Shipping Gazette*, 7th March, C. A., *per* KENNEDY, L.J., citing *Steamship "Lebanon" (Owners)* v. *Steamship "Ceto" (Owners)*, *The "Ceto"* (1889), 14 App. Cas. 670, 686.

(*o*) *The City of Berlin*, [1908] P. 110, C. A.; *The Nereo* (1907), *Shipping Gazette*, 2nd November; on appeal (1908), *Shipping Gazette*, 7th March, C. A. (two steam vessels were meeting in a narrow channel and collided; one was to blame for not showing side lights, for showing a mysterious white light, and for not giving a port helm signal when the helm was ported; but the second vessel was also to blame because, seeing the white light narrowing on the port bow at a short distance and getting nearer, involving risk of collision, she hard-a-ported and kept full speed ahead instead of going full speed astern); *The Archtor, supra* (two steamers were approaching in the Bristol Channel red to red, one going nine and the other nine and a half knots, and the first steamer at a distance of a quarter to half a mile and two to three points on the port bow of the other wrongly shut in her red and opened her green. The second mate, who was in charge of the second steamer, thought it was his duty to keep his course and speed, and stamped on deck to summon the master, who came on the bridge and stopped and reversed the engines. The second steamer was held also to blame, because the second mate, when he saw the red light did not broaden at half a mile and then saw the green at a quarter to half a mile, ought to have stopped and reversed at once); *The Oporto*, [1897] P. 249 (where the officer of a steamship in the Swin Channel, having the green light of another steamship half a mile off on his port bow crossing to the wrong side, was not justified in waiting to see if there would be a change of light until the vessels were only a quarter of a mile apart); *Ocean Steamship Co., S.S. "Hebe" (Owners)* v. *Apcar & Co., S.S. "Arratoon Apcar" (Owners)*, *The "Arratoon Apcar"* (1889), 15 App. Cas. 40 (decided on the Sea Regulations, 1884, art. 18); *The Stanmore* (1885), 10 P. D. 134, C. A. (a steam vessel was held to blame for stopping only and not reversing when the vessels were green to green on opposite courses, and the other vessel at a little more than a quarter of a mile off on the starboard bow was seen to be porting); *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1880), 5 App. Cas. 876 (two steamers were approaching green to green on parallel courses at somewhat less than a mile, when one wrongly put her helm hard-a-port; the master of the other hard-a-starboarded, and delayed for about a minute to stop and reverse, and for this delay was held to be in fault).

(*p*) *The Beryl* (1884), 9 P. D. 137, 142, C. A.

(*q*) See *China Navigation Co., Ltd.* v. *Asiatic Petroleum Co., Ltd. and Taku Tug and Lighterage Co., Ltd.*, [1910] A. C. 204, P. C. (a steamer was held free from blame for not stopping, when she was in a river approaching red to red with a tug towing a lighter, though her signal that she was porting was not answered by the tug); *The Kaiser Wilhelm der Grosse*, [1907] P. 259,

662. Article 24 of the Sea Regulations is as follows :— Article 24.

Article 24.

Notwithstanding anything contained in these Rules, every vessel, overtaking any other, shall keep out of the way of the overtaken vessel. (1863) (*r*)

Every vessel coming up with another vessel from any direction more than two points abaft her beam, *i.e.*, in such a position, with reference to the vessel which she is overtaking, that at night she would be unable to see either of that vessel's side-lights, shall be deemed to be an overtaking vessel; and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these Rules, or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear. (1897)

As by day the overtaking vessel cannot always know with certainty whether she is forward or abaft this direction from the other vessel, she should, if in doubt, assume that she is an overtaking vessel and keep out of the way. (1897)

663. The words "these Rules" in the first line of the article refer to articles 17, 19, 20 and 26 (*s*). Although the words "so as to "... these Rules."

266, 267, C. A. (when a steamship, going into a harbour entrance which was a narrow channel, was approaching a second steamship which was coming out and showing her green, and the second steamship improperly sounded a starboard helm signal when about half a mile off or nearer, the first steamship was entitled to pause before acting on that signal); *Wilson, Sons & Co.* v. *Currie*, [1894] A. C. 116 (reasonable anticipation that other ship would attend to sound signal is excuse for not stopping and reversing earlier): *The "Jesmond" and The "Earl of Elgin"* (1871), L. R. 4 P. C. 1, 7 (decided on the Sea Regulations, 1863, art. 16), where it was held that a steamer having terminated an original risk of collision was under no duty to slacken her speed.

(*r*) The corresponding art. 17 of the Sea Regulations, 1863, was: "Every vessel overtaking any other vessel shall keep out of the way of the said last-mentioned vessel." This article and the crossing rule (art. 14) of the same regulations left a doubt in some cases as to the relative duties of ships one of which was under these articles at once a crossing and an overtaking ship; for instance, when an overtaking steamship came up before the starboard beam of another steamship and was on a course which crossed hers, did the overtaking rule still apply notwithstanding the crossing rule? Accordingly art. 20 of the Sea Regulations, 1880, the first words of which were directed to remove such doubt (*The Seaton* (1883), 9 P. D. 1, 2), was as follows: "Notwithstanding anything contained in any preceding article, every ship, whether a sailing ship or a steamship, shall keep out of the way of the overtaken ship." The terms of art. 20 of 1880 also made it clear that a sailing ship when overtaking a steamship was bound to keep out of the way notwithstanding the rule (art. 17 of 1880) that when a steamship and sailing ship were proceeding in such directions as to involve risk of collision, the steamship should keep out of the way of the sailing ship. There had been a decision by Dr. LUSHINGTON to this effect under the Sea Regulations, 1863 (*The Wheatsheaf* v. *The Intrepide* (1866), 13 L. T. 612), but in a later case Sir ROBERT PHILLIMORE had left this point open (*The Philotaxe* (1877), 3 Asp. M. L. C. 512). In the Sea Regulations, 1884, the overtaking rule (art. 20) remained the same. As regards the terms of the rule in 1880 and 1884, in *The Seaton, supra*, BUTT, J., said that a vessel might be both overtaking and crossing, but afterwards withdrew this in *The Imbro* (1889), 14 P. D. 73, 77. In the Sea Regulations, 1897, it was altered into its present form.

(*s*) The words "these Rules" were substituted in 1897 for "any pre-

SECT. 2. Regulations for Preventing Collisions etc.

involve risk of collision" are not inserted in the first paragraph of this article as in most of the other steering and sailing rules, yet the article cannot apply when the vessels are far distant, but only applies when the time comes for action and improper action will involve risk of collision (*t*). If one vessel has aleady overhauled another before there was any question of risk of collision, and first comes in sight of the other's side light at a considerable distance, it may be that some other rule than the overtaking (*u*) rule, for instance the crossing rule, will apply (*v*); but if the overtaking rule has once applied, the overtaking vessel must keep out of the way until she is past and clear. Thus a steam vessel which is an "overtaking" vessel within the definition, even if her course intersects that of the other vessel, cannot come within the crossing rule (article 19) either when she is more than two points abaft the beam or when she has come before the beam of the other, until at any rate she has become finally past and clear (*a*).

The definition of an overtaking vessel in the second paragraph of this article (*b*), and the continuation of the obligation of the overtaking vessel until past and clear (*c*), are taken from decided cases.

Overtaking vessel.

664. The definition of "an overtaking vessel" is a practical rule, and it is not exhaustive (*d*). It appears to imply three conditions: greater speed, a similar direction within a wide range, and a certain degree of nearness.

As regards speed, it appears that one vessel cannot be "over-

ceding article" in the corresponding article of the Sea Regulations, 1884, apparently in order to include any case under art. 26, which was then a new rule.

(*t*) *The Banshee* (1887), 6 Asp. M. L. C. 221, C. A., *per* Lord ESHER, M.R., and LINDLEY, L.J.

(*u*) As regards the meaning of "overtaking," see, further, under art. 10, p. 401, *ante*.

(*v*) *The Molière*, [1893] P. 217, 221.

(*a*) See the terms of this article, and *The Franconia* (1876), 2 P. D. 8, 12, C. A.

(*b*) In *The Franconia*, *supra*, the Court of Appeal laid down the following definition: if the ships were in such a position and were on such courses and distances that if it were night the hinder ship could not see any part of the lights of the forward ship, then if the hinder ship was going faster, she was an overtaking ship. It had been argued to the contrary (see *ibid.*, at p. 11) as if ships must always be under the crossing rule, even when one came up astern of the other, unless they were going on parallel or nearly parallel lines; but it was held *ibid.*, as it had been in *The Chanonry* (1873), 1 Asp. M. L. C. 569, that when one vessel was coming up astern of the other, they did not come within the crossing rule, although their courses intersected. In *The Peckforton Castle* (1878), 3 P. D. 11, C. A., the Court of Appeal, as then constituted, refused to give unqualified assent without further argument to the definition of "overtaking" in *The Franconia*, *supra*, on the ground that it was not a necessary part of the decision; compare *The Breadalbane* (1881), 7 P. D. 186. But the altered article in the Sea Regulations, 1880 and 1884, which directed in effect that the overtaking rule should override the crossing rule, gave support to the decision and the definition in *The Franconia*, *supra*; and the definition laid down in that case was afterwards treated in the Court of Appeal as undoubted law; see *The Main* (1886), 11 P. D. 132, 138, C. A.

(*c*) *The Molière*, *supra*.

(*d*) *The Main*, *supra*, at p. 136.

taking" another which is not under way; but she may be overtaking if the other vessel is lying-to (*e*). A vessel must be going faster than the other (*f*), and have sufficient speed to be coming up with her, in order to be "overtaking."

The divergence of the courses of the overtaking and overtaken vessels may be very wide (*g*); but it is clear that the duty of keeping out of the way of another vessel is one which arises from the proximity of the two vessels, and without such proximity there can be no such duty (*h*). This article only applies when, if either of the vessels does anything contrary to the regulations, it will cause danger of collision; and anything done before that time is immaterial (*i*).

Rights and duties of overtaken vessel.

665. The overtaken vessel is entitled to keep her course and speed without being bound to look round to see what the overtaking vessel is doing; but when she is aware of a vessel overtaking her and the article is applicable, she has no right to alter her course or speed without looking to see where the overtaking vessel is (*k*).

While the overtaken vessel keeps her course, the obligation of the overtaking vessel to keep out of her way is absolute (*l*). The

(*e*) Compare *The Helvetia* (1868), 3 Asp. M. L. C. 43, n., P. C. (a case under the crossing rule); *The Eleanor* v. *The Alma* (1865), 2 Mar. L. C. 240.

(*f*) *The Franconia* (1876), 2 P. D. 8, C. A.

(*g*) *The Seaton* (1883), 9 P. D. 1; *The King's County* (1904), 20 T. L. R. 202. Under a Tyne bye-law "when steam vessels are proceeding in the same direction," but with unequal speed, the vessel which steamed slowest should keep sufficiently to port and offer no obstruction to the free passage of the faster vessel, but "no vessel overtaking any other vessel" would be justified in passing such vessel at certain places. This bye-law was considered only to apply to a vessel overtaking and passing another actually upon the same course with itself (*The Henry Morton* (1874), 2 Asp. M. L. C. 466, P. C.).

(*h*) *The Main* (1886), 11 P. D. 132, C. A., *per* Lord ESHER, M.R., at p. 138.

(*i*) Thus the article was held not to apply when four minutes before a collision the overtaken steamship, being 800 yards ahead, ported to pass a pilot cutter (*The Banshee* (1887), 6 Asp. M. L. C. 221, C. A., *per* Lord ESHER, M.R., at p. 222).

(*k*) Compare *The Banshee, supra*, at p. 223. As to the duty of the overtaken vessel to keep her course and speed, see under art. 21, p. 445, *ante*. And as to the right of a sailing vessel in a river when she can no longer stand on to go about without notice to a following steamer, see *The Palatine* (1872), 1 Asp. M. L. C. 468, and see pp. 492, 493, *post*.

(*l*) When a screw steamer alleged that she had been drawn out of her course by suction of a larger screw steamer passing her, it was held that as the overtaking steamer was bound to keep clear of the other, it was enough to find that from no fault of the overtaken vessel she had failed to do so (*The "Hilda"* (*Owners*) v. *The "Australia"* (*Owners*) (1884), 12 R. (Ct. of Sess.) 76; compare *The Olympic and H.M.S. Hawke*, [1913] P. 214, C. A.). Before the overtaking rule existed, when one brig was passing another, which was drifting in a river, she was held bound to take such measures as would enable her to pass with safety (*The Globe* (1848), 6 Notes of Cases, 275). And if it was practicable for a vessel which was following close upon the track of another to pursue a course which was safe, and she adopted one that was perilous, if mischief ensued she was answerable for all the consequences (*The John Munn* (1848), Stuart's Vice-Admiralty Court Cases, Lower Canada, 265; compare *The Batavier* (1854), 1 Ecc. & Ad. 378, 382).

SECT. 2. Regulations for Preventing Collisions etc.

overtaken vessel may be excused for deviating from her course owing to immediate danger, for instance owing to another vessel or a rock or wreck in her way, or, if she is a sailing vessel, owing to a hurricane catching her sails. But if, when the article applies, she deviates from her course for another vessel when not obliged to do so, or deviates more than is necessary, then the absolute obligation on the overtaking vessel is gone, and that vessel is only bound to act reasonably, and the burden then falls on the overtaken vessel of justifying her action (*m*).

Sailing vessels.

666. A sailing vessel, coming up with a steam vessel and in the position stated in this article, is an overtaking vessel, and must keep out of the way, notwithstanding article 20 (*n*).

When one sailing vessel is overhauling another, the question generally turns on the duties of good seamanship rather than on the terms of the overtaking rule (*o*).

When one sailing vessel is overhauling another on the same tack, and they will arrive at a point where both must tack, the leading vessel must not suddenly go about under the bows of the other; and no vessel must keep her course and run into another vessel which she sees is going about (*p*).

(*m*) *The Saragossa* (1892), 7 Asp. M. L. C. 289, C. A., *per* Lord ESHER, M.R., and LOPES, L.J.; KAY, L.J., however, did not accept this change of obligation on the overtaking vessel. Before the rule to show a stern light was introduced, a steamer was held to blame for collision with an overtaken sailing vessel, the burden being on her to show that it was impracticable to avoid collision; see *The Hannah Park and The Lena* (1866), 2 Mar. L. C. 345; compare *S.S. Nova Scotian* v. *S.S. Quebec* (1875), 2 Quebec Law Reports, 1 (steamer held to blame for trying to pass another steamer in a river under dangerous circumstances when she could have avoided this by slackening speed); *The Farewell* (1882), 8 Quebec Law Repotrs, 87 (steamer trying to pass a tug and tow in a narrow channel in similar circumstances).

(*n*) So decided under the Sea Regulations, 1863; see *The Wheatsheaf* v. *The Intrepide* (1866), 13 L. T. 612, and *The Philotaxe* (1877), 3 Asp. M. L. C. 512 (see note (*r*), p. 461, *ante*). "Sailing ship" was expressly included in the overtaking rule in the Sea Regulations, 1880 and 1884. But its omission in 1897 made no difference, as a sailing vessel is a "vessel" within the article.

(*o*) Two sailing vessels were beating down the river Mersey, and in the process of tacking from side to side one gradually overhauled the other, and the overhauling vessel while close-hauled on the starboard tack came into collision one-third of the way across the river with the other vessel close-hauled on the port tack; it was held that the overtaking rule could not apply as, if it did, the overhauling vessel's duty would have been to keep out of the way and not cross ahead, and the other vessel would have been bound to keep her course, and these duties could not be carried out; and that art. 17 (b) applied, and it was the duty of the vessel close-hauled on the port tack, though being overhauled, to keep out of the way of the other (*The Annie*, [1909] P. 176).

(*p*) *Ibid;* see also *The Priscilla* (1870), L. R. 3 A. & E. 125; p. 493, *post;* compare *The Falkland, The Navigator* (1863), Brown. & Lush. 204, where the overtaken ship was held to blame for improperly wearing instead of tacking, and *The Crescent* (1853), Stuart's Vice-Admiralty Court Cases, Lower Canada, 289, where one steamer ahead of another was held to blame for making a short and unusual turn across the course of the other in a crowded roadstead.

667. Article 25 of the Sea Regulations, 1910, is as follows :—

Article 25.

In narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fair-way or mid-channel which lies on the starboard side of such vessel. (1840) (*q*).

Article 25.

668. *Primâ facie* a narrow channel (*r*) is a channel bounded on

"Narrow channel."

(*q*) The terms of this article have remained the same since 1880, except that in 1897 "vessel" was substituted for "ship." The history of the narrow channel rule is important. Between 1840 and 1863, by the Trinity House Regulations and various statutes, a narrow channel rule, almost to the same effect as in this article, had been applied to steamers; and in various forms a port helm rule (mostly to the effect that vessels meeting one another with risk of collision should pass port to port) had been applied first to steamers and afterwards to sailing vessels. In the Sea Regulations, 1863, however, both the narrow channel rule and the port helm rule were omitted, and from 1863 till 1880 there ceased to be any such rule apart from local regulations. The narrow channel rule for steamers and the port helm rule for crossing steamers were first introduced by the Trinity House Regulations, 1840; see Table in Appendix, *post*. The narrow channel rule then was: "A steam vessel passing another in a narrow channel, must always leave the vessel she is passing on the larboard hand." This applied to a steamer passing a sailing vessel (*The Friends* (1842), 1 Wm. Rob. 478, 484); and the rule was of a stringent nature and of almost universal application, and the convenience of steering for the tide could not be regarded, but must give way to the rule when there was risk of collision (*The Duke of Sussex* (1841), 1 Wm. Rob. 274; *The Gazelle* (1842), 1 Wm. Rob. 471; *The Friends, supra*, affirmed, *sub nom. General Steam Navigation Co.* v. *Tonkin, The Friends* (1844), 4 Moo. P. C. C. 314). The narrow channel rule for steamers and the port helm rule for meeting steamers were introduced in new forms in stat. (1846) 9 & 10 Vict. c. 100, s. 9. The narrow channel rule was: "Every steam vessel navigating any river or narrow channel shall keep as far as is practicable to that side of the fair-way or mid-channel of such river or channel which lies on the starboard side of such vessel, due regard being had to the tide and to the position of each vessel in such tide." The proviso as to the tide allowed very great scope for judgment; and the meaning was very much that a steamer should keep along her starboard side of the channel, provided it might be done with convenience or safety to the vessel she might meet (*The Leith* (1849), 7 Notes of Cases, 137); but a steamer was bound to show sufficient cause for not keeping on her starboard side (*The Nimrod* (1851), 15 Jur. 1201). In the Steam Navigation Act, 1851 (14 & 15 Vict. c. 79), s. 27, the port helm rule was extended to any vessel, thus including sailing vessels; and the narrow channel rule was: "The master of any steam vessel navigating any river or narrow channel shall keep as far as is practicable to that side of the fairway or mid-channel thereof which lies on the starboard side of such vessel." The proviso as to the tide in the previous Act had been omitted on purpose from this rule; and any usage which was contrary to the Act, in order to be valid, had to be based on such a matter of safety as the avoidance of shoals, and could not rest on convenience of steering for the tide (*The "Sylph"* (1854), 2 Ecc. & Ad. 75; compare *The "Panther"* (1853), 1 Ecc. & Ad. 31, 34). In the M. S. Act, 1854, ss. 296, 297, the port helm rule (s. 296) was further elaborated, still applying to any vessel. The narrow channel rule was contained in *ibid.*, s. 297. The cases decided under *ibid.* are cited in note (*r*), *infra*, notes (*s*)—(*g*), pp. 467, 468, *post*.

(*r*) There have been many decisions of the courts as to whether particular waters are narrow channels. In the territorial waters of the United Kingdom the following have been held to be narrow channels:—The Firth of Forth, from the Forth Bridge upwards (*Screw Colliery Co.* v. *Webster or Kerr*, [1910] A. C. 165). The river Humber, between the Bull and Clee

SECT. 2. Regulations for Preventing Collisions etc.

either side by land, so that a vessel cannot navigate at any great width

Ness buoys on the south side, and the buoys on the north side (*The Ashton*, [1905] P. 21). In the river Thames, the Swin channel on each side of the Swin Middle lightship (*The Oporto*, [1897] P. 249, C. A.; before the N. E. Maplin buoy was lighted, vessels bound inwards and outwards passed between the Swin Middle lightship and the Middle Sand, and this passage was a narrow channel within the rule; see *The Minnie*, [1894] P. 336, C. A.; *The Corennie*, [1894] P. 338, n.); and a space of water in Sea Reach between four red conical lighted buoys and the Nore Sand buoys to the south of them (*The Gustafsberg*, [1905] P. 10, 20). The Solent (*The Assaye*, [1905] P. 289, 291). Falmouth harbour just inside the entrance (*The Clydach* (1884), 5 Asp. M. L. C. 336). The Bristol Channel in the neighbourhood of the English and Welsh grounds (*The Brooklyn City* (1885), Pritchard's Admiralty Digest, 3rd ed., p. 2371). Cardiff Drain near Roath Basin channel, in the case of small vessels, which can safely pass each other (*The Leverington* (1886), 11 P. D. 117, C. A.; 6 Asp. M. L. C. 7; in this case, as appears from the latter report, the steamers were of 581 tons gross and 679 tons register); but in *The Red Cross* (1907), 10 Asp M. L. C. 521, a barque of 2,785 tons gross was proceeding up Cardiff Drain with a tug fast ahead and astern, and it was held that for good seamanship a steamship of 2,877 tons gross bound out of Roath Basin channel ought to have waited until the incoming traffic up the Cardiff Drain had passed, and that the crossing rule and other Sea Regulations could not be applied in the circumstances. Swansea entrance channel (*The Prince Leopold de Belgique*, [1909] P. 103). Queenstown harbour entrance channel (*The Glengariff*, [1905] P. 106). On the other hand, the channel near the Bell buoy outside the Queen's channel of the Mersey was held not to be a narrow channel (*The Florence Nightingale, The Mœander* (1863), 1 Mar. L. C. 301, P. C. (decided under the M. S. Act, 1854, s. 297)); and so also Lerwick harbour in the Shetland Islands, except in so far as its northern and southern entrances are narrow channels (*The Seymolicus*, [1909] P. 109). In *The Try Again* (1908), *Shipping Gazette*, 2nd June, the court decided a collision case in Lowestoft North Roads as if it might be a narrow channel, while refusing to determine whether it was so.

In other British territorial waters the following have been held to be narrow channels:—In Canadian waters, the roadstead of Sydney harbour, Cape Breton (see *The Santanderino* (1893), 3 Exchequer Court Reports of Canada, 378; *The Ship Cuba* v. *McMillan* (1896), 26 Supreme Court of Canada Reports, 651 (decided under Revised Statutes of Canada, c. 79, s. 2, art. 21)). As regards the south channel of the river St. Lawrence, near the Margaret Tail buoy and not far from Quebec, it was held that steamers ought to navigate as if it was a narrow channel, though it was not decided to be one (*The Corinthian*, [1909] P. 260, 265, 266, C. A.). The Narrows outside Vancouver appears to be a narrow channel; see *Bryce* v. *Canadian Pacific Rail. Co.* (1908), 13 British Columbia Reports, 446 (the point was admitted). In Queensland, the space between cuttings Nos. 5 and 6 of the Brisbane river was held by the Chief Justice not to be a narrow channel within the Queensland Navigation Act, 1876 (*Australian Steam Navigation Co.* v. *Smith & Sons* (1889), 14 App. Cas. 318, P. C.).

In foreign waters the following have been held to be narrow channels:—The River Scheldt near the Kattendyk dock, Antwerp (*The Whitlieburn* (1900), 9 Asp. M. L. C. 154); Cherbourg harbour entrance (*The Kaiser Wilhelm der Grosse*, [1907] P. 36, 259, C. A.); the Strait of Messina (*Scicluna* v. *Stevenson, The "Rhondda"* (1883), 8 App. Cas. 549, P. C.); the Sulina arm of the Danube (*S.S. "Diana"* v. *S.S. "Clieveden," The "Clieveden,"* [1894] A. C. 625, 629, P. C.); and the Great Bitter Lake, Suez Canal, near the northern entrance to the dredged channel (*The Knaresbro* (1900), [1907] P. 38, n.). But the inner harbour of Boston, Massachusetts, has been held not to be a narrow channel; see *Ship Calvin Austin* v. *Lovitt* (1905), 35 Supreme Court of Canada Reports, 616 (decided under rule 25 of the United States Inland Rules to prevent collisions, which was in the same terms as this article).

between the two banks; it is opposed to "at sea" (*s*). The court will not lay down what particular width or length will constitute a narrow channel (*t*); but while a narrow channel is of necessity comparatively small in breadth, it may also be very short in length (*u*). An entrance between the piers of a harbour has more than once been held to be a narrow channel (*v*): looking at the object which is the prevention of risk of collision, there is as much reason to apply the rule to such an entrance as to a longer channel (*x*).

When such an entrance or opening is a narrow channel, the duty to keep to the starboard side applies in so much of the water inside and outside of the entrance as is required for manœuvring for the entrance (*a*).

Although physical conditions remain the same, the alteration in lights and other marks which affect navigation sometimes makes a part of a large piece of water into a narrow channel (*b*).

Application of rule to certain waters.

669. In some instances, while not deciding that certain waters were a narrow channel, the courts have held that steamers should navigate therein as if the narrow channel rule applied (*c*).

"The fair-way or mid-channel."

670. The starboard side of "the fair-way" appears to be distinguished from the starboard side of "mid-channel" (*d*). Fair-way means a clear passage-way by water; wherever there is an open navigable passage used by vessels proceeding up and down a river or channel, that may be said to be a fair-way (*e*). It would appear

(*s*) *The Florence Nightingale, The Mœander* (1863), 1 Mar. L. C. 301, P. C., *per* Dr. LUSHINGTON.

(*t*) *Scicluna* v. *Stevenson, The "Rhondda"* (1883), 8 App. Cas. 549, 552, P. C. Whether a space of water is a narrow channel may apparently be so much a matter of fact as to be a question for the jury (*Australian Steam Navigation Co.* v. *Smith & Sons* (1889), 14 App. Cas. 318, P. C.).

(*u*) *The Kaiser Wilhelm der Grosse*, [1907] P. 259, C. A., *per* Lord ALVERSTONE, C.J., at p. 263.

(*v*) *Ibid.*; and as to places which have been held to be narrow channels, see note (*r*), p. 465, *ante*.

(*x*) *The Kaiser Wilhelm der Grosse, supra*, at p. 264. The question whether the rule applies to an opening between buoys or lightships does not depend on whether there is a dredged channel there or not (*ibid.*).

(*a*) *Ibid.*, at p. 44, *per* GORELL BARNES, P.; *The Knaresbro* (1900), [1907] P. 38, n. Even apart from this rule a vessel, going out of or coming into a narrow harbour entrance, ought not to cross the entrance so close as not to leave room for vessels going the other way, but ought to make a wide sweep so as to leave them a fair-way (*The Harvest* (1886), 11 P. D. 90, C. A.). And in a harbour where there was a rule to the effect that a vessel when proceeding out or in should be kept to the right of mid-channel, and two buoys really marked the entrance to the channel, although there was sufficient water for vessels to go outside the buoys, it was held that a vessel ought to round in so as to enter either on the right side of the channel marked by the buoys, or outside the right-hand buoy (*The Winstanley*, [1896] P. 297, C. A.).

(*b*) *The Gustafsberg*, [1905] P. 10, 19.

(*c*) *The Ashton*, [1905] P. 21; *The Try Again* (1908), *Shipping Gazette*, June 2; *The Corinthian*, [1909] P. 260, 266, C. A.

(*d*) "Fair-way" appears to give an additional meaning and not to be merely synonymous with "mid-channel," as has been suggested; see *The Blue Bell*, [1895] P. 242, in argument.

(*e*) *The Blue Bell, supra, per* BRUCE, J., at p. 264. The *dictum* is general;

SECT. 2. Regulations for Preventing Collisions etc.

that when there is a fair-way and no deep water channel, a vessel must keep to the starboard side of the fair-way; but when there is a fair-way and deep water channel, a steam vessel must keep to the starboard side of the mid-channel. When on one side of a fair-way there were four or five hundred yards of navigable water, it was held that under this article, though not bound to keep in the fair-way, a steam vessel in it ought to keep to her starboard side of the middle of the fair-way, and that she had no right to keep over to her port side in order to cheat the tide (*f*).

Construction of the article.

671. The narrow channel rule is to be construed with reasonable latitude; some allowance has to be made for tide, locality, and wind, and for the case of a vessel being in tow (*g*). And though the court might be of opinion that the vessel might have kept fifty yards closer to the proper shore of the river (*h*), it may refuse to look at a question of a few yards more or less (*i*).

Obeying the article.

672. This article is not merely a rule which is to be obeyed by one steam vessel as regards another vessel, but it is a positive direction that a steam vessel shall be kept as far as is safe and practicable on the starboard side of the channel (*k*), irrespective of manœuvring for any other vessel.

The rule has to be obeyed unless it is unsafe or impracticable; even apart from this qualification, it could be departed from under article 27, and if it was impracticable it would not be binding on principle (*l*). No consideration, however, of convenience of the vessel or increase of speed can justify disobedience; and no custom to the contrary can be maintained without proof of some local

but the question in that case was as to the meaning of the Thames bye-law as regards vessels "when in the fair-way of the river, and not under way" ringing the bell in fog. And in *The Clutha Boat* 147, [1909] P. 36, as to the similar bye-law in the river Medway as to vessels "at anchor in the fair-way of the river," GORELL BARNES, P., held that, considered in its context, the bye-law applied to a vessel at anchor in the ordinary course of her navigation, and when she was in a part of the river where small vessels went. Compare *Smith* v. *Voss* (1857), 2 H. & N. 97 (decided under the M. S. Act, 1854, s. 297); the direction to the jury that the vessel should be kept to the starboard side of, but within, the fair-way or mid-channel was upheld on appeal, but see *ibid.*, *per* BRAMWELL, B., at p. 102.

(*f*) *The Glengariff*, [1905] P. 106, 110; and see *The "Sylph"* (1854), 2 Ecc. & Ad. 75; and other cases cited in note (*q*), p. 465, *ante*. But when there is no narrow channel rule, a vessel may be entitled to keep on her port side of a river or channel to cheat the tide, and other vessels may be bound to allow for her doing so (*The "Esk" and The "Niord"* (1870), L. R. 3 P. C. 436, 443; *The Bywell Castle* (1879), 4 P. D. 219, C. A., *per* BRETT, L.J., at p. 224).

(*g*) *The La Plata* (1857), Sw. 220 (decided on the M. S. Act, 1854, s. 297; see note (*q*), p. 465, *ante*); reversed on appeal for nautical considerations ((1857), Sw. 298, P. C.).

(*h*) In the river Thames, near Halfway Point.

(*i*) *The "Sylph"* (1854), 2 Ecc. & Ad. 75, 81 (decided on the Steam Navigation Act, 1851, s. 27; see note (*q*), p. 465, *ante*).

(*k*) *The Kaiser Wilhelm der Grosse*, [1907] P. 259, C. A., *per* Lord ALVERSTONE, C.J., at p. 265; and a vessel ought to keep to her starboard side in proper time, and has no right at the last to port across the bows of the other vessel (*The Glengariff*, *supra*, at p. 210).

(*l*) See p. 366, *ante*.

impediment or inconvenience (*m*). The burden of proof lies on a steamer to show not vaguely, but distinctly, what obstacles there were to prevent her going to the starboard side (*n*). If she improperly goes to the other side, she does so at her own risk (*o*). The mere fact that the vessels are approaching at a certain time green light to green light, as one vessel comes round, is no justification for keeping on the wrong side (*p*). But it is conceived that a steam vessel overtaking another vessel, or having to manœuvre for a sailing vessel may, in some circumstances, avail herself of the qualification to the rule (*q*).

Vessel swinging.

673. This article does not apply to a vessel swinging in a narrow channel where a vessel turns round in the way in which she must turn round (*r*).

Allowance for behaviour of other vessel.

674. In obeying this article, allowance must sometimes be made for the other vessel under the dictates of good seamanship. Those who framed this article were quite aware that there might be circumstances which would make it unsafe and impracticable for a steam vessel to remain on the starboard side of the channel, and that the vessel would be wrong in remaining there (*a*). A vessel may be wrong in obstinately staying on the starboard side of the channel, expecting all other vessels coming into the channel to get out of her way; and on the other hand a vessel may be wrong which tries to force out of position another vessel which is on the starboard side of her own channel (*b*). Circumstances may prevent the rule from operating to its full extent (*c*) where two vessels have to manœuvre for one another in dangerous

(*m*) *The Unity* (1856), Sw. 101; *The Hand of Providence* (1856), Sw. 107; compare *The Seine* (1859), Sw. 411 (crossing the river to take on board a customs officer was no excuse for disobedience).

(*n*) *Malcomson* v. *Meeson*, "*The Malvina*" (1863), 1 Moo. P. C. C. (N. S.) 357, 368 (decided on the M. S. Act, 1854, s. 297).

(*o*) *The Fyenoord* (1858), Sw. 374, 377, P. C.

(*p*) *The Clydach* (1884), 5 Asp. M. L. C. 336; nor that in a fog it was necessary for the vessel to keep along one bank to guide her, and that she kept to the port bank when she might have kept to the starboard bank (*Russian S.S.* "*Yourri*" v. *British S.S.* "*Spearman*" (1885), 10 App. Cas. 276, P. C.).

(*q*) But a vessel passing another vessel which was crossing a river has been held to blame for not passing astern of her on the proper side of the river or else stopping and waiting (*The Henry Morton* (1874), 2 Asp. M. L. C. 466, P. C.).

(*r*) *The Whitlieburn* (1900), 9 Asp. M. L. C. 154 (a sailing vessel in tow of a tug was turning round in the river Scheldt and her stern was on the port side of mid-channel, the tide setting the vessel over to that side; art. 25 was held not to be at all applicable to the case).

(*a*) *The Try Again* (1908), *Shipping Gazette*, 2nd June.

(*b*) *Ibid.* In this case the court held that, whether the narrow channel rule applied or not, it was the duty of the vessel which had the other on her starboard side to keep out of the way; and that the other vessel was also to blame, because it was her duty not to port but to keep her course.

(*c*) *The Prince Leopold de Belgique*, [1909] P. 103, 105; 11 Asp. M. L. C. 203. In this case two steam vessels came into collision in a dangerous place nearly end on, and there being no local rule to govern the case, it was held that the vessels must deal with each other on the footing of good seamanship, complying as far as possible with this article.

SECT. 2. Regulations for Preventing Collisions etc.

circumstances. In very confined waters it has been held that this article and the other Sea Regulations do not apply, and that one vessel must act for another according to good seamanship (*d*), and the same principle may apply when one vessel coming out of a lock into a river has to manœuvre for another vessel (*e*).

Sometimes a channel, for instance, into a lock is so narrow that two vessels cannot pass in it, and one must wait for the other; in such circumstances it has been said to be a universal rule that the incoming vessel should wait for the outgoing vessel (*f*). But such a rule has no application even to big vessels in an entrance channel half a mile wide, where the narrow channel rule applies (*g*).

Narrow channel and crossing rules.

675. The application of the narrow channel rule in connexion with the crossing rule has been already considered (*h*).

Local rules and practices.

676. A local rule or practice often exists in a river to the same or a similar effect as the narrow channel rule (*i*).

When this article or a similar rule applies in a river, its effect may be qualified by the rule of good seamanship under which, when two steam vessels are approaching from opposite directions so that they would meet at the point of a sharp bend, the one having the tide against her should ease her engines and wait above or below the point until the other has passed (*k*). Good seamanship also requires that a steam tug with a vessel in tow navigating a sharp bend in a river with the tide should give warning by whistle

(*d*) *The Red Cross* (1907), 10 Asp. M. L. C. 521, 524.

(*e*) *The Hazelmere*, [1911] P. 69, C. A., *per* Lord ALVERSTONE, C.J., at p. 77.

(*f*) *Taylor* v. *Burger* (1898), 8 Asp. M. L. C. 364, H. L., *per* Lord HALSBURY, L.C.

(*g*) *The Kaiser Wilhelm der Grosse*, [1907] P. 259, 269, 274, C. A. When a vessel in the Suez Canal has to tie up and wait in a siding to allow another to pass, she must act reasonably by slowing down, stopping her engines, and going to the siding in sufficient time; the other vessel must watch what is happening and see that she does not get too near, and for that purpose must if necessary slow down so as to have herself properly in hand as she approaches (*The Clan Cumming*, [1907] P. 311, C. A.). As to the rule in the Danube, at points of insufficient breadth, for one vessel going up stream to wait for the other, and as to the duty of the second vessel not to go on when the other wrongly fails to wait, see *S.S.* "*Diana*" v. *S.S.* "*Clieveden*," *The* "*Clieveden*," [1894] A. C. 625, P. C.).

(*h*) See under art. 19, pp. 439, 440, *ante*.

(*i*) As to the rule in the river Tees, see *The Mary Lohden* (1887), 6 Asp. M. L. C. 262, C. A.; and in the river Tyne, *The Henry Morton* (1874), 2 Asp. M. L. C. 466, P. C.; and see note (*a*), p. 483, *post*. There is no rule at present in the Thames (where new rules will soon come into force) that steam vessels should keep to the north side going up; the only rule is that such vessels approaching so as to involve risk of collision should pass port to port; if there is no such risk, there is no rule to prohibit their passing starboard to starboard (*The Marie Gartz* (1913), 30 T. L. R. 88, C. A.); but in (*The Agnes* (1913), 7th February (unreported), EVANS, P., said that the effect of the cases was that steam vessels should so proceed that if approaching so as to involve risk of collision they could obey the rule to pass port to port; see, further, note (*a*), pp. 482, 483, *post*. As to a rule in the Danube, see *Russian S.S.* "*Yourri*" v. *British S.S.* "*Spearman*" (1885), 10 App. Cas. 276, P. C.

(*k*) *The Talabot* (1890), 6 Asp. M. L. C. 602; compare *The Ezardian*, [1911] P. 92. See also the Thames Rules, 1898, art. 47; note (*a*), pp. 482, 483, *post*.

signals to enable a vessel on the other side to approach the bend in such a way as to avoid collision (*l*).

SECT. 2. Regulations for Preventing Collisions etc.

Article 26.

677. Article 26 of the Sea Regulations, 1910, is as follows:—

Article 26.

Sailing vessels under way shall keep out of the way of sailing vessels or boats fishing with nets, or lines, or trawls. This Rule shall not give to any vessel or boat engaged in fishing the right of obstructing a fairway used by vessels other than fishing-vessels or boats. (1897)

Application of article.

678. This article is to be looked upon as completing the code of rules applicable to one vessel unincumbered meeting another vessel incumbered over fishing (*m*). It overrides the provisions of article 17, but that article may still apply when two sailing fishing vessels or fishing boats (*n*) are approaching one another (*o*).

A sailing vessel shooting her nets is "fishing with nets" within the meaning of this article, and her condition is not a *casus omissus* (*p*). A steam drifter, shooting her nets and sailing with a little mizen sail at about one knot an hour, and with steam up, is not a "sailing" vessel fishing with nets under this article (*q*).

When this article applies, it is the duty of the sailing fishing vessel or fishing boat to keep her course and speed (*r*).

Article 27.

679. Article 27 of the Sea Regulations, 1910, is as follows:—

Article 27.

In obeying and construing these Rules, due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above Rules necessary in order to avoid immediate danger. (1863) (*a*)

680. This, like the other articles, appears to be a general rule laid down to govern any person who has charge of a vessel, both

(*l*) *The Kennet*, [1912] P 114.

(*m*) *The Grovehurst*, [1910] P. 316, C. A., *per* BUCKLEY, L.J., at p. 332. It was at one time contended that the rule that an unincumbered sailing vessel should keep out of the way of a steamer incumbered over fishing (see p. 397, *ante*) had been abrogated by the introduction of this article, on the principle that *expressio unius est exclusio alterius* and for other reasons, but the argument did not succeed (*The Grovehurst, supra*, at pp. 329, 332, 337, overruling *The Craigellachie*, [1909] P. 1. The argument had been used previously in *The Upton Castle*, [1906] P. 147).

(*n*) As to the meaning of "fishing-vessel" and "fishing-boat," see p. 396, *ante*.

(*o*) Compare *The Grovehurst, supra, per* BUCKLEY, L.J., at pp. 333, 334, as to an analogous case.

(*p*) *The Pitgaveney*, [1910] P. 215.

(*q*) *Ibid.*

(*r*) Compare *The Ragnhild*, [1911] P. 254, 259, 260.

(*a*) The Sea Regulations, 1863, art. 19, was as follows: "In obeying and construing these Rules, due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances which may exist in any particular case rendering a departure from the above Rules necessary in order to avoid immediate danger." This article bore the marginal note: "Proviso to save special cases." It was specially referred to in the previous article, which was the keep-course rule; and in *The David Cannon* (1865), 2 Asp. M. L. C. 353, n., it was said that this art. 19 was framed for the purpose of the protection of a vessel that was required to keep her course. In *The Zephyr* (1864), 2 Asp. M. L. C. 352, n., it was said that the meaning of these two articles was to impose the

SECT. 2. Regulations for Preventing Collisions etc.

Application.

for the sake of the safety of his own vessel and of vessels approaching him (*b*). It is addressed to such persons (*c*). It is a proviso for special cases (*d*). It is a warning that something more is required than obedience to these regulations, namely, proper attention to all dangers, and discretion in deciding whether the particular circumstances give rise to one of the common cases which are contemplated by a regulation (*e*), or whether there are special or extraordinary circumstances which make a departure from the rule necessary to avoid immediate danger and thus prevent the rule applying (*f*).

Interpretation.

681. This article does not appear to create any new principle as regards the judicial interpretation of the regulations (*g*). In substance it appears to declare, and thus emphasise, the ancient principle laid down by the courts, namely, that whatever be the regulations which govern ships generally, in case of immediate danger it is the duty of every ship to avoid collision (*h*). So far as the principle or principles involved in this article are concerned, they have already been considered among the other principles established by the courts as to the observance of the collision regulations and the exceptions thereto (*i*); and their application has been considered under the various articles. The principles in this article may be applied either as imposing an obligation upon the officer in charge to act otherwise than is specified in another article, or to exonerate him for having thus acted (*k*).

This article contains no direction in itself as to what an officer in charge of a vessel is to do. It contemplates a departure from the

obligation as strictly as possible of obeying art. 18 as far as was consistent with not incurring immediate danger. Art. 23 of the Sea Regulations, 1880 and 1884, was to the same effect as art. 19 of the Sea Regulations, 1863. Art. 27 of the Sea Regulations, 1897, was the same as the present article. The words "and collision" were added in 1897, possibly in order to make the exceptions on this account clear for international purposes, as such exceptions were already recognised in the courts of this country; see pp. 366, 367, *ante*.

(*b*) *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1880), 5 App. Cas. 876, *per* Lord HATHERLEY, at p. 909.

(*c*) See the terms of the article "In obeying," p. 471, *ante*.

(*d*) Marginal note to art. 19 of the Sea Regulations, 1863.

(*e*) *The Dunelm* (1884), 9 P. D. 164, C. A., *per* FRY, L.J., at p. 176.

(*f*) The simpler view appears to be that the departure from the rule is a departure from applying it; see *The Tweedsdale* (1889), 14 P. D. 164, 169 "art. 23" [now art. 27] "prevents the application of art. 17"); *The Immaganda Sara Clasina* (1850), 7 Notes of Cases, 582, 584, 585. The departure, however, from a rule under this article is sometimes described as a violation of the rule; see *The Boanerges and The Anglo-Indian* (1865), 2 Mar. L. C. 239.

(*g*) It, however, affected the construction of the statutes between 1863 and 1911, which imposed special penalties, falling on the owner of a vessel, for non-observance of the Sea Regulations; see p. 367, *ante*.

(*h*) *The David Cannon* (1865), 2 Asp. M. L. C. 353, n.; and see note (*p*), p. 363, *ante*, and *The Eliza* v. *The Orinoco* (1865), Holt (ADM.), 98, 101, there referred to. An exception to the Sea Regulations is sometimes said to be based on this article (see *The Grovehurst*, [1910] P. 316, 330, C. A.), since it declares this ancient principle, which is the foundation of all exceptions.

(*i*) See pp. 362 *et seq.*, *ante*.

(*k*) Compare *H.M.S. Sans Pareil*, [1900] P. 267, 274, C. A.; and see p. 371, *ante*, as to cases where departure from a rule becomes a positive duty.

regulations, and the officer is then left to take what according to the best of his knowledge is the course of good seamanship (*l*).

This article, notwithstanding the words "the above Rules," has been applied to the interpretation of article 28 (*m*).

682. The sound signals for vessels in sight of one another in the Sea Regulations 1910, are as follows :—

Sound signals. Article 28.

Sound Signals for Vessels in Sight of one Another.

Article 28.

The words "short blast" used in this Article shall mean a blast of about one second's duration.

When vessels are in sight of one another, a steam vessel under way, in taking any course authorized or required by these Rules, shall indicate that course by the following signals on her whistle or siren, viz. :—

One short blast to mean, "I am directing my course to starboard."

Two short blasts to mean, "I am directing my course to port."

Three short blasts to mean, "My engines are going full speed astern." (1880) (*n*)

683. The first purpose of this article is to give the other vessel information, and part of the importance of the signal is that it is a clear indication of the manœuvre, instead of leaving it to inference, which might sometimes lead to mistake, and must always take time (*o*). But the essence of the article is to call the attention of the other vessel to what is going on ; it is an appeal to a vessel which is acting wrongly to consider her course (*p*).

Intention of article.

684. The words "in sight of one another" are qualified by the subsequent words "in taking any course authorised or required by these Rules." Thus "in sight" does not mean at any distance, but

"In sight of one another."

(*l*) *H.M.S. Sans Pareil*, [1900] P. 267, 282, 291, C. A. (this case decided that art. 27 was not a collision regulation within the meaning of the M. S. Act, 1894, s. 419 (4), so that a breach of art. 27 was not an infringement of a collision regulation for which a vessel came within the statutory presumption of fault, which then existed) ; and see *The Eliza* v. *The Orinoco* (1865), Holt (ADM.), 98, 101.

(*m*) *The Bellanoch*, [1907] P. 170, C. A., *per* GORELL BARNES, P., at p. 175 ; though this was doubted by FLETCHER MOULTON, L.J., at p. 189, in a dissenting judgment. As to this, see note (*a*), p. 471, *ante*. If, as seems clear, art. 27 does not alter the law as regards exceptions to the regulations, the point is not of great importance.

(*n*) The Sea Regulations, 1880, art. 19, was as follows :—"In taking any course authorised or required by these Regulations, a steamship under way may indicate that course to any other ship which she has in sight by the following signals on her steam whistle, viz. : " [The next three paragraphs are the same as in the present article.] "The use of these signals is optional ; but, if they are used, the course of the ship must be in accordance with the signal made." The Sea Regulations, 1884, art. 19, was the same. Under the Sea Regulations, 1897, art. 28, which was the same as the present article, the signals became compulsory, and the effect of the article was completely altered.

(*o*) *The Anselm*, [1907] P. 151, C. A., *per* Lord ALVERSTONE, C.J., at p. 166 ; *The Corinthian*, [1909] P. 260, C. A., *per* FLETCHER MOULTON, L.J., at p. 281.

(*p*) *The Corinthian*, *supra*, at p. 281.

SECT. 2. Regulations for Preventing Collisions etc.

in sight with reference to manœuvres for the purpose of avoiding collision (*q*). The time referred to is the time when it ought to be apparent that there will be risk of collision, if nothing is done to prevent it. Until one vessel ought to act for the other, there is no duty upon a vessel to whistle under this article, and it may be wrong, because misleading, to do so (*r*).

The word "vessels" seems to be similarly qualified, as the article does not appear to apply when a steamer is manœuvring to keep clear of a vessel which is not under way. It applies, however, if the other vessel is under way, although she is keeping in approximately the same position (*s*).

When duty arises.

685. The duty of a steam vessel to signal under this article arises in all cases when the time has come for one vessel to act for the other, and when a steam vessel in fact acts for the other vessel by altering her helm or going full speed astern. This is so whether the vessel which takes such action is the giving-way vessel taking ordinary action under article 19, 20, 22, 23 or 24 (*t*), or the keep-on vessel acting under the note to article 21 (*a*), or a vessel acting under article 18 or 25 (*b*), or any vessel taking exceptional action under article 27 (*c*), or acting under the dictates of good seamanship according to the warning in article 29 (*d*). In all these cases the steamer is taking a course either "required" or "authorised" within the meaning of the article (*e*). Even if the alteration of helm is only to mitigate the collision, and not to avoid it, there is the same duty to signal (*f*). An officer in charge should err, if at all, on the side of whistling (*g*).

When, however, although the time has come for one vessel to act for the other, the steam vessel, which alters her helm or goes full speed astern, does so for some other purpose than manœuvring for the other vessel, the question whether she ought to whistle under this article is more complicated (*h*). In such a case, supposing that

(*q*) *The Bellanoch*, [1907] P. 170, C. A., *per* Lord ALVERSTONE, C.J., at p. 181; affirmed, *sub nom. S.S. Canning (Owners)* v. *S.S. Bellanoch (Owners)*, [1907] A. C. 269.

(*r*) *The Bellanoch, supra, per* KENNEDY, L.J., at pp. 192, 193, 195; *The Aristocrat*, [1908] P. 9, 23, 25, C. A.

(*s*) *The Aristocrat, supra*, at p. 20.

(*t*) Compare *The Mourne*, [1901] P. 68, 72.

(*a*) *The Annie* (1912), *Shipping Gazette*, 2nd February, C. A.

(*b*) *The Anselm*, [1907] 151, 164, C. A.; *The Mourne, supra*; *The Corinthian*, [1909] P. 260, C. A.

(*c*) *The Hero*, [1911] P. 128, 159, C. A.; reversed on appeal on another point, *sub nom. S.S. Hero (Owners)* v. *Commissioners for Executing the Office of Lord High Admiral of the United Kingdom*, [1912] A. C. 300; *The Anselm, supra*, at p. 168.

(*d*) *The Uskmoor*, [1902] P. 250; *The Hero, supra*; *The Aristocrat, supra*.

(*e*) "Authorised" is a very much larger word, and a large interpretation ought to be given to it; the narrow interpretation which would have confined it to courses where a certain amount of choice is allowed by the Sea Regulations is to be rejected (*The Uskmoor, supra*, at p. 254, approved in *The Anselm, supra*). The original inclination of the nautical world to obey this article only in narrow waters was condemned (*The Uskmoor, supra*, at pp. 254, 255).

(*f*) *The Annie, supra, per* KENNEDY, L.J.

(*g*) *The Uskmoor, supra*, at p. 255.

(*h*) The simplest interpretation of the article would appear to have been

the steam vessel is not bound by article 21, and therefore is under no duty to keep her course and speed, then if in altering her helm or putting her engines full speed astern she is not acting for the other vessel at all, but is acting in the ordinary course of her navigation, she is not bound to whistle under this article (*i*). On the other hand, supposing that a steamer is bound at the time to keep her speed under article 21, then if she goes full speed astern, even though only for the purpose of her own navigation, she appears to be bound to give the proper signal (*j*).

"Course."

686. "Course" in this article cannot mean compass course only, but includes directions to alter the helm or reverse the engines full speed for the purpose of avoiding collision or to put an end to any existing danger of it (*k*). It has been said that the continuing of a helm is just as much a directing of the vessel's head to one side or another as a change of helm in the other direction (*l*). The signal should be given every time when a distinct manœuvre is made with the helm (*m*).

Time for giving signal.

No precise time for giving the signal is specified in the article, but the signal should be given immediately the order to the helm or engines has been given and received, and the officer in charge ought not to wait until he sees whether the execution of the order has had an effect on the course of the vessel (*n*).

that in all such cases the steamer was taking an "authorised" course, and therefore, ought to whistle. The advantage of the information to the other vessel may be as great as in the case where the steamer is in fact acting for her; and the danger which may arise from the other vessel not having this information is illustrated by the facts in *The Mourne*, [1901] P. 68. But it is clear from the cases that, as the law stands, a steamer in such a case is not always bound to whistle under the article.

(*i*) *The Wakasa Maru* (1908), *Shipping Gazette*, 2nd June, C. A. (steamer in river ported for a wreck and starboarded back); *The Calgarth* (1906), *Shipping Gazette*, 3rd November (tug in river ported a little to keep well on her starboard side); *The Mourne*, *supra* (steamer coming from dock entrance continued to swing round in river under starboard helm); *The Aristocrat*, [1908] P. 9, 19, C. A. (if the vessel only starboarded sufficiently to keep her head on her course, "very different considerations would arise").

(*j*) *The Bellanoch*, [1907] P. 170, C. A., *per* KENNEDY, L.J., at p. 194 (if she did go astern, when the period for action had arisen, "she was bound to give a signal under art. 28"), and *per* Lord ALVERSTONE, C.J., at p. 182; and on appeal, [1907] A. C. 269, the duty to whistle was assumed; see also the explanation of this case in *The Corinthian*, [1909] P. 260, C. A.; compare *The Tempus*, [1913] P. 166.

(*k*) *The Anselm*, [1907] P. 151, 163, C. A.

(*l*) *The Aristocrat*, *supra*, *per* Lord ALVERSTONE, C.J., at p. 21, an *obiter dictum*. It was contended in vain in this case that the tug crossing the river under a starboard helm was not "taking" a "course" within this article when she further starboarded for the other steamer; and see *The Anselm*, *supra*; but see also *The Corinthian*, *supra*, *per* BUCKLEY, L.J., at p. 286.

(*m*) *The Corinthian*, *supra* (a steamship which ported and blew a port helm signal, and then steadied, was held wrong in not blowing another port helm signal when she shortly afterwards hard-a-ported).

(*n*) *The Annie* (1912), *Shipping Gazette*, 2nd February, C. A., *per* VAUGHAN WILLIAMS, L.J., and see *ibid.*, *per* KENNEDY, L.J.: the latest time to be allowed for giving the signal is when the order is actually being carried out, "although it may not at that moment have had actual effect."

SECT. 2. Regulations for Preventing Collisions etc.

Principles governing use of signals.

687. It is far more important that these sound signals should be given when the course taken is not the ordinary one prescribed by the Sea Regulations, but is dictated by good seamanship, and is justified only by the particular circumstances and imminent danger (*o*). There is a more stringent duty to signal than ordinary upon a vessel acting under the note to article 21, in order to give the other vessel an opportunity to understand the manœuvre (*p*); it has been said that when two vessels have to co-operate in carrying out manœuvres, it is obvious that they must communicate with each other (*q*). A long-blast signal is no sufficient substitute for a helm signal, especially if given by a tug, because a long-blast signal is given for all sorts of reasons, and is no indication that one vessel is manœuvring for the other, and it may have no connexion with navigation, so that it does not invite at all the same attention (*r*). The three-blast signal is the most powerful warning to draw the attention of the other vessel to what is happening and to lead her to take proper measures, especially if given by a vessel in daylight and at a distance (*s*).

Exceptional cases.

688. A vessel, which goes full speed astern for another vessel and sounds three short blasts, is not bound to sound another short blast if she puts her helm hard-a-port to counteract the canting of her head to starboard, because she is not "directing" her "course" to starboard (*t*). The officer in charge of a vessel cannot successfully contend that, because the course he took is afterwards found by the court to be wrong and not "authorised or required," his failure to sound the appropriate signal was not a breach of the article (*u*). If a steam vessel is hailed by the other vessel to port or starboard, and does so, the omission to whistle will probably not be a substantial breach of the article (*x*).

Apart from the provisions of this article, it may be the duty of

(*o*) *The Anselm*, [1907] P. 151, C. A., *per* FLETCHER MOULTON, L.J., at p. 168.

(*p*) *The Annie* (1912), *Shipping Gazette*, 2nd February, C. A., *per* KENNEDY, L.J.

(*q*) *Ibid.*, *per* VAUGHAN WILLIAMS, L.J.

(*r*) *The Aristocrat*, [1908] P. 9, 21, C.A. A vessel which gives the wrong helm signal is doubly to blame (*The Frankfort*, [1910] P. 50, C. A.).

(*s*) *The Anselm*, *supra*, *per* FLETCHER MOULTON, L.J., at p. 168.

(*t*) *The Aberdonian*, [1910] P. 225.

(*u*) *The Hero*, [1911] P. 128, C. A. (decided when presumption of fault applied). The decision is based on two grounds: first, the absurdity of excusing a vessel, if its course was wrong, from the obligation to whistle and consequences of not doing so, which applied if its course was right; and secondly, on the ground that in the action the party contended until the judgment that the course was authorised or required, and a course "authorised or required" according to the article included a course thus alleged to have been authorised or required. Another ground which appears to underlie the judgment is the maxim "*Nemo allegans suam turpitudinem est audiendus.*"

(*x*) *The Annie* (1911), *Shipping Gazette*, 11th November; reversed on another point (1912), *Shipping Gazette*, 2nd February, C. A. Even when presumption of fault existed upon infringement of this article, disobedience was sometimes excused; *e.g.*, in *S.S. Canning* (*Owners*) v. *S.S. Bellanoch* (*Owners*), [1907] A. C. 269, on the ground that a failure to signal could not have contributed to the collision, as it could not have told the master of the other vessel more than he knew; and in *The*

a steam vessel to give any of the signals specified as a matter of good seamanship (*a*).

689. Article 29 of the Sea Regulations, 1910, is as follows :— Article 29.

No Vessel under any circumstances to neglect proper Precautions.

Article 29.

> Nothing in these Rules shall exonerate any vessel, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case. (1863) (*b*)

690. This article is simply a warning; it does not in itself impose any obligations (*c*); but it is one of the "Rules" referred to in article 28, and has an effect in the interpretation of that article (*d*). Application of article.

691. Article 30 of the Sea Regulations, 1910, relates to the Reservation of Rules for Harbours and Inland Navigation, and is as follows :— Article 30.

Reservation of Rules for Harbours and Inland Navigation.

Article 30.

> Nothing in these Rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbour, river, or inland waters. (1880) (*e*)

692. The purpose of this article appears to have been (*f*), and Intention of rule.

Calgarth (1906), *Shipping Gazette*, 3rd November, because the vessels were perfectly visible and only a few hundred yards apart. As to the right of a vessel which, while rounding a bend in a river, is in a position of safety red to red with another vessel, and which alters her course away from the other vessel and so signals, to treat the position as still safe though she gets no answering signal, see *China Navigation Co., Ltd.* v. *Asiatic Petroleum Co., Ltd. and Taku Tug and Lighterage Co., Ltd.*, [1910] A. C. 204, P. C.

(*a*) Compare *The Anselm*, [1907] P. 151, C. A., *per* Lord ALVERSTONE, C.J., at p. 165; *The Battersea* (1912), *Shipping Gazette*, 14th February, where a steamer, which was dredging up the river Thames stern first and going sometimes slow astern with a touch ahead now and again, was properly blowing signals of three short blasts.

(*b*) This article is first to be found at the end of the International Code of Sea Regulations, 1863, and was apparently placed there in order to warn seamen that the full set of rules then introduced was not to be treated as a complete guide for conduct or as any excuse for want of vigilance in observing the common rules of good seamanship in navigable waters. It has remained the same since it first appeared, except that in 1897 "vessel" was substituted for "ship." As to breaches of the rules of good seamanship, see pp. 483 *et seq.*, *post*.

(*c*) *H.M.S. Sans Pareil*, [1900] P. 267, 271, C. A. Art. 29 was held not to be a "collision regulation" within the meaning of the M. S. Act, 1894, s. 419 (4), now repealed; see *H. M. S. Sans Pareil, supra*, at pp. 282, 291.

(*d*) See art. 28, p. 473, *ante*; *The Uskmoor*, [1902] P. 250; *The Anselm, supra*.

(*e*) This article has remained the same since its introduction in the Sea Regulations, 1880, except that in 1897 the last word, "waters," was substituted for "navigation."

(*f*) In the statute which authorised the first international Sea Regulations,

SECT. 2. Regulations for Preventing Collisions etc.

still to be, to preserve all local rules lawfully made, whether under a local Act or not, from any presumption of being abrogated by the Sea Regulations, and also to make such local rules prevail over the Sea Regulations when the latter clash with a special local rule. This is the more important because in many cases the authorities which make the local rules are not consulted as regards the Sea Regulations (*g*).

Application of rule.

693. The Sea Regulations, when first introduced, were frequently applied in some inland waters (*h*), as local rules were then much less numerous and complete (*i*); and in 1897 the Sea Regulations were formally stated to apply in waters connected with the sea navigable by sea-going vessels (*k*). The Sea Regulations apply in the river Thames (*l*), and other waters of the above description, when these regulations are suitable and where there are no such local rules as ought reasonably to prevent their application (*m*). But where there is a special local rule which deals with the whole scope of a subject, parts of the provisions of the Sea Regulations must not be added, as this would be to "interfere with the operation" of the special rule (*n*).

A rule, in order to be "duly made by local authority," must be made in accordance with its powers and must be properly published (*o*).

1863, certain provisions preserved the full force and effect of local rules of navigation for inland waters made under the authority of any local Act, and provided that local rules made under Order in Council in certain cases should have the same effect as the Sea Regulations (M. S. Act, 1862, ss. 27, 31, 32); and these provisions have been in effect re-enacted and are still in force (M. S. Act, 1894, ss. 419 (1), 421 (1), (2)).

(*g*) See *ibid.*, s. 418 (1).

(*h*) As to cases of this kind, see p. 377, *ante*.

(*i*) There were no steering or sailing rules in the Thames before 1872 (*The Carlotta*, [1899] P. 223, 227).

(*k*) See p. 373, *ante*.

(*l*) *The Carlotta, supra.*

(*m*) *Ibid.*

(*n*) Thus, where there is a local rule for steam vessels aground to give certain whistles, this ought not to be supplemented by art. 4 (a) of the Regulations, even if that could be applied to a vessel aground (*The Carlotta, supra*). A local rule which provides for the lights of a vessel aground excludes the operation of art. 11 of these Regulations (*The Bitinia*, [1912] P. 186). When the local sailing rules do not contain a starboard hand rule, the narrow channel rule in art. 25 of these Regulations is not to be imported into them (*The Écossaise* (1885), *Shipping Gazette*, 15th December, cited in *The Carlotta, supra*, at p. 229; compare *The Marie Gartz* (1913), 30 T. L. R. 88, C. A.). And when the bye-laws of the river Thames did not impose on a lighter the duty to carry a light, it was held that the Sea Regulations did not apply to introduce such an obligation (*The C. S. Butler* (1874), L. R. 4 A. & E. 238).

(*o*) Compare *Imperial Royal Privileged Danubian Steam Navigation Co.* v. *Greek and Oriental Steam Navigation Co., The "Smyrna"* (1864), 2 Moo. P. C. C. (N. S.) 435, 447; *Prowse* v. *European and American Steam Shipping Co., The "Peerless"* (1860), 13 Moo. P. C. C. 484, 497; *H.M.S. The Topaze* (1864), 2 Mar. L. C. 38. When local regulations are pleaded by one party and not denied by the other, there is no necessity to prove them, especially if the other party relies on them (*Prowse* v. *European and American Steam Shipping Co., The "Peerless," supra*, at p. 506). Navigation rules, even though not emanating from any competent authority, might by long usage of well-recognised practice obtain the force of law (*Imperial Royal Privileged Danubian Steam Navigation Co.* v. *Greek and*

There appears to be no doubt that "local authority" in this article includes authorities in foreign countries (*p*).

694. The article as to distress signals in the Sea Regulations, 1910, is as follows :— Distress signals.

Distress Signals.

Article 31. Article 31.

When a vessel is in distress and requires assistance from other vessels or from the shore, the following shall be the signals to be used or displayed by her, either together or separately, viz. :—

In the daytime—

1. A gun or other explosive signal fired at intervals of about a minute ;
2. The International Code signal of distress indicated by NC ;
3. The distant signal, consisting of a square flag, having either above or below it a ball or anything resembling a ball ;
4. A continuous sounding with any fog-signal apparatus.

At night—

1. A gun or other explosive signal fired at intervals of about a minute ;
2. Flames on the vessel (as from a burning tar-barrel, oil-barrel, &c.) ;
3. Rockets or shells, throwing stars of any colour or description, fired one at a time, at short intervals ;
4. A continuous sounding with any fog-signal apparatus. (1884) (*q*)

695. If the master of a vessel uses or permits any person under his authority to use any of these signals when a vessel is not in distress, he will be liable to pay compensation for any labour undertaken, risk incurred, or loss sustained in consequence of that signal having been supposed to be a signal of distress, and that compensation may be recovered in the same way as salvage (*r*). But this does not give any right of compensation to those who, in response to signals of distress properly used, offer services which are not required (*s*). Exemption from this provision may be obtained in the case of registered private signals (*t*). Abuse of distress signals.

SUB-SECT. 3.—*Local Rules of Navigation.*

696. All vessels navigating in the waters comprised in districts Local navigation rules.

Oriental Steam Navigation Co., The "Smyrna" (1864), 2 Moo. P. C. C. (N. S.) 435 ; and see *The Fyenoord* (1858), Sw. 374, P. C.) ; and such rules, if necessary for the safety of navigation, may constitute exceptions to the Sea Regulations ; see p. 370, *ante*. As to local rules of navigation, see, further, the text, *infra*.

(*p*) See the cases on local rules in foreign waters, p. 480, *post*.

(*q*) This article, which is made under special statutory authority (M. S. Act, 1894, s. 434 (1)), has remained in almost the same terms as when it first appeared as art. 27 of the Sea Regulations, 1884. Previous rules as to signals of distress were contained in the M. S. Act, 1873, Sched. I., which was repealed by the M. S. Act, 1894, Sched. XXII.

(*r*) *Ibid.*, s. 434 (2).

(*s*) *The Elswick Park*, [1904] P. 76.

(*t*) M. S. Act, 1894, s. 733.

SECT. 2. Regulations for Preventing Collisions etc.

for which local rules (*a*) for inland navigation have been made should strictly observe them.

(*a*) Such local rules have been made in the following districts:— *Arundel* (25th April, 1895): *Avon River* (23rd Sept., 1892); see also *Bristol: Balta Sound, Isle of Unst, Shetland* (16th May, 1904): *Barrow Harbour and Docks, and Peel Harbour* (29th March, 1905): *Barry Docks* (8th June, 1891): *Belfast* (6th Nov., 1888): *Berehaven* (12th Aug., 1907): *Berkeley Canal*, see *Gloucester: Blyth Harbour* (6th March, 1889): *Boston, Lincolnshire* (29th Aug., 1853): *Bridgwater Canal*, see *Mersey and Irwell Navigation: Bristol* (29th June, 1896); see also *Avon River: Bristol Docks* (14th Feb., 1876): *Bute Docks, Cardiff* (Oct., 1865; 30th April, 1891): *Caledonian Canal* (rules made under stat. (1803) 43 Geo. 3, c. 102, s. 31; recent additions made 24th July, 1896): *Carron River, Grangemouth Harbour* (23rd May, 1893): *Castle Bay, Island of Barra* (16th May, 1904): *Chatham and Sheerness Dockyards* (29th June, 1888): *Clyde, Firth of* (9th Feb., 1859): *Clyde, River, and Harbour of Glasgow* (6th Aug., 1889): *Cork* (22nd March, 1889); see also *Queenstown: Cowes* (13th June, 1899): *Dartmouth* (27th June, 1887): *Deptford Dockyard* (29th Feb., 1868); see also *Thames: Dover* (23rd June, 1904): *Dublin* (18th March, 1898): *Falmouth Harbour* (5th June, 1871): *Fleetwood-on-Wyre* (30th Sept., 1888): *Foss River Navigation* (27th Aug., 1888): *Fowey Harbour* (7th May, 1900): *Galway* (28th Nov., 1900): *Glasgow, Harbour of*, see *Clyde, River: Gloucester and Berkeley Canal* (17th Sept., 1884): *Grangemouth*, see *Carron River: Holyhead Harbours* (2nd June, 1905): *Humber, Ouse, Trent* (8th Feb., 1890; 19th July, 1910): *Ipswich, River Orwell* (13th April, 1883): *Limerick* (22nd Aug., 1897): *Littlehampton*, see *Arundel: Londonderry, Lough Foyle* (1st Sept., 1858): *Manchester Ship Canal* (5th Aug., 1895): *Medway* (9th Oct., 1896): *Mersey* (17th Sept., 1900): *Mersey and Irwell Navigation* (18th May, 1870): *Milford Haven*, see *Pembroke: Newhaven* (27th Feb., 1895): *Newport* (*Monmouth*) (8th March, 1894): *Newry Navigation* (2nd May, 1859): *Orwell River*, see *Ipswich: Ouse* (*Lower*) (31st July, 1886); see also *Humber, Ouse, Trent: Ouse, Upper Navigation, and River Foss* (6th July, 1885): *Pembroke* (26th Sept., 1891): *Plymouth* (24th Oct., 1904): *Poole* (undated; made under Pier and Harbour Order Confirmation Act, 1891, No. 3 (54 & 55 Vict. c. clix.)): *Portland Harbour* (17th June, 1903): *Portsmouth* (26th Feb., 1897): *Port of Preston* (28th Dec., 1893): *Port Talbot* (3rd Aug., 1898): *Queenstown, Dockyard Port* (10th Aug., 1903); see also *Cork: Runcorn and Weston Canal*, see *Mersey and Irwell Navigation: Ryde* (3rd May, 1882); see also *Cowes: Sharpness New Docks, and Gloucester and Birmingham Navigation* (1900): *Sheerness*, see *Chatham and Medway: Shoreham* (1st Feb., 1877): *Solent Navigation*, see *Cowes and Ryde: Southampton* (29th Nov., 1898): *Suir, River* (*Ireland*) (28th Nov., 1887); see also *Waterford: Sunderland* (7th June, 1906): *Swansea Harbour* (10th Nov., 1856; also Rules by Harbour Master (undated): *Tees* (2nd May, 1887): *Thames* (28th April, 1898): *Trent* (7th March, 1887); see also *Humber and Ouse: Tyne* (15th Nov., 1884): *Warkworth Harbour* (15th June, 1870): *Waterford* (5th Sept., 1870): *Weaver Navigation* (11th Nov., 1896): *Whitby* (5th Aug., 1898): *Windermere* (19th Nov., 1902): *Wisbeach* (14th Feb., 1896): *Woolwich Dockyard* (29th Feb., 1868): *Youghal Port and Harbour* (16th June, 1879). As to the making and alteration of these rules, see note (*o*), p. 478, *ante*. They are constantly changing, but the dates given are those of rules which were recently in force. There are also local rules in force in various foreign waters, including the Bosporus, the Danube, the Suez Canal, and the Inland Waters, the Great Lakes, and the Western Rivers of the United States; see Stuart Moore's Rules of the Road at Sea, 4th ed., where the most important of them will be found. As to breach of a local regulation, constituting negligence, see pp. 506, 507, *post;* as to the application generally of the Sea Regulations, 1910, to waters connected with the sea and navigable by sea-going vessels, see the preliminary article, pp. 373 *et seq.*, *ante;* and as to the Sea Regulations not interfering with local rules, see art. 30, p. 477, *ante*.

The local rules for the particular districts named in the following list have been the subject of judicial decisions in the cases named :—

Bute Docks, Cardiff.—The Red Cross (1907), 10 Asp. M. L. C. 521 (Sea Regulations held inapplicable in the case of a vessel coming out of the Roath Dock basin and colliding in Cardiff Drain with a vessel bound to the East Bute Dock) ; *The St. Audries* (1886), 5 Asp. M. L. C. 552 (a steamship bound for Penarth Dock and carrying the usual docking signal not exempted from obeying the crossing rule of the Sea Regulations).

Clyde River.—Little v. *Burns* (1881), 9 R. (Ct. of Sess.) 118 (Sea Regulations, 1863, applied within the limits to which these bye-laws relate) ; *The "Nerano"* v. *The "Dromedary"* (1895), 22 R. (Ct. of Sess.) 237 (Sea Regulations, 1884, similarly applied).

Cowes.—And see the Solent Navigation Act, 1881 (44 & 45 Vict. c. ccxix.), s. 8 (presumption of fault applies in case of infringement of regulations as to mooring in part of the Solent).

Danube.—As to steamers stopping before rounding points, see *S.S. "Diana"* v. *S.S. "Clieveden," The "Clieveden,"* [1894] A. C. 625, P. C. ; as to vessels keeping to the right bank in fog, see *Russian S.S. "Yourri"* v. *British S.S. "Spearman"* (1885), 10 App. Cas. 276, P. C. ; and as to the validity of certain regulations in 1860, see *Imperial Royal Privileged Danubian Navigation Co.* v. *Greek and Oriental Steam Navigation Co., The "Smyrna"* (1864), 2 Moo. P. C. C. (N. S.) 435.

Humber Rules, art. 2, as to anchor lights ; see *The Magneta* (1890), 15 P. D. 101 (as to height of anchor light). As to waiting before rounding the bend at Whitton Gas Float No. 3 against the tide, see *The Ezardian,* [1911] P. 92. As to the entrance to the Humber between certain buoys being a narrow channel within the Sea Regulations, 1910, art. 25, see *The Ashton,* [1905] P. 21. Presumption of fault for infringement of the Humber Rules existed formerly; see *The Ripon* (1885), 10 P. D. 65 (a steamship under way improperly carrying a white globular light).

Manchester Ship Canal.—As to the Sea Regulations not applying in the canal, see *The Hare,* [1904] P. 331 ; see also *The City of Liverpool* (1912), 29 T. L. R. 139 (good seamanship does not require a vessel in one of the lay-bys to sound her bell in fog). Certain bye-laws made under the Manchester Ship Canal Act, 1885 (48 & 49 Vict. c. clxxxviii.), s. 198, were not confirmed by the Board of Trade.

Medway Bye-laws, 1896.—Art. 43 (c) : "at anchor in the fairway of the river" ; see *The Clutha Boat* 147, [1909] P. 36.

Mersey Rules, 1881.—Art. 4, as to anchor light ; see *The Talbot,* [1891] P. 184 ; *The Hermod* (1890), 6 Asp. M. L. C. 509. Art. 4 (a), as to towing lights ; see *The Devonian,* [1901] P. 221, C. A. Art. 5, as to stern light ; see *The Fire Queen* (1887), 12 P. D. 147. As to the regulation as to anchor lights in the Mersey Collisions Act, 1874 (37 & 38 Vict. c. 52), s. 1 (2) (now repealed), see *The Lady Downshire* (1878), 4 P. D. 26. As to the proper precautions on launching a vessel in the Mersey, see *Ketch Frances (Owners)* v. *Steamship Highland Loch (Owners),* [1912] A. C. 312 ; *The George Roper* (1883), 8 P. D. 119 ; *The Cachapool* (1881), 7 P. D. 217 ; *The Glengarry* (1874), 2 P. D. 235. Presumption of fault for infringement of regulations formerly applied in the Mersey ; see *The Lady Downshire, supra ; The Fire Queen, supra.* As to the port side rule under the Steam Navigation Act, 1851 (14 & 15 Vict. c. 79), s. 27, being applied in the Mersey, see *The Nimrod* (1851), 15 Jur. 1201.

Newport.—As to the Newport (Monmouth) bye-laws, 1894, arts. 12 and 13, and the proper way to enter the harbour, and the application of the Sea Regulations, 1884, art. 16, see *The Winstanley,* [1896] P. 297, C. A.

Ouse.—As to the practice of dredging up stern first with anchor down when proceeding up Goole Reach, see *The Frankfort,* [1910] P. 50, C. A. ; and as to keels drifting up, see *The Ralph Creyke* (1886), 6 Asp. M. L. C. 19.

Suez Canal.—As to the relative duties of vessels going north and south in a certain part of the canal, see *The Clan Cumming,* [1907] P. 311, C. A. ; and as to the liability of the owner of a vessel for negligence of the canal pilot compulsorily taken, as he is merely the adviser of the master, see *The Guy Mannering* (1882), 7 P. D. 132, C. A.

Tees.—The former Tees Rules, arts. 17 and 18, as to keeping to the

SECT. 2. Regulations for Preventing Collisions etc.

starboard side etc., were held to apply even when vessels were approaching so as to show their green lights to each other; see *The Mary Lohden* (1887), 6 Asp. M. L. C. 262, C. A. Art. 22 of these former rules, as to a steamship not being navigated at more than six miles an hour, meant six miles over the ground and not through the water; see *The R. L. Alston* (1882), 8 P. D. 5, C. A. See also *The Peter Benoit* (1914), 30 T. L. R. 277.

Thames.—[N.B. In 1912 a series of new "Port of London River Bye-laws" were deposited with the Board of Trade for confirmation, but have not yet been confirmed.] Thames Rules, 1898: Art. 4 (interpretation clause); *quære*, whether the definition of "master" does not include a pilot compulsorily in charge (*The Umsinga*, [1911] P. 234). Art. 8, as to not navigating within the anchorage ground in Gravesend Reach; see *The City of Delhi* (1887), 6 Asp. M. L. C. 269. Art. 10, as to anchoring in the fairway during fog; see *The Aguadillana* (1889), 6 Asp. M. L. C. 390. Art. 11, as to carrying the anchor stock awash; see *The Six Sisters*, [1900] P. 303. As to earlier rules to the same effect, see *The Monte Rosa*, [1893] P. 23; *The Dunstanborough* (1891), [1892] P. 363, n.; *The J. R. Hinde*, [1892] P. 231; *The Rose of England* (1888), 6 Asp. M. L. C. 304; *The City of Delhi, supra; The Margaret* (1881), 6 P. D. 76, C. A. Art. 14, as to the master remaining on the bridge; see *The Umsinga, supra.* Art. 23, as to towing not more than six vessels; see *Gadney* v. *Rough* (1879), 4 Asp. M. L. C. 73. Art. 27, as to the manning of a lighter; see *Gosling* v. *Newton*, *Gosling* v. *Eagers*, [1895] 1 Q. B. 793; *Goldsmith* v. *Slattery* (1890), 6 Asp. M. L. C. 561. Preliminary article, as to general precautions and lights, see *The John Fenwick* (1872), L. R. 3 A. & E. 500 (neglecting to signal, when lying across river so that regulation lights could not be seen by vessels astern); as to the duty of a vessel to signal when dropping up river stern first, see *The Juno* (1894), 7 Asp. M. L. C. 506; steam vessels going up the Thames are not bound to keep to the north side; see *The Marie Gartz* (1913), 30 T. L. R. 88, C. A., qualifying *The Gere*, [1909] P. 287, and *The Brook* (1913), *Shipping Gazette*, 7th February; compare *The Écossaise* (1883), *Shipping Gazette*, 15th December; and see p. 470, *ante;* as to the duty of a steamship to keep out of the way of a dumb barge driving with the tide, see *The Owen Wallis* (1874), 2 Asp. M. L. C. 206; but see *The St. Aubin*, [1907] P. 60 (collision with unlighted barge attached to a vessel but swinging across fairway at night); *The Swallow* (1877), 3 Asp. M. L. C. 371, C. A. (under a former rule). Art. 29, as to the lights of a sailing vessel under way; see *The Indian Chief* (1888), 14 P. D. 24 (sailing barge dredging down). Art. 30, as to anchor lights; see *The Wega*, [1895] P. 156 (they should be put up as soon as the vessel is held by her anchor). As to the provision as regards the lights for a vessel aground in or near a fairway, and the Sea Regulations, 1910, art. 11, not applying, see *The Bitinia*, [1912] P. 186; *The Carlotta*, [1899] P. 223. As to the want of provision for lights and signals in the case of a vessel temporarily aground, see *The Bromsgrove*, [1912] P. 182. Art. 36, as to fog signals for vessels under way; see *The Juno, supra* (a steamer dropping up the river stern first). Art. 38, as to the fog signal of the bell for vessels in the fairway of the river, and not under way, see *The Blue Bell*, [1895] P. 242 (the fairway includes all that part of the river inshore of the buoys which is navigable for vessels of moderate draught); *The Clutha Boat* 147, [1909] P. 36; see also *The Carlotta, supra* (this article does not apply to a vessel taking the ground whilst proceeding up the river, and remaining fast). The article cannot apply in clear weather (*The Rhein* (1902), 9 Asp. M. L. C. 278). Art. 39, as to whistle signals to intimate course; see *The Harberton*, [1913] P. 149 (a vessel which is backing and filling while turning in the river, having given four short blasts under art. 40, need not give three short blasts when her engines are put full speed astern). Art. 40, as to a steam vessel giving four short blasts when turning round or not under command etc.; see *The New Pelton*, [1891] P. 258 (as regards not giving three short blasts when going full speed astern); *The Harberton, supra.* A vessel temporarily taking the ground is within the article (*The Carlotta, supra;* see also *The Bromsgrove, supra*); and so, also, a vessel throwing herself athwart the river and stopping her way to anchor was within the former rule to the same effect (*The Wega, supra*). A sailing vessel should

SUB-SECT. 4.—*Rules of Good Seamanship.*

(i.) *Scope of Rules.*

SECT. 2. Regulations for Preventing Collisions etc.

Scope of rules.

697. These rules extend over the whole range of conditions in the working of a vessel from the time of launching and getting under way until she returns to her anchorage in port or moorings in a dock; there are special rules of good seamanship for the manœuvring of sailing ships and other vessels, and for cases of fog and heavy weather, and for navigation in rivers and other inland waters.

take reasonable steps to get out of the way of a steam vessel which has been compelled to give the four blasts (*The Longnewton* (1888), 6 Asp. M. L. C. 302). Art. 43, as to no other signals being used than those mentioned; see *The Kennet*, [1912] P. 114. Art. 45, as to a steam vessel keeping out of the way of a sailing vessel; see *The Palatine* (1872), 1 Asp. M. L. C. 468 (a sailing vessel after tacking as close over to the shore as prudent is entitled to go about without warning other vessels of her intention). Art. 46, as to steam vessels when approaching with risk of collision passing port side to port side; see *The Guildhall*, [1908] P. 29, C. A. (the rule was applied when the vessels were approaching green to green in such positions that they would have passed close); *The Odessa* (1882), 4 Asp. M. L. C. 493, C. A.; *The Lady Wodehouse* (1886), 2 T. L. R. 252, C. A. (vessels not likely to meet); see also p. 482, *ante*; and as to the application of art. 47, and this rule, see *The Libra* (1881), 6 P. D. 139, C. A. As to the former crossing rule in the Thames, see *The Oceano* (1887), 3 P. D. 60, C. A.; and as to the application of the crossing rule in the Sea Regulations, 1863, to the windings of the Thames, see under Sea Regulations, 1910, art. 19, pp. 436 *et seq.*, *ante*. Art. 47, as to steam vessels waiting before rounding certain points against the tide; see *The Margaret* (1884), 9 P. D. 47, C. A. (the "point" begins where the vessel having to round would, if nothing were in the way, have to use her steerage power for the purpose of continuing in a proper course, and it ends where the necessity for using that steerage power ceases); S.C., *sub nom. Cayzer* v. *Carron Co.* (1884), 9 App. Cas. 873; *The Ovingdean Grange*, [1902] P. 208, C. A.; *The Ursula Fischer* (1913), 29 T. L. R. 529 (the rule applies to the case of a steamer meeting a sailing vessel); see also *The Libra*, *supra*. Art. 48, as to steam vessels, crossing from one side of the river towards the other, keeping out of the way of vessels going up and down; see *The John Hollway*, [1900] P. 37 (article held not to apply to a steamship turning on one side of mid-channel, though owing to her length some portion of her hull might be at some time while turning across the line of mid-stream); *The River Derwent* (1891), 7 Asp. M. L. C. 37, H. L. (where the steamer in fact moved from one side of the river to the other while turning, and was held to come within the article); *The Schwan* (1889), 6 Asp. M. L. C. 409. Art. 49, as to a steamer slackening speed and stopping and reversing when approaching so as to involve risk of collision; see *The Harton* (1884), 9 P. D. 44. Art. 53, as to one vessel keeping her course and speed when the other has to keep out of the way; see *The Schwan*, *supra*; *The River Derwent*, *supra*.

Tyne.—The Tyne Rules, 1884, art. 18 (c), as to a vessel at anchor ringing her bell in foggy weather; see *The Titan*, *The Rambler* (1906), 10 Asp. M. L. C. 350 (article not applied to a vessel moored at a pontoon connected with the bank). Art. 20, as to a vessel being brought into port to north of mid-channel, and being taken out of port to the south, see *The Harvest* (1886), 11 P. D. 90, C. A. (reasonable room should be left by the incoming steamer for the outgoing one); *The John o' Scott*, [1897] P. 64, C. A.; *The Raithwaite Hall* (1874), 2 Asp. M. L. C. 210 (as to this rule in foggy weather). Arts. 21 and 22, as to crossing vessels keeping out of the way of vessels going up and down; see *The Skipsea*, [1905] P. 32; *The Thetford* (1887), 6 Asp. M. L. C. 179; *The Henry Morton* (1874), 2 Asp. M. L. C. 466, P. C.; see also *The Hand of Providence* (1856), Sw. 107 (no custom for vessels in ballast to come up on the south shore).

SECT. 2. Regulations for Preventing Collisions etc.

(ii.) *Usual Events.*

(a) *Launching a Vessel.*

Launching a vessel.

698. When a vessel is to be launched, those in charge of her are bound to give customary (*b*) or reasonable (*c*) notice thereof, to prevent injury to vessels in the neighbourhood, such as by hoisting flags, by having boats in attendance to warn passing vessels (*d*), by giving written notices, or otherwise. Those in charge are also bound to take customary (*e*) or reasonable (*f*) precautions to prevent injury to other vessels, by keeping a good look-out, by having a tug or tugs in attendance and otherwise. And the burden of proving such notice and such precautions lies on them, even when they are defendants (*g*). But there are obligations also on those in charge of passing vessels to keep out of the way (*h*). A vessel at anchor in the track of a launch is bound to get out of the way, if she has warning and the offer of a tug to move her (*i*); and if she refuses, those in charge of the launch may be justified in risking the chance of injuring her to avoid serious risk to life and property which would result from postponement (*k*).

(b) *Getting under Way.*

Getting under way.

699. It may be exceedingly imprudent to move a large vessel with a tug in a river at night in anything like thick weather (*l*), and an owner is likely to be held liable for a collision if his vessel gets under way unnecessarily in bad weather with other vessels about her (*a*). If a vessel getting under way places herself across a fair-way, she must signal, if necessary, to a vessel which cannot see her regulation lights (*b*).

(c) *Carrying and Dropping Anchor.*

Anchors.

700. A steamship ought to have both anchors ready to let go when navigating in port past other vessels, where the existence of an exceptional current is known to be possible (*c*). But a steamer (*d*) or a sailing vessel (*e*) may be excused for not dropping her anchor

(*b*) *The Vianna* (1858), Sw. 405, 406 (no one is bound to do more in this respect than the custom of the place requires).

(*c*) *The Blenheim* (1846), 2 Wm. Rob. 421 (what is reasonable notice depends on local considerations and other circumstances. Notice of the day is not sufficient; it should state the time more definitely).

(*d*) *The Vianna, supra,* at p. 407; *The George Roper* (1883), 8 P. D. 119 (held a breach of duty for the tug not to warn approaching vessels).

(*e*) Such as having the harbour master present; see *The United States* (1865), 12 L. T. 33, P. C.

(*f*) *The George Roper, supra,* at p. 120.

(*g*) *The Glengarry* (1874), 2 P. D. 235, n.

(*h*) *The United States, supra* (both to blame, the tug for not signalling, and the other vessel for being there negligently).

(*i*) *The Cachapool* (1881), 7 P. D. 217. Even if her anchor is foul and she will incur expense by slipping it; see *Ketch Frances* (*Owners*) v. *Steamship Highland Loch* (*Owners*), [1912] A. C. 312.

(*k*) *Ketch Frances* (*Owners*) v. *Steamship Highland Loch* (*Owners*), *supra.*

(*l*) *The Borussia* (1856), Sw. 94.

(*a*) *The Carrier Dove* (1863), Brown. & Lush. 113, P. C.

(*b*) *The John Fenwick* (1872), L. R. 3 A. & E. 500.

(*c*) *The "City of Peking"* (1888), 14 App. Cas. 40, P. C.

(*d*) *The C. M. Palmer, The Larnax* (1873), 2 Asp. M. L. C. 94, P. C.

(*e*) *The Elizabeth, The Adalia* (1870), 22 L. T. 74; compare *Doward* v.

in time to prevent a collision. And in a river a vessel should carry her anchor, as far as permissible, so as not to expose other vessels to damage by it (*f*). Whether she is under way or moored, her owners will be liable for damage done by the improper projection of the anchor at night (*g*), though not in daytime, if the other vessel could with ordinary care have avoided it (*h*).

(d) *Steering Gear.*

Steering gear.

701. When a steamship has used steam steering gear in crowded waters, she has been held to blame in some instances for not having her hand gear ready in case of a breakdown (*i*).

(e) *Taking Tug Assistance.*

Tug assistance.

702. A ship may be held to blame for manœuvring without taking tug assistance when it is available and reasonably necessary, for example, a steamship getting up her anchors off Dover in a gale without tug assistance (*k*), and a sailing vessel when trying to bring up ahead of another vessel in the Downs after losing one anchor and without using available tug assistance (*l*).

(f) *Officers and Watch on Look-out.*

Officers and watch on look-out.

703. As regards the officer on watch, it is a want of due care for a senior officer to give up charge to a junior officer and go below while his vessel is actually manœuvring for another vessel which is drawing near to her (*m*). To constitute a good look-out on a ship there must be a sufficient number of persons stationed for the purpose, who must know and be able to discharge that duty (*n*). As a rule, except doubtless in the case of very small vessels, there ought to be a look-out forward (*o*) besides the officer on the bridge, even on a fine day (*p*). Sometimes the proper place for the

Lindsay, The "William Lindsay" (1873), L. R. 5 P. C. 338; *The Peerless* (1860), Lush. 30.

(*f*) *The Six Sisters*, [1900] P. 302; and see p. 482, *ante*, under Thames Rules, 1898, art. 11, as to carrying the anchor stock awash.

(*g*) *The Margaret* (1881), 6 P. D. 76, C. A. Or she may be partly to blame if a man ought to have been on the other vessel who would have prevented the damage (*The Scotia* (1890), 6 Asp. M. L. C. 541; *The Dunstanborough*, [1892] P. 363, n.).

(*h*) *The Monte Rosa*, [1893] P. 23 (collision with tug).

(*i*) *The Turret Court* (1900), 69 L. J. (P.) 117; *The Merchant Prince*, [1892] P. 179, C. A.; see other cases as to steering gear, cited in note (*e*), p. 536, *post*.

(*k*) *The Gertor* (1894), 7 Asp. M. L. C. 472.

(*l*) *The Annot Lyle* (1886), 6 Asp. M. L. C. 50, C. A.

(*m*) Compare *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1880), 5 App. Cas. 876, 880, 881, 896, 897; *The Arthur Gordon, The Independence* (1861), Lush. 270, 280, P. C. (ship in tow held in fault for tug being left, while tug-master was at breakfast, in charge of a common sailor, as he was not competent and failed to manœuvre soon enough for another vessel).

(*n*) *The George* (1845), 4 Notes of Cases, 161.

(*o*) Or astern, if the vessel is proceeding stern first (*The Juno* (1894), 7 Asp. M. L. C. 506, 507).

(*p*) Compare *The Glannibanta* (1876), 1 P. D. 283, 290, C. A.; *The Hector* (1883), 52 L. J. (P.) 47, C. A.; *London and Edinburgh Shipping Co.* v. *Eaton, The Iona* (1867), 2 Mar. L. C. 479, 481, P. C.; *Netherlands Steam Boat Co.* v. *Styles, The Batavier* (1854), 9 Moo. P. C. C. 286.

SECT. 2. Regulations for Preventing Collisions etc.

look-out is not forward, but on the bridge (*q*). The crow's nest is a proper place for a look-out on a ship off Beachy Head (*r*). In deciding what is a proper look-out, one must consider the state of the night and the proximity of vessels; the greater the necessity for the look-out owing to thick weather or otherwise, the more vigilant it should be. It is no excuse for a bad look-out to urge that no vigilance could have avoided the other vessel (*s*). In some cases it has been considered that a steamship proceeding at high speed in a thronged thoroughfare (*t*), or in fog (*a*), ought to have a double look-out forward. It is a want of due caution for the look-out forward to be engaged on other duties, such as clearing the anchor (*b*). As regards a look-out astern at sea, there is no necessity as a rule for a ship at night, if she has a fixed stern light (*c*), to look out for ships astern (*d*), but there may be if there is reason to suppose that a vessel so approaching does not see her (*e*). Not having any look-out has been said to be a breach of the Sea Regulations, and it is no excuse that it was immaterial because the vessel had to keep her course (*f*). It is the duty of a ship towing another to keep a look-out for both (*g*), but this does not emancipate the tow from keeping a good look-out, and even a pilot cutter lashed alongside a ship in tow has been held liable for not doing so (*h*). In a river the duty of a look-out as to reporting lights is different from the duty in the open sea; to report every light in a river would mean confusion, but the duty is to watch until a light, which perhaps has been seen before, becomes material, and to report every material light as soon as it becomes material (*i*).

(*q*) Even where a river rule provided for a look-out at the bow, it was said that the proper place for the look-out in the circumstances was on the bridge instead, and that a pilot and two other persons there were a sufficient look-out (*Clyde Navigation Co.* v. *Barclay* (1876), 1 App. Cas. 790, 797, 798).

(*r*) *The Bethania* (unreported) (1910), 1st November, C. A., *per* Lord ALVERSTONE, C.J.

(*s*) *The Mellona* (1847), 3 Wm. Rob. 7, 11, 12, 13 (the duty to keep a good look-out is specially incumbent in hazy weather); *The Nevada* (1872), 1 Asp. M. L. C. 477; *The Milanese* (1883), Pritchard's Admiralty Digest, 3rd ed., p. 222.

(*t*) Compare *The Germania* (1869), 3 Mar. L. C. 269, P. C.; *The Iron Duke* (1846), 4 Notes of Cases, 94, 585, P. C.; *S.S. Londonderry* (*Owners*) v. *Dolbadarn Castle* (*Owners*) (1845), 4 Notes of Cases, Supplement, xxxi.

(*a*) *The Europa* (1850), 14 Jur. 627. As to duty of a look-out in fog to report whistles, see p. 412, *ante*.

(*b*) *The Bold Buccleugh* (1853), Pritchard's Admiralty Digest, 3rd ed., p. 221.

(*c*) See Sea Regulations, 1910, art. 10; pp. 399 *et seq.*, *ante*.

(*d*) *The City of Brooklyn* (1876), 1 P. D. 276, 279, C. A.; compare *The Earl Spencer* (1875), L. R. 4 A. & E. 431.

(*e*) *The Anglo-Indian* (1875), 3 Asp. M. L. C. 1, P. C. And if a vessel is proceeding stern first, there is, of course, a duty to keep a look-out astern; see p. 497, *post*.

(*f*) *The Craigellachie*, [1909] P. 1, 5, dissented from on a different point in *The Grovehurst*, [1910] P. 316, C. A.

(*g*) *The Jane Bacon* (1878), 27 W. R. 35.

(*h*) *The Harvest Home*, [1905] P. 177, C. A. A vessel sailing so close to another as to obstruct her own look-out has been held to blame (*The Zollverein* (1856), Sw. 96, 97).

(*i*) *The Skakkeborg*, [1911] P. 245, n. In river rules it is sometimes prescribed that a master of a small steamer shall stand on the bridge, and in such a case he has been found to blame for bad look-out through not doing so (*The Wirrall* (1848), 3 Wm. Rob. 56, 62, 64).

He is stationed to see what vessels or obstacles are in the channel, and his attention is properly directed to this, and not elsewhere, as, for example, to the blue peter of a vessel in a basin and just coming out (*k*).

(g) *Speed.*

Speed.

704. No rate of speed by steamers or other vessels can be said absolutely to be dangerous, and whether any given rate is dangerous or not must depend on the weather, locality, sea room, and other facts (*l*). Fog or clear, light or dark, no steamer has a right to navigate at such a rate that it is impossible for her to prevent damage by taking all precaution at the moment she sees damage to be possible or probable (*m*); but no rate of speed will be laid down by the court for steamers (*n*). When a steamer's lights are obscured by her own smoke so as to prevent her from seeing or being seen by ships approaching, it is negligence for her to proceed at full speed (*o*).

In case of a fishing ground, even a sailing vessel has been held to blame for crossing the ground at excessive speed (*p*); and steamers which choose to pass through a fleet of fishing vessels ought to regulate their speed so as to be able to keep out of the way of incumbered fishing vessels (*q*).

In a river, steamers must proceed only at a rate compatible with the safety of other vessels; and they have been held to blame for swamping other vessels by their swell (*r*).

(*k*) *Moss* v. *African Steamship Co., The "Calabar"* (1868), L. R. 2 P. C. 238, 242. As to the absence of glasses for the look-out, when they are needed, see *The Hibernia* (1874), 2 Asp. M. L. C. 454, P. C.; and see Lord MERSEY'S Report as regards *The Titanic*, August, 1912. As to having a bargeman on a dumb barge in a river, see pp. 494, 495, *post;* and as to anchor watch, see pp. 489, 490, *post.*

(*l*) *The Europa* (1850), 14 Jur. 627, 630; *The Milan* (1861), Lush. 388.

(*m*) *The Europa* (1851), 5th December, P. C.; Pritchard's Admiralty Digest, 3rd ed., p. 223; see also the passage cited in somewhat similar terms in *The S.S. Pennsylvania* (1874), 2 Asp. M. L. C. 378; and compare *The Europa* (1850), 14 Jur. 627.

(*n*) *The Great Eastern* (1864), 2 Mar. L. C. 97, 100, P. C. Where a rate of speed for steamers is prescribed by bye-law, it means speed over the ground and not through the water (*The R. L. Alston* (1882), 8 P. D. 5, C. A. (decided on the Thames rule)).

(*o*) *The Rona, The Ava* (1873), 2 Asp. M. L. C. 182, P. C. Before lights were prescribed for vessels (compare *The Rose* (1843), 2 Wm. Rob. 1), and later when no light astern had as yet to be shown (compare *The City of Brooklyn* (1876), 1 P. D. 276, C. A.), the speed of steamers was restricted, ten to eleven knots being held excessive in crowded waters. It is no excuse for a vessel going at excessive speed that she is under contract to carry Government mails at a higher speed (see *The Vivid* (1856), Sw. 88; affirmed, *sub nom. Churchward* v. *Palmer, The Vivid*, 10 Moo. P. C. C. 472).

(*p*) *The Pepperell* (1855), Sw. 12.

(*q*) *The Picton*, [1910] P. 46. A speed of nine knots in such a case has been held excessive with a bad look-out (*ibid.*), but not with a good one; see *The Pacific* (1884), 9 P. D. 124; see also *The Margaret* v. *The Tuscar* (1866), 15 L. T. 86; *The Columbus* (1848), Pritchard's Admiralty Digest, 3rd ed., p. 239 (it is the duty of a vessel with a fair wind not to disturb a smack engaged in fishing); *The Rose* (1843), 2 Wm. Rob. 1; *Murphy* v. *Palgreave* (1869), 21 L. T. 209 (a steamer bore down on a yawl boat moored on a fishing ground, and touched her without damage. Three men who jumped overboard, in reasonable fear of their lives, recovered damages).

(*r*) *The Batavier* (1854), 1 Ecc. & Ad. 378, 382; affirmed, *sub nom. Netherlands Steam Boat Co.* v. *Styles, The Batavier*, 9 Moo. P. C. C. 286.

SECT. 2. Regulations for Preventing Collisions etc.

It is the duty of steam vessels by the rules of good seamanship to slacken speed, or stop, or reverse, in order to avoid collision (*s*).

(h) *Keeping Clear of Vessel at Anchor.*

Keeping clear of vessel at anchor.

705. It is the duty of every vessel seeing another at anchor, whether in a proper or improper place, and whether properly or improperly anchored, to take reasonable care to avoid, if practicable and consistent with her own safety, a collision (*t*); and a ship brought up in an exposed position has been held not to contribute to a collision with a ship driving into her (*a*). But it appears that a vessel may be so lying at anchor as to require more than ordinary care to avoid her (*b*). There is a similar duty to keep clear of a sailing vessel which is compelled at the moment to go about (*c*), or of an incumbered fishing vessel (*d*), or of other disabled vessels (*e*); and there is a statutory duty not to run foul of any lightship or buoy (*f*).

(i) *Standing too Close, and Speaking.*

Standing close and speaking.

706. A vessel ought not to stand so close to another in bad weather that if she is struck by a squall there will be a collision (*g*); and if she tries to pass in a narrow space between vessels unnecessarily, she will be to blame for a collision which results from her doing so (*h*).

But where the sinking of a barge was due partly to the swell and partly to her being moored in a very exposed place, she could not formerly recover at common law (see *The Duke of Cornwall* (1862), Pritchard's Admiralty Digest, 3rd ed., p. 226), nor if her sinking was partly due to her being improperly trimmed (compare *Luxford* v. *Large* (1833), 5 C. & P. 421; *Smith* v. *Dobson* (1841), 3 Scott (N. R.), 336). As to damage to barges by steamers, see, further, p. 494, *post*.

(*s*) See the Sea Regulations, 1910, art. 23; p. 454, *ante*.

(*t*) Compare *The Secret* (1872), 1 Asp. M. L. C. 318; *The Batavier* (1845), 2 Wm. Rob. 407; *Girolamo* (1834), 3 Hag. Adm. 169, 173; *The Duna* (1860), 5 Ir. Jur. (N. S.) 384; *The Anne* (1860), 5 Ir. Jur. (N. S.) 360. As to defences of compulsory pilotage or otherwise, compare *The Lochlibo* (1850), 3 Wm. Rob. 310, 319; *The Batavier, supra*). As to the burden of proof in such cases, see pp. 500, 501, *post*.

(*a*) *The Despatch* (1860), Lush. 98, P. C.

(*b*) *The Telegraph, Valentine* v. *Cleugh* (1854), 1 Ecc. & Ad. 427, 429; compare *The Bothnia* (1860), Lush. 52. And in various American cases the vessel at anchor has been held in such circumstances to have caused or contributed to the collision; see *United States* v. *St. Louis and Mississippi Valley Transportation Co.* (1902), 184 United States Reports, 247; *The Clara* (1880), 12 Otto, 200; *The Scioto* (1847), Daveis, 359; *Strout* v. *Foster* (1843), 1 Howard, 89.

(*c*) *The Priscilla* (1870), L. R. 3 A. & E. 125; compare *Chadwick* v. *City of Dublin Steam Packet Co.* (1856), 6 E. & B. 771.

(*d*) See under Sea Regulations, 1910, art. 9; pp. 396, 397, *ante*.

(*e*) As to the duty to keep clear of a vessel in stays, see *The Sea Nymph* (1860), Lush. 23; and as to the duty of a vessel either not to throw herself in stays (see *The Allan* v. *The Flora* (1866), 2 Mar. L. C. 386), or if in stays to get under command as quickly as possible, see *Wilson* v. *Canada Shipping Co.* (1877), 2 App. Cas. 389, P. C.; *The Kingston-by-Sea* (1850), 3 Wm. Rob. 152; *The Calcutta* (1869), 3 Mar. L. C. 336. In such cases a collision has sometimes been held accidental (*The John Buddle* (1847), 5 Notes of Cases, 387; *The Thornley* (1843), 7 Jur. 659). As to a vessel which is disabled being excused for departure from the Sea Regulations, see p. 369, *ante*.

(*f*) M. S. Act, 1894, s. 666.

(*g*) *The Globe* (1848), 6 Notes of Cases, 275.

(*h*) *The Schwalbe* (1861), Lush. 239.

A ship which approaches another to speak to her does so at her own risk (*i*); and a vessel ought not to run alongside another for this purpose while running before the wind (*k*).

(j) *Coming to Anchor, and Foul Berth.*

Coming to anchor, and foul berth.

707. A vessel intending to come to anchor ought to make preparations (*l*), choosing her time (*m*) and easing her speed (*n*), and ought to see carefully that all is clear around her (*o*); and in a river should round to against the strength of the tide (*p*), and give any necessary warning before putting herself across the line of navigation (*q*).

When one vessel anchors near another, there should be sufficient space left for swinging to the anchor, so that in ordinary circumstances the two vessels cannot come together; and a berth such that sufficient space is not left is a foul berth (*r*). It is improper to anchor directly ahead or directly astern of another vessel, in the direction of the tides or prevailing winds, unless at so great a distance as will allow time for either vessel to take measures to avoid collision in the event of either driving from her anchors (*s*). When a vessel has given another a foul berth, she has no right to demand that the other should take extraordinary precautions (*t*), and when the difficulty calls for instant decision, the other may not be to blame for an error of judgment (*a*).

(k) *Anchor Watch.*

Anchor watch and precautions.

708. A vessel at anchor ought to have a competent person on watch to see that the anchor light is duly exhibited, and also do everything in his power to avert or minimise a collision (*b*).

(*i*) *H.M.S. Bellerophon* (1875), 3 Asp. M. L. C. 58, P. C.

(*k*) *The Thames* (1805), 5 Ch. Rob. 345.

(*l*) If necessary, by getting tug assistance; see p. 485, *ante*.

(*m*) Compare *Bibby* v. *Boissevain, The "Egyptian"* (1863), 1 Moo. P. C. C. (N. S.) 373 (delaying to bring up till night instead of doing so safely in daytime).

(*n*) Compare *The Ceres* (1857), Sw. 250, 252. A sailing vessel should shorten sail in time before bringing up near other vessels; compare *Neptune the Second* (1814), 1 Dods. 467; *The Secret* (1872), 1 Asp. M. L. C. 318.

(*o*) *The Ceres, supra; The Annot Lyle* (1886), 6 Asp. M. L. C. 50, C. A. On grounds where drift-net fishing is going on, fishing boats are forbidden to anchor (Sea Fisheries Act, 1883 (46 & 47 Vict. c. 22), Sched. I., art. 14).

(*p*) *The Shannon* (1842), 1 Wm. Rob. 463, 471.

(*q*) *The Queen Victoria* (1891), 7 Asp. M. L. C. 9, C. A.; *The Philotaxe* (1877), 3 Asp. M. L. C. 512.

(*r*) *The "Northampton"* (1853), 1 Ecc. & Ad. 152, 160; compare *The Woburn Abbey* (1869), 3 Mar. L. C. 240 (foul berth, though collision not for some days); *The Innisfail, The Secret* (1876), 3 Asp. M. L. C. 337 (foul berth and hurricane; inevitable accident).

(*s*) *The Cumberland* (1836), Stuart's Vice-Admiralty Court Cases, Lower Canada, 75, 79. A vessel has been held to blame for coming to anchor in a bay during bad weather two cables ahead of another (*The Volcano* (1844), 2 Wm. Rob. 337). But a cable's length was held a clear berth in the Mersey (*The Princeton* (1878), 3 P. D. 90).

(*t*) *The Vivid* (1873), 1 Asp. M. L. C. 601.

(*a*) *"Mary" Tug Co.* v. *British India Steam Navigation Co., The "Meanatchy,"* [1897] A. C. 351, P. C.

(*b*) *Ibid.*; *Lack* v. *Seward* (1829), 4 C. & P. 106; *Vanderplank* v. *Miller*

SECT. 2. Regulations for Preventing Collisions etc.

She must take proper precautions to prevent driving in heavy weather (*c*). It may be her duty to shift her berth (*d*), or to slip and put to sea (*e*). A vessel coming last to a tier has been held in fault for not hauling out from it in bad weather, that being the only means of avoiding damage to a vessel alongside (*f*). And when one vessel is lying on shore or in dock, and a second vessel is voluntarily placed where damage will happen if some probable event arises which it is not possible to control, the owners of the second vessel will be responsible (*g*). So the owners will be liable if a vessel moors where she will take the ground and heel over and damage another vessel (*h*).

(iii.) *Special Vessels.*

(a) *Tug and Tow.*

Tug and tow.

709. When one vessel is in tow of another, the tug and tow owe certain duties towards each other and other vessels to prevent a collision. When the tug controls the navigation, and her master and crew are not the servants of the owners of the tow (*i*), as is usual when a tug is towing barges in a river, the duty of those on board the tow towards the tug appears to be substantially confined to following her manœuvres (*k*), and the tow is entitled to act on the

(1828), Mood. & M. 169. Two persons have been considered sufficient look-out for an anchor watch (*The Christiana* (1849), 7 Notes of Cases, 2, 6). A ship moored to buoys in the Tyne was held to blame for not having an anchor watch (*The Pladda* (1876), 2 P. D. 34, 39). A single watchman may suffice for a ship in a dock (*The Excelsior* (1868), L. R. 2 A. & E. 268, 271).

(*c*) A single anchor may suffice for a vessel intending to stop for only one tide (*The Gipsey King* (1847), 2 Wm. Rob. 537); but not in a gale (*The Maggie Armstrong* v. *The Blue Bell* (1865), 2 Mar. L. C. 318). As to mooring appliances, persons who give the use of them for value warrant their fitness (*Allen* v. *Quebec Warehouse Co.* (1886), 12 App. Cas. 101, P. C.), and port authorities which permit their use treat them as sufficient (*Doward* v. *Lindsay, The "William Lindsay"* (1873), L. R. 5 P. C. 338, 343). As regards anchor chain, sixty fathoms were found an improperly short cable for a vessel of 1,489 tons in the Mersey in a strong wind and tide (*The City of Cambridge* (1874), L. R. 4 A. & E. 161; affirmed, *sub nom. Wood* v. *Smith, The "City of Cambridge,"* L. R. 5 P. C. 451); compare *The Peerless* (1860), Lush. 30 (catching of cable on windlass an inevitable accident). A ship has been held to blame for not getting a rope fast, when necessary, to a pier-head 800 feet off (*The Lyn* (1883), Pritchard's Admiralty Digest, 3rd ed., p. 291); and for not striking her top gear and yards (*The Ruby Queen* (1861), Lush. 266; *The Excelsior* (1868), L. R. 2 A. & E. 268). As to inevitable accident, see, further, pp. 535, 536, *post.*

(*d*) *The Woburn Abbey* (1869), 3 Mar. L. C. 240.

(*e*) *The Uhla* (1867), 19 L. T. 89.

(*f*) *The Patriotto* v. *The Rival* (1860), 2 L. T. 301.

(*g*) *The Lidskjalf* (1856), Sw. 117, 119; *The Jacob* (1860), 5 Ir. Jur. (N. S.) 379.

(*h*) *The Jacob, supra; The Indian* v. *The Jessie* (1865), 2 Mar. L. C. 217 (damage to barge); *The Western Belle* (1906), 10 Asp. M. L. C. 279 (damage to moorings); but see *Dalton* v. *Denton* (1857), 1 C. B. (N. S.) 672.

(*i*) As to when the tug or tow takes control, and as to the liabilities of the tug and tow towards one another and third parties, see, further, pp. 357, 358, 529, *post.*

(*k*) *The Jane Bacon* (1878), 27 W. R. 35; *The Marmion* (1913), 29 T. L. R. 646 (when tug sounding regulation whistles tow need not sound her whistle).

belief that the tug will be reasonably well navigated (*l*). But in the case of a ship in tow of a tug at sea or in a river (*m*), whether by night or day, as a rule the tow controls the navigation in order to avoid a divided command, and because the pilot, if there be one, takes his station on the tow, and the officers of the tow are usually of a higher class and better able to direct the navigation than those of the tug (*n*). The rule is subject to exception (*o*), and it is a question of fact as to whether the master of the tug has undertaken the management of the tug and tow (*p*). In the ordinary case of a ship in tow the general direction is to be given by those on the tow, but she is not constantly to interfere, and those in charge of the tug must use their judgment and not constantly expect orders from the tow (*q*). At night a ship in tow is liable for the wrong lights of a tug over which she has reasonable control, and which is attached to her for the purpose of towing (*r*). But when a tug controls the navigation, for instance when towing a barge in a river, blame for breach by the tug of sailing regulations cannot be affixed to the tow (*s*). The tug contracts to obey the orders of the tow (*t*). When there is a pilot on the tow, he is bound to give the tug proper directions and the tug is bound to obey them (*a*). If the tug does not get orders, she is responsible for the direction of the course (*b*). It is the duty of those on the tow (*c*) to check the tug, and of those on the tug (*d*) to warn the tow, if they know that the course which is set is dangerous. It is in general the duty of the tow to follow all the tug's manœuvres (*e*), and when other vessels are likely to be met to have the means ready of slipping or cutting the rope (*f*).

(*l*) *Lightship Comet* (*Owners*) v. *The W. H. No.* 1 (*Owners*), *The W. H. No.* 1 *and The Knight Errant*, [1911] A. C. 30.

(*m*) *The Isca* (1886), 12 P. D. 34, 35.

(*n*) *The Niobe* (1888), 13 P. D. 55, 59.

(*o*) *Union Steamship Co.* v. "*Aracan*" (*Owners*), *The* "*American*" *and The* "*Syria*" (1874), L. R. 6 P. C. 127.

(*p*) *The Isca, supra.* As to a ship in tow at night with a long hawser not directing the movements of the tug, see *The Stormcock* (1885), 5 Asp. M. L. C. 470. The legal relationship of master and servant arising from a towage contract is not material to the question as regards third parties whether either or both tug and tow are to blame for a collision between the tow and a third vessel (*The W. H. No.* 1 *and The Knight Errant*, [1910] P. 199, C. A.).

(*q*) *The Isca, supra.*

(*r*) *The Devonian*, [1901] P. 221, C. A.

(*s*) *S.S. Devonshire* (*Owners*) v. *Barge Leslie* (*Owners*), [1912] A. C. 634; *The W. H. No.* 1 *and The Knight Errant, supra.*

(*t*) *The Mary* (1879). 5 P. D. 16.

(*a*) *The Energy* (1870), L. R. 3 A. & E. 48 (order to try to slip the tow-rope); *Spaight* v. *Tedcastle* (1881), 6 App. Cas. 217; *Smith* v. *St. Lawrence Tow-Boat Co.* (1873), L. R. 5 P. C. 308 (order to stop in fog); *The Duke of Sussex* (1841), 1 Wm. Rob. 270; *The Christina* (1848), 3 Wm. Rob. 27.

(*b*) *The Altair*, [1897] P. 105, 115; *The Robert Dixon* (1879), 5 P. D. 54, 58, C. A.

(*c*) *The Altair, supra*, at p. 116.

(*d*) *Shersby* v. *Hibbert, The Duke of Manchester* (1847), 5 Notes of Cases, 470, P. C.

(*e*) *The Jane Bacon* (1878), 27 W. R. 35.

(*f*) *Ibid.* As to the tug casting off the tow, compare *The Annapolis, The Golden Light, The H. M. Hayes* (1861), Lush. 355, P. C. As to two

SECT. 2. Regulations for Preventing Collisions etc.

Tug and tow manœuvring for other vessels.

710. As regards manœuvring for other vessels, many of the ordinary obligations of a steamer are shared by a tug and her tow, because to a great extent they partake of the nature of a steamer (*g*). A tug has been held bound to stop her engines enough to let the way run off the tow, on hearing in fog the fog signal of a vessel under conditions in which an ordinary steamer ought to stop her engines (*h*). On the other hand, when it would have been the duty of an ordinary steamer to stop her engines on approaching another vessel so as to involve risk of collision, a tug with a ship in tow has been held excused for not stopping them when she was going extremely slowly (*i*). A tug with a vessel in tow is bound to keep out of the way of a sailing vessel (*k*), but allowances should be made for the comparatively disabled condition of the tug as an incumbered steamer, and a duty of additional caution is imposed on the sailing vessel approaching her (*l*).

(b) *Sailing Vessels.*

Sailing vessels.

711. As regards sailing vessels (*m*), one general rule is that when a ship is in stays or in the act of going about, she becomes for the time being unmanageable, and in this case it is the duty of a vessel which ought otherwise to have kept her course to execute any practical manœuvre which would prevent collision (*n*); but when a ship goes about very near to another, and without giving any preparatory indication from which that other can be warned in

vessels being in tow of a tug, and one being damaged by the grounding of the other without fault of the tug, see *Harris* v. *Anderson* (1863), 14 C. B. (N. S.) 499; as to contract of towage, see also p. 528, *post*.

(*g*) *The Lord Bangor*, [1896] P. 28, 33; *The Knarwater* (1894), 63 L. J. (ADM.) 65.

(*h*) *The Challenge and Duc D'Aumale*, [1905] P. 198, C. A.; compare Sea Regulations, 1910, art. 16; pp. 414, 415, *ante*.

(*i*) *The Lord Bangor*, [1896] P. 28.

(*k*) *The Warrior* (1872), L. R. 3 A. & E. 553.

(*l*) *Union Steamship Co.* v. "*Aracan*" (*Owners*), *The* "*American*" *and The* "*Syria*" (1874), L. R. 6 P. C. 127, 131. A steamer with a ship in tow is under the control of and has to consider the ship to which she is attached, and of which she may for many purposes be considered as a part, the motive power being in the steamer and the governing power in the ship towed. She cannot by stopping or reversing her engines at once stop or back the tow. She cannot at once, and with the same rapidity, by slipping aside out of the way of another vessel draw the tow out of the way. She may have a long hawser, and the movement which sends the tug out of danger may draw the tow into it. The vessel in tow may be a log upon the water, only moving in the direction in which she is drawn; see *Maddox* v. *Fisher*, *The Independence* (1861), 14 Moo. P. C. C. 103, 115, 116; *The Cleadon* (1860), Lush. 158, P. C. Whether such a steamer is to be considered under the same obligation as an ordinary steamer depends upon the state of the wind and weather, the course of the steamer, and the nature of the impediments in her course (*The Kingston-by-Sea* (1850), 3 Wm. Rob. 152, 154; compare *The La Plata* (1857), Sw. 298, P. C. (where it was held that a small vessel in tow of a tug in a river should get out of the way of a large ship in tow).

(*m*) As to the chief rules of navigation for sailing vessels, see Sea Regulations, 1910, art. 17; p. 425, *ante*.

(*n*) *Wilson* v. *Canada Shipping Co.* (1877), 2 App. Cas. 389, P. C.; *The Ida* v. *The Wasa of Nicolaistadt* (1866), 15 L. T. 103.

time to prepare to give room, the damage may arise from the fault of those in charge of the ship going about at such improper time or place (*o*). When a vessel, which ought to keep out of the way of another, has thrown herself into stays, she ought still to take any reasonable steps to avoid collision (*p*). When a sailing vessel beating up a river has gone as near one shore as she can safely go so as to avoid collision with vessels at anchor, she is entitled to go about without warning to other vessels, and it is the duty of a steamer coming up astern to know from her position and the state of her sails that she is going about, and to keep out of her way (*q*). It is the duty of a sailing vessel following another to go about where the leading vessel is compelled to go about (*r*).

A sailing vessel is entitled to wear instead of staying, but ought not to resort to the extraordinary operation of wearing unless she is sure she has room to do so safely (*s*).

A vessel sailing free ought to get out of the way of a sailing vessel lying-to (*t*). A vessel hove-to should exercise more than ordinary care not to obstruct navigation (*u*); heaving-to in the track of ships and lying with helm lashed a-lee may be negligence (*x*).

In manœuvring for other vessels, it is the duty of a sailing vessel to use her sails to assist her helm, when necessary (*a*).

(c) *Dangerous Vessels.*

Dangerous vessels.

712. If there is on a ship a latent instrument of danger, for instance a ram on a warship, those who have the control are bound to take all reasonable precautions that it shall not cause damage to other vessels; but the obligation to give notice is dependent on

(*o*) *The Leonidas* (1841), Stuart's Vice-Admiralty Court Cases, Lower Canada, 226, 229; *The Allan* v. *The Flora* (1866), 2 Mar. L. C. 386 (duty of a vessel to take a proper survey of the sea immediately surrounding her before going into stays); *The Sea Nymph* (1860), Lush. 23 (burden of proof, first, on vessel to show that she is in stays, which is almost the same as at anchor, and then, on the other vessel to show that the first vessel was improperly in stays or otherwise); *The Mobile* (1856), Sw. 69, 127, P. C.

(*p*) *Wilson* v. *Canada Shipping Co.* (1877), 2 App. Cas. 389, P. C. (by getting sternway on her); *The Kingston-by Sea* (1850), 3 Wm. Rob. 152, 158 (through making her pay off before the wind, by squaring the mainyard).

(*q*) *The Palatine* (1872), 1 Asp. M. L. C. 468. But the vessel in stays, when the state of her canvas is not visible to the other vessel, should warn the other vessel in sufficient time (*Wilson* v. *Canada Shipping Co.*, *supra*).

(*r*) *The Priscilla* (1870), L. R. 3 A. & E. 125; compare *The Annie*, [1909] P. 176, 179. As to not standing too close in a time of squalls, compare *The Plato* v. *The Perseverance* (1865), Holt (ADM.), 262.

(*s*) *The Falkland, The Navigator* (1863), Brown. & Lush. 204, P. C.

(*t*) *The Eleanor* v. *The Alma* (1865), 2 Mar. L. C. 240.

(*u*) *Ibid.*

(*x*) *The Attila* (1879), 5 Quebec Law Reports, 340.

(*a*) *The Marpesia* (1872), L. R. 4 P. C. 212 (assist helm by hauling in head-sheets and letting go lee braces, if there is time); *The Ulster* (1862), 1 Mar. L. C. 234, P. C. (duty of schooner to run up her outer jib to assist in turning her head); *The Lady Anne* (1850), 15 Jur. 18; *The James* (1856), Sw. 55, 60, P. C.

SECT. 2. Regulations for Preventing Collisions etc.

having a reasonable opportunity of giving it, and there is no obligation to give it unless there is a reasonable probability of danger to the other vessel from want of it (*b*).

(d) *Small Vessels.*

Small vessels.

713. In the case of a large ship in tow in a river close over to her right side, and a small vessel also in tow but on her wrong side, it was stated that it is the duty of small vessels to keep out of the way of large ships in time (*c*); and where there is no custom or rule to the contrary, it may well be that a small vessel should take into account such a consideration, for instance, as regards increasing her speed, or choosing the moment for a necessary alteration in her course.

(e) *Dumb Barges.*

Dumb barges.

714. A dumb barge (*d*) in the Thames, in the absence of any rule of the road, regulation or custom to prevent it, may navigate as hitherto on either side of the river (*e*), and in the deep water, although she thereby obstructs larger vessels, having as much right as they to the advantage of a swift stream (*f*). There is no duty imposed by statute on a dumb barge to get out of the way of a steamer; on the contrary, it is the steamer's duty to keep out of her way (*g*). And as a dumb barge carries no anchor and has no means of bringing up, she is entitled to go on in a fog until she comes in contact with something to which she can make fast (*h*). A dumb barge drifting on the tide was not formerly bound by the Sea Regulations to carry a light (*i*); and when there was no local rule for her to show a light, and if she did not do so, a collision between the barge and a steamer on a dark night afforded no presumption of negligence against the steamer, and was an inevitable accident, unless negligence was proved (*k*). But if the Sea Regulations, 1910, article 5, applies to her, because she is lashed alongside a tug, she is bound to carry the proper lights (*l*). Whether a barge when not under way ought to have a man in charge of her depends on circumstances. One important point to be considered is whether it is usual in the

(*b*) *H.M.S. Bellerophon* (1875), 3 Asp. M. L. C. 58.

(*c*) *The La Plata* (1857), Sw. 298, P. C., in which case it was so stated by the nautical assessors and approved by the Privy Council.

(*d*) A dumb barge is a barge without sails or helm; compare *Aktieselkab Helios* v. *Ekman & Co.*, [1897] 2 Q. B. 83, 87, C. A. (it is a barge which, with the exception of two small cabins at the ends of the barge, one for stowing the tackle of the barge and the other for the use of the bargeman, is altogether undecked and open for the reception of cargo).

(*e*) *The Owen Wallis* (1874), L. R. 4 A. & E. 175, 177.

(*f*) *The Ralph Creyke* (1886), 6 Asp. M. L. C. 19. And there is nothing negligent in one keel driving up river on the flood tide lashed to another keel, they together taking up no more room than a steamship (*ibid.*).

(*g*) *The Owen Wallis, supra,* at p. 177. As to damage to barges by the swell of steamers, see p. 487, *ante.*

(*h*) *The Rose of England* (1888), 6 Asp. M. L. C. 304.

(*i*) *The Owen Wallis* (1874), L. R. 4 A. & E. 175; but see now, as to vessels under oars, Sea Regulations, 1910, art. 7.

(*k*) *The Swallow* (1877), 3 Asp. M. L. C. 371, C. A.

(*l*) *The Lighter No.* 3 (1902), 18 T. L. R. 322.

circumstances to have a man in charge (*m*); but that is not conclusive (*n*). The principle of the cases as regards barges, even when in dock, has been that it is negligence not to have a man in charge if there are dangers likely to be incurred which he could prevent, and which are so obvious that they ought to be prevented. The same principle applies wherever a barge is situated, whenever someone should be there on account of the run of the river or exposure of the barge (*o*).

(iv.) *Special Weather.*

Special weather.

715. In addition to the rules of good seamanship in fog (*p*), a vessel may be to blame for neglecting such precautions as good seamanship dictates to guard against dangers arising from special weather. Thus a steamship with three hands on board, which broke from her moorings in a gale, has been held to blame for not having her anchor ready to let go, and for her master and more of her crew not being on board (*q*); and a steamship, properly moored but dashed into by another vessel in heavy weather and broken adrift, was held to blame for collision with a third vessel, among other reasons, for having her chains improperly unbent from her anchors, so that no anchor could be let go (*r*). The master of a vessel has been held in fault for not having a sufficient crew on board in heavy weather to protect his ship against the ordinary incidents of peril which a competent seaman would guard against (*s*).

(*m*) *The Western Belle* (1906), 10 Asp. M. L. C. 279 (absence of man not negligence).

(*n*) *The Scotia* (1890), 6 Asp. M. L. C. 541.

(*o*) *The Western Belle, supra.* A dumb barge at night with her head fast to another barge at a tier is in fault for swinging athwart the fair-way of a river with no one on board to show a light or warn approaching vessels (*The St. Aubin*, [1907] P. 60 (barge alone to blame)). When a barge was fast by her head rope in dock, with her stern swinging out as an obstacle, but there was plenty of light, and a tug coming down the dock struck her, the absence of a bargeman was held to have nothing to do with the collision (*The Hornet*, [1892] P. 361). And where a barge was moored in barge roads and out of the track, and it was not usual to have a man on board, his absence was held not to be negligence, although if on board he might have averted the damage (*The Western Belle, supra*). But where a steamer and barge were moored in dock at night, and the steamer got under way and her propeller struck the barge, and a bargeman would have avoided the accident, his absence was held to be negligence contributing to the collision, although it was not usual to have a man on a barge in dock; see *The Scotia* (1890), 6 Asp. M. L. C. 541; compare *The Dunstanborough* (1891), [1892] P. 363, n. (absence negligent); *Lack* v. *Seward* (1829), 4 C. &. P. 106 (if the plaintiff's men put the barge in such a place that persons using ordinary care would run against it, the defendant is not liable at common law, nor is he liable if the accident would have been avoided but for the negligence of the men in not being on board the barge when it was lying in a dangerous place).

(*p*) As to which, see Sea Regulations, 1910, arts. 15, 16; pp. 410, 417 *et seq.*, *ante*.

(*q*) *The Kepler* (1875), 2 P. D. 40, n., in which case the steamship was moored in a place which required every precaution, and there was a bye-law requiring her not to be left without a responsible person on board.

(*r*) *The Pladda* (1876), 2 P. D. 34.

(*s*) *The Excelsior* (1868), L. R. 2 A. & E. 268, 272. As to vessels in heavy weather, see, further, p. 490, *ante*, p. 536, *post*.

SECT. 2. Regulations for Preventing Collisions etc.

(v.) *Navigation in Rivers and Narrow Waters.*

(a) *Tide and Current.*

Tide and current.

716. When an exceptional current or tide occurs at a place at distant intervals, but may occur at any time, a cautious mariner is bound to keep in view its possibility and be prepared for it, and if those in charge of a vessel are caught unprepared by such a current because they think there is no probability of it, they will be in fault (*t*). Where an eddy noted in the charts prevented a vessel's port helm from acting, so that a collision occurred, but the necessity for port helm arose from the other vessel proceeding along the wrong side of a channel and suddenly coming out, when the first vessel had a right to expect that the coast would be clear, the first vessel was held not to blame (*u*).

(b) *Waiting at Bend.*

Waiting at bend.

717. In a tidal river where there is a strong bend, a steam vessel having the tide against her should ease her engines and wait under the point until another vessel coming with the tide has cleared her (*a*); and where a steamship coming up with the tide failed to answer her helm at a sharp and dangerous bend in the river owing to the eddy, another steamship coming down against the tide was held to blame for the collision, owing to her not having waited for the first vessel to clear the bend (*b*). A steamship proceeding down a difficult reach in a river against the flood tide on a night not very clear ought to navigate with great care and great caution, because there being a flood tide vessels will probably be met, and she has a special duty to keep a good look-out (*c*). Sometimes good seamanship requires a steamer to whistle when rounding a bend even with the tide (*d*).

(c) *Dredging Stern First.*

Dredging up stern first.

718. A steamship proceeding up river with a strong flood tide and approaching a bend may be held to blame for not swinging

(*t*) *The "City of Peking"* (1888), 14 App. Cas. 40, P. C. Those who allege an unusual eddy as excusing them should give positive evidence of it; it is not enough to say that a strong eddy must have caught the vessel, otherwise she would have come round (*The Polynésien*, [1910] P. 28, 33).

(*u*) *Scicluna* v. *Stevenson, The "Rhondda"* (1883), 8 App. Cas. 549, P. C.

(*a*) *The Talabot* (1890), 15 P. D. 194 (this rule of good seamanship applied, although there was also a rule that the vessels should pass port to port). See also the cases cited on pp. 482, 483, *ante*, under the Thames Bye-laws, 1898, r. 47. In *The Symrna* (1864), 11 L. T. 74, P. C., it was held that common prudence required that a vessel ascending a river with a strong current should place herself out of the strength of the current, so as to allow full swing to the descending vessels. In *The La Plata* (1857), Sw. 220, 223, Dr. LUSHINGTON appears to have thought that a vessel towing against the tide was responsible to other vessels for any danger which might arise to other vessels greater than if she were towing with it; but this opinion received no support on the appeal, when the decision was reversed ((1857), Sw. 298).

(*b*) *The Ezardian*, [1911] P. 92.

(*c*) *The "Trident"* (1854), 1 Ecc. & Ad. 217, 220, 223.

(*d*) *The Kennet* (1911), 12 Asp. M. L. C. 120; and see under Sea Regulations, 1910, art. 28; pp. 474, 475, *ante*.

round and dredging up stern first, according to local practice, in order to avoid excessive speed (*e*). A vessel proceeding up river stern first at night should exhibit a stern light to down-coming vessels (*f*) and should keep a look-out up river, and, if a steamship, should give some signal, such as a prolonged blast on her whistle, to prevent a mistake by down-coming vessels (*g*). When a keel, with her mast lowered, lashed to another keel, was driving up the deep-water channel of a river on the flood tide, it was held that both keels should have dredged up, so that by keeping the anchor on the ground they could practically steer themselves and by letting the anchor hold could bring themselves to a standstill (*h*).

(d) *Difficulties of Warping, or Smelling the Ground.*

Difficulties of warping, or smelling the ground.

719. If a vessel chooses to use a particular mode of going down river at a time which makes it difficult for her to escape collision, she must bear the consequences of a contingency to which she has exposed herself. Accordingly, when a steamship was warping down river against the flood, it was held to be no excuse that she was incapable of getting out of the way (*i*). When those in charge of a vessel are navigating a river where they know there is a risk of her smelling the ground, they ought, if necessary by occasionally stopping their engines, to keep her so well under control as to be able to avoid collision with other vessels in case she smells the ground and fails to answer her helm (*k*).

(e) *Crossing or Turning in a River.*

Crossing or turning in a river.

720. It is not uncommon to have a bye-law in a river to the effect that a vessel crossing shall keep out of the way of other traffic. Such a rule does not mean that if two vessels come into collision the one which is crossing is to blame (*l*). The whole river belongs to everybody, and nobody has an exclusive occupation of the road. If a vessel is properly endeavouring to get as soon as practicable to the other side of the river, and is doing that in a proper way, she is merely making a legitimate use of the river (*m*). The crossing vessel may cross if there is time and opportunity to do so without hampering another vessel, and the other vessel which sees a vessel about to cross must act reasonably with regard to her, and if she wants a little more room to assist her in crossing must give it. It is a kind of give and take; but the weight of responsibility for the operation at the outset is principally upon the vessel crossing, in that she must see whether she has room to cross.

(*e*) *The Frankfort*, [1910] P. 50, C. A.
(*f*) Compare *The Indian Chief* (1888), 14 P. D. 24.
(*g*) *The Juno* (1894), 7 Asp M. L. C. 506; or three short blasts; see *The Battersea* (1912), *Shipping Gazette*, 14th February.
(*h*) *The Ralph Creyke* (1886), 6 Asp. M. L. C. 19. As to a duty to dredge up river if under way in a dense fog, compare *The Aguadillana* (1889), 6 Asp. M. L. C. 390; and see Sea Regulations, 1910, art. 16; pp. 414 *et seq.*, *ante*.
(*i*) *The Hope* (1843), 2 Wm. Rob. 8.
(*k*) *The Ralph Creyke*, *supra*.
(*l*) *The Thelford* (1887), 6 Asp. M. L. C. 179.
(*m*) *Ibid.*

SECT. 2. Regulations for Preventing Collisions etc.

Where one vessel about to cross is near a second vessel which must act for her if she crosses, those on the first vessel ought to make up their minds at once whether to cross or not and indicate their intention in an unmistakable way (*n*). Similarly a burden is sometimes placed on a vessel turning in a river either not to cause damage to other vessels (*o*) or, if a steamship, to give certain sound signals (*p*), and a vessel has been found in fault for trying to turn round too sharply across the course of another vessel in the Bosphorus (*q*).

(f) *Anchoring or Aground in Fair-way.*

Anchoring in fair-way.

721. A vessel is justified in anchoring in the fair-way of a river if overtaken by a dense fog, but those in charge ought to move her as soon as they reasonably can (*r*). When a vessel is compelled by damage from collision through no fault of hers to drop her anchor, it is not negligent to drop it in the fair-way in what would otherwise have been an improper place (*s*). It is not necessarily unlawful in fine weather to anchor in a river in the track of a ferryboat (*t*).

Aground in fair-way.

722. Apart from any regulations, those in charge of a vessel aground at night in the fair-way of a navigable channel are bound to take proper means to apprise other vessels of her position (*a*). A vessel in a fog which neglected to give prescribed signals by ringing the bell was held partly in fault for the collision, though the other vessel had no right to be under way (*b*).

(g) *Incoming Vessel to Wait for Outgoing.*

Incoming vessel to wait for outgoing.

723. When two vessels from opposite directions are approaching the entrance to a dock or harbour so as to reach it at about the same time and there is not room for them to pass each other there, it is the universal rule that the incoming vessel should wait to enter until the outgoing vessel has got clear (*c*). When a vessel is

(*n*) *The Skipsea*, [1905] P. 32, 37, 41. As to vessels crossing a river, see, further, the cases on the Thames Rules, 1898, art. 48, and the Tyne Rules, 1884, art. 22, pp. 482. 483, *ante*.

(*o*) Compare Tyne Rules, 1884, art. 22.

(*p*) Compare Thames Rules, 1898, art. 40.

(*q*) *S.S. Chittagong* (*Owners*) v. *S.S. Kostroma* (*Owners*), [1901] A. C. 597, P. C.

(*r*) *The Aguadillana* (1889), 6 Asp. M. L. C. 390, 391.

(*s*) *The Kjobenhavn* (1874), 2 Asp. M. L. C. 213.

(*t*) *The Lancashire* (1874), L. R. 4 A. & E. 198, 200.

(*a*) *The Industrie* (1871), L. R. 3 A. & E. 303, 308 (no light shown); *The Bromsgrove*, [1912] P. 182; compare *The Queen Victoria* (1891), 7 Asp. M. L. C. 9, C. A. (a steamship in the Firth of Clyde suddenly stopping to anchor ought to signal by whistle to vessels approaching from astern, though she is carrying a stern light).

(*b*) *The Clutha Boat* 147, [1909] P. 36, 42; *The Blue Bell*, [1895] P. 242; and see Thames Rules, 1898, art. 38.

(*c*) *Taylor* v. *Burger* (1898), 8 Asp. M. L. C. 364, H. L.; compare *The Henry Morton* (1874), 2 Asp. M. L. C. 466, 467, P. C., where the judge of the Admiralty Court held that it was the duty of a steamship by the common rules of navigation, having the tide assisting her, to stop to allow another vessel to come out of dock; and it was held in the Privy Council to be her duty to stop or go under the stern of such vessel.

coming out of dock to turn up or down river, another vessel is entitled to take for granted that she will resort to all the means proper for the purpose; and if a vessel, for instance, by not running up her jib fails to take such means, and so causes a collision, she is to blame for it (*d*).

(h) *Obeying Orders of Dock Master or Harbour Master.*

Orders of dock master or harbour master.

724. It is the duty of a harbour master or dock master to consider the interests of all the shipping under his care, and he is entitled to order a vessel to move from her berth if a second vessel, which is disabled, absolutely requires the protection of this berth, while the first vessel can with care do without it, even if in the interests of the first vessel alone the order to move would be injudicious (*e*). A dock master has authority to give directions to a vessel which is coming into dock (*f*), and to order a ship to leave the premises of the dock authority (*g*). The primary duty of those in charge of a vessel is obedience to the dock master's orders; it is not their duty in any doubtful case to consider whether the order is right or wrong. But if it is certain that a disaster will happen by obeying an order, then and then only it ought to be disobeyed (*h*).

SECT. 3.—*Negligence Causing Damage; and the Rule of Division of Damage or Loss in Proportion to Fault.*

SUB-SECT. 1.—*Negligence Causing Damage by Collision between Vessels: Preliminary Rules as regards Negligence.*

(i.) *Negligence must Cause Collision and Damage.*

Cause of action.

725. The ordinary case of negligence causing damage by collision is that of one vessel coming into collision with another

(*d*) *Laird* v. *Brownlie, The "Ulster"* (1862), 1 Moo. P. C. C. (N. S.) 31, 41; compare *The Mourne*, [1901] P. 68, where the vessel coming out under a starboard helm was held not bound to give the starboard helm signal, nor to stop her engines, on seeing the other vessel; *The Sunlight*, [1904] P. 100, where the outcoming vessel was held in fault while in the half-tide lock for not seeing the lights of the vessels in the river and for not easing her engines and starboarding; *Richelieu and Ontario Navigation Co.* v. *Taylor*, [1910] A. C. 174, P. C. (when there is a regulation as to a vessel lying off at a specified distance, if there are several vessels waiting to enter, this is intended to preserve order among those competing for entrance, and is not intended to excuse the erratic and dangerous movements of another vessel).

(*e*) *The Excelsior* (1868), L. R. 2 A. & E. 268. In such a case the master of the vessel ought to move her, and may be in fault if he has not sufficient crew on board to protect his vessel against ordinary perils (*ibid.*).

(*f*) *Reney* v. *Kirkcudbright Magistrates*, [1892] A. C. 264, 269; and see Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), ss. 52, 53; pp. 640, 641, *post*.

(*g*) *The Sunlight*, [1904] P. 100, 112.

(*h*) *Taylor* v. *Burger* (1898), 8 Asp. M. L. C. 364, 365, H. L. When a signal was given for a sailing vessel to enter a narrow channel leading to a dock, a tug was held to blame for entering the channel to pick up a buoy and thereby obstructing the sailing vessel and causing a collision (*The Effort* (1847), 5 Notes of Cases, 279).

SECT. 3. Negligence Causing Damage.

vessel. In these circumstances, to establish a right of action against the owner of a vessel, the court must decide that there was a collision, that damage was done by it, and that the collision or damage was caused wholly or in part by the fault of the owner, or the person for whom he is responsible (*a*). Impact of two vessels without damage gives no right of action (*b*); but if the defendant's negligence has caused the damage, though not the collision, he will be at least partly in fault (*c*). Impact and damage without fault on the part of those in charge of a vessel give no right of action *in rem* against the vessel (*d*), and the damage is then either an inevitable accident (*e*), or is due to the fault of the other party, or some other person, such as a compulsory pilot (*f*).

(ii.) *Burden of Proof of Negligence in Collision Cases.*

Burden of proof.

726. The burden of proof, in the case of collision between two vessels, usually at first rests on the plaintiff (*g*), even if the defendant has broken a collision regulation (*h*), or even if the defendant alleges inevitable accident (*i*) or admits that he is partly in fault (*k*). Where the evidence on both sides is nicely balanced and conflicting, the court will be guided by the probabilities of the cases set up (*l*), and the reasonable way is to analyse the facts so as to ascertain what is the principal subject of inquiry on which the case hinges, and endeavour to arrive at a satisfactory conclusion as to the testimony upon that (*m*). But the plaintiff cannot succeed if the case is left in doubt (*n*), and it is for him to give preponderating evidence (*o*). By proving certain circumstances the plaintiff may shift the burden of proof on to the defendant (*p*). Thus, where a

(*a*) Compare *The Margaret* (1881), 6 P. D. 76, 79, C. A.

(*b*) *Ibid.*

(*c*) *Ibid.*, at p. 76. But the defendant will not be liable for his anchor wrongly projecting, even if it is the instrument of damage, provided the plaintiff's vessel could see it and with ordinary care avoid it (*The Monte Rosa*, [1893] P. 23). And he may be only partly in fault if there ought to have been a man on the other vessel who ought to have veered the vessel away (*The Dunstanborough* (1891), [1892] P. 363, n.).

(*d*) *Morgan* v. *Castlegate Steamship Co., The "Castlegate*, [1893] A. C. 38, *per* Lord WATSON, at p. 52. In a claim made in respect of a collision the property is not treated as the delinquent *per se*. Though the ship has caused injury by collision by reason of the negligence of those in charge of her, yet she cannot be made the means of compensation if those in charge of her were not the servants of her then owners, as if she was in charge of a compulsory pilot. This doctrine is conclusive to show that the liability to compensate must be fixed, not merely on the property, but also on the owner through the property (*ibid.*).

(*e*) See pp. 535, 536, *post.*

(*f*) See pp. 529 *et seq.*, *post.*

(*g*) *The Bolina* (1844), 3 Notes of Cases, 208, 210.

(*h*) As to breaches of collision regulations, see pp. 506, 507, *post.*

(*i*) *The Otter* (1874), L. R. 4 A. & E. 203.

(*k*) *The Cadeby*, [1909] P. 257.

(*l*) *The Mary Stewart* (1844), 2 Wm. Rob. 244.

(*m*) *The "Singapore" and The "Hebe"* (1866), L. R. 1 P. C. 378.

(*n*) *The City of London* (1857), Sw. 300, 302, P. C.

(*o*) *Ligo* (1831). 2 Hag. Adm. 356.

(*p*) *The "Carron"* (1853), 1 Ecc. & Ad. 91, 93.

vessel under way in daylight and clear weather runs down a vessel at anchor, the burden at the outset is on the owners of the vessel under way to prove they were not in fault (*q*). In a similar case at night, the owner of the vessel at anchor establishes a *primâ facie* case when he has shown that his vessel had a proper light (*r*). Those facts which can be proved almost exclusively by the defendant he is, in a collision case, usually bound to prove (*a*).

(iii.) *Rules as to Proof of Negligence in Collision Cases.*

Rules as to proof.

727. The court follows certain established rules in drawing conclusions as to testimony in collision cases. The certain facts of a case, such as weather, description of vessels, courses, time and place, which are admitted or indisputably proved, are to be ascertained, and the doubtful facts are to be fitted in with them as far as possible (*b*). Usually, even after large experience, it is difficult in collision actions to draw satisfactory conclusions from testimony as to the damage received by a vessel (*c*), as regards the speeds of the vessels, and still more as regards the angle of the blow (*d*). It is a universal rule in collision cases not to attribute perjury, if it is possible to avoid doing so (*e*). In nautical points the court is assisted by the opinion and advice of nautical assessors (*f*),

(*q*) Compare *The Annot Lyle* (1886), 11 P. D. 114, C. A.; *The "City of Peking"* (1888), 14 App. Cas. 40, P. C. But where the defence is that the vessel was anchored in such an improper place, and so improperly that she could not in the circumstances be avoided by ordinary care, the plaintiff may have to prove proper anchoring; compare *The "Telegraph," Valentine* v. *Cleugh* (1854), 1 Ecc. & Ad. 427, 429. So also the burden from the outset lies on a vessel which runs down a vessel fishing with drift nets and with proper lights up; see *The Sisters* (1852), Pritchard's Admiralty Digest, 3rd ed., p. 248.

(*r*) *The Indus* (1886), 12 P. D. 46, C. A. As to the burden of proof in a collision with a vessel in stays, see *The Sea Nymph* (1860), Lush. 23.

(*a*) *The John Harley* v. *The William Tell* (1865), 2 Mar. L. C. 290. The burden of proof of good look-out on a vessel on a dark night is on those on board who allege it, and not on those who were not on board; where a vessel which was moored complained that a second vessel was improperly moored and drifted down on her, and the defence was that the second vessel was properly moored in a gale and that there was no negligence, the burden of proof that the second vessel was properly moored lay on those who alleged it (*ibid.*). Compare *The "Swanland"* (1855), 2 Ecc. & Ad. 107, where the burden of proof as to his lights was held to lie on the plaintiff, partly because their state was a matter peculiarly within his knowledge; and see title EVIDENCE, Vol. XIII., p. 435.

(*b*) *The "Carron"* (1853), 1 Ecc. & Ad. 91, 92.

(*c*) *The "Clarence"* (1853), 1 Ecc. & Ad. 206, 216.

(*d*) *The Sargasso*, [1912] P. 192, 195.

(*e*) *The "Clarence," supra*, at p. 213; *Steamship "Gannet" (Owners)* v. *Steamship "Algoa" (Owners), The "Gannet,"* [1900] A. C. 238; *The Olympic and H.M.S. Hawke*, [1913] P. 214, C. A., *per* KENNEDY, L.J., at p. 258; *The "Alice" and The "Princess Alice"* (1868), L. R. 2 P. C. 245; *The Glannibanta* (1876), 1 P. D. 283, C. A. The court does not as a rule pay great attention to evidence of conversations after a collision, devoting its consideration to testimony of the facts rather than of these uncertain colloquies (*The "Dundee"* (1821), *Times*, 5th December, *per* Lord STOWELL), or admissions (*The Virgil* (1843), 2 Wm. Rob. 201, 203).

(*f*) See *The City of Berlin*, [1908] P. 110, C. A. As to particular questions

SECT. 3. **Negligence Causing Damage.**

whose duty it is to be guided in matters of nautical experience by their own knowledge (*g*).

(iv.) *Negligence in Equipment.*

Negligence in equipment or manning.

728. The simplest case of negligence on the part of an owner of a vessel causing damage by collision is negligence in constructing or equipping or manning her. Vessels have been held to blame for a collision owing to their not being built or equipped with reasonable care (*h*). As regards the officers of a ship, certificates are required in some cases for the master, the mates, and the engineers (*i*). The number of hands required depends on circumstances. There ought to be a sufficient crew on board even in harbour to protect a ship against the ordinary incidents of peril which a competent seaman would foresee (*k*).

(v.) *Negligent Navigation.*

(a) *In General.*

Negligent navigation.

729. Negligence in navigation by those in charge of a vessel is usually that of the master and crew, so that the question of the responsibility of the owner for the negligence has to be considered, as well as the negligence itself.

(b) *Responsibility of Owner.*

Responsibility for master and crew.

730. The owner (*l*) of a vessel is liable for the negligent navigation of the master and crew (*m*) of his vessel when they are his

to nautical assessors, see *The Beryl* (1884), 9 P. D. 137, 142, 143, C. A.; *The New Pelton*, [1891] P. 258.

(*g*) *The Gazelle* (1842), 1 Wm. Rob. 471, 474. As to how far the court should be guided by the nautical assessors, and as to decision on questions of testimony resting with the court, see *Steamship "Gannet" (Owners)* v. *Steamship "Algoa" (Owners)*, *The "Gannet,"* [1900] A. C. 238; *The Beryl, supra*, at p. 141; *The Aid* (1881), 6 P. D. 84 (county court).

(*h*) A vessel not being safely navigable owing to her improper trim (*The Argo* (1859), Sw. 462), or not having a proper mast to carry her light (*The Hirondelle* (1905), 22 T. L. R. 146, C. A.), or having defective steering gear (*The Warkworth* (1884), 9 P. D. 145, C. A.), though this will be excused if due to latent defect (*The Virgo* (1876), 3 Asp. M. L. C. 285), an excuse which is difficult of proof (*The Merchant Prince*, [1892] P. 179, C. A.). A vessel may be to blame for having too light an anchor (*The Massachusetts* (1842), 1 Wm. Rob. 371), or no mechanical foghorn (*The Love Bird* (1881), 6 P. D. 80).

(*i*) M. S. Act, 1894, ss. 92—104.

(*k*) *The Excelsior* (1868), L. R. 2 A. & E. 268, 272. But see *S.S. Toward (Owners)* v. *S.S. Turkistan (Owners)* (1885), 13 R. (Ct. of Sess.) 342. A vessel on a trial trip need not be officered and manned as on a voyage, but she should have a sufficient crew for the temporary purpose to navigate safely (*Clyde Navigation Co.* v. *Barclay* (1876), 1 App. Cas. 790, 794, 800). A rowing barge in the Thames with two hands is properly manned (*The Minna* (1868), L. R. 2 A. & E. 97). As to when a man is required on a barge in a river, see pp. 494, 495, *ante*.

(*l*) Even a foreign owner is thus liable in this country for a collision at sea, though exempted by his own law; see *The Leon* (1881), 6 P. D. 148.

(*m*) But not for their obeying without negligence imprudent orders which they were bound to obey; see *The Bilbao* (1860), Lush. 149 (harbour master's orders); *Hodgkinson* v. *Fernie* (1857), 2 C. B. (N. S.) 415 (orders of Government officer); and see note (*d*), p. 532, *post*.

servants (*n*) and are acting within the scope of their authority (*o*), even when disobeying the Sea Regulations (*p*), or even, in certain circumstances, when intentionally doing wrongful damage (*q*).

(c) *Nature of Negligence in Navigation.*

Negligence in navigation.

731. Negligence in navigation, as regards other vessels, is failure to exercise (*r*) that attention and vigilance which is due to their security, and which, if so far neglected as to become, however unintentionally, the cause of damage to a vessel, amounts to a breach of duty, giving a right of action (*s*). Negligence is failure to exercise reasonable care and reasonable skill (*t*), reasonable care being sometimes more than ordinary care, and reasonable skill being possibly in an emergency less than ordinary skill. Negligence in navigation includes not only failure to exercise reasonable care and reasonable skill in the usual sense, but also failure to exercise reasonable foresight (*a*) and ordinary nerve (*b*).

"Reasonable care" and "reasonable skill."

732. "Reasonable care" and "reasonable skill" in this connexion mean as a rule ordinary care and ordinary skill (*c*); and where the circumstances of the case often occur, it is important to see whether it is or is not usual to do the thing charged to have been neglected, for instance, to have a man in charge of a barge in dock (*d*). But the degree of care required varies according to circumstances, and more than ordinary care is sometimes required; for instance, there is a duty to take special precautions when using a delicate instrument (*e*).

(*n*) *Fenton* v. *City of Dublin Steam Packet Co.* (1838), 8 Ad. & El. 835 (charterparty); *The Louise* (1902), 18 T. L. R. 19; *Martin* v. *Temperley* (1843), 4 Q. B. 298 (owner of barge liable for navigation of privileged waterman); *Steel* v. *Lester* (1877), 3 C. P. D. 121 (owner liable though master trading independently).

(*o*) *The Druid* (1842), 1 Wm. Rob. 391.

(*p*) *Grill* v. *General Iron Screw Colliery Co.* (1868), L. R. 3 C. P. 476, Ex. Ch.; *The Seine* (1859), Sw. 411.

(*q*) *M'Gee* v. *Anderson* (1895), 22 R. (Ct. of Sess.) 274 (cutting fishing nets to save their own); *M'Knight* v. *Currie* (1895), 22 R. (Ct. of Sess.) 607. But not if such damage is a malicious assault, for then it is not within the scope of their employment; see *The Druid, supra; The Ida* (1860), Lush. 6.

(*r*) Negligence is not merely a state of mind, but wrong action.

(*s*) *The Dundee* (1823), 1 Hag. Adm. 109, 120.

(*t*) *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1880), 5 App. Cas. 876, *per* Lord BLACKBURN, at p. 891. Negligence is the absence of care according to the circumstances; see *Vaughan* v. *Taff Vale Rail. Co.* (1860), 5 H. & N. 679, Ex. Ch., *per* WILLES, J., at p. 688; *Grill* v. *General Iron Screw Collier Co.* (1866), L. R. 1 C. P. 600, 612.

(*a*) *Doward* v. *Lindsay, The "William Lindsay"* (1873), L. R. 5 P. C. 338, 343.

(*b*) *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co., supra,* at p. 888 (ordinary care, skill and nerve).

(*c*) Negligence is thus commonly described as failure to exercise ordinary care and skill.

(*d*) *The Western Belle* (1906), 10 Asp. M. L. C. 279; though the fact that the act complained of is usually done is by no means conclusive disproof of negligence; see *The Scotia* (1890), 6 Asp. M. L. C. 541.

(*e*) *The Turret Court* (1900), 69 L. J. (P.) 117 (a master, using steam steering gear, ought to have had the hand gear ready).

SECT. 3. **Negligence Causing Damage.**

Ordinary skill.

733. Ordinary skill means the skill which would ordinarily be shown by a seaman of competent skill and experience in the circumstances (*f*). Failure to do the very best thing, or to show extraordinary skill or presence of mind, does not create a right of action (*g*).

Degree of skill required in sudden difficulty.

734. When one vessel by a wrongful act suddenly puts another in a difficulty, the same amount of skill is not to be expected as under other circumstances (*h*) ; and in such a case a mistake by the other vessel in the agony of collision is not to be held to have in any way caused it (*i*). It is not enough in such circumstances to show a commission or omission by the officer in charge of the other vessel, by reason of which the collision actually occurred (*k*). His conduct is entitled to a favourable consideration (*l*). For a man may not do the right thing, and may even do the wrong thing, and yet not be guilty of neglect of his duty, which is not absolutely to do right at all events, but only to take reasonable care and use reasonable skill ; and when a man is suddenly and without warning thrown into a critical position, due allowance must be made for this, but not too much (*m*). So when a sudden change of circumstances takes place, which brings a regulation into operation, though the thing prescribed is not done by the person in charge, yet the regulation can hardly be said to be infringed by him till he knows or ought to have known of the change of circumstances (*n*). The officer in charge of a vessel placed suddenly in a difficulty by the fault of another vessel must have time —it may be a very short time—for thought (*o*). When vessels have to manœuvre for one another, and one hails the other to alter her helm, it appears that she cannot complain of the alteration (*p*) ;

(*f*) *Inman* v. *Reck, The "City of Antwerp" and the "Friedrich"* (1868), L. R. 2 P. C. 25, 34.

(*g*) Compare *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1880), 5 App. Cas. 876, 888 ; *The Bywell Castle* (1879), 4 P. D. 219, 227.

(*h*) *The Bywell Castle, supra.*

(*i*) *The Nor* (1874), 2 Asp. M. L. C. 264, 266, P. C.

(*k*) *The Sisters* (1876), 1 P. D. 117, 120, C. A. ; *The C. M. Palmer, The Larnax* (1873), 2 Asp. M. L. C. 94, P. C. (a master of a vessel in a sudden emergency was held not to blame because it did not occur to him to let go his anchor, even supposing it would have averted the collision) ; *The Elizabeth, The Adalia* (1870), 22 L. T. 74 (a schooner following up river a steamer, which suddenly grounded, was held not to blame for not dropping her anchor, though a proper thing to do).

(*l*) *"Mary" Tug Co.* v. *British India Steam Navigation Co., The "Meanatchy,"* [1897] A. C. 351, 357, P. C.

(*m*) *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co., supra,* at p. 891.

(*n*) *Ibid.*, at p. 894.

(*o*) *S.S. "Kwang Tung" (Owners)* v. *S.S. "Ngapoota" (Owners), The "Ngapoota,"* [1897] A. C. 391, P. C. ; *Hoek van Holland Maatschappij* v. *Clyde Shipping Co.* (1902), 5 F. (Ct. of Sess.) 227 ; *The Emmy Haase* (1881), 9 P. D. 81.

(*p*) Compare *The James Watt* (1844), 2 Wm. Rob. 270, 275 ("the altering ship is not inculpated, because they called upon her so to do") ; *Maddox* v. *Fisher, The Independence* (1861), 14 Moo. P. C. C. 103, 109 (blame may be attached to a vessel which wrongly hails another to starboard her helm).

or if the hail is not to alter the helm, it becomes the duty of the hailing vessel, even if not so before, to avoid the other (*q*).

Collateral negligence immaterial.

735. It is not necessarily negligent to risk doing damage to another vessel intentionally; persons have been held justified in risking injury to one vessel by launching another, in order to avoid the more serious risk to life and property by postponement (*r*). And the breach of duty must be connected with the damage as cause and effect to afford the right of action; for instance, though a vessel lying at a pontoon is a trespasser, her owners will not be liable for damage done by her to the pontoon owing to another vessel wrongly striking her (*s*). One should look at the nature of the accident and at what the neglect is, and it must be proved that the actual transgression was to some extent the cause of the accident (*t*). Even if blame is attributable to an act, one must guard against assuming that it was therefore the cause of the accident (*a*), and not merely collateral negligence. On the other hand, the defendant is responsible for the ordinary and reasonable consequences of his negligence, both on the navigation of his own vessel and of other vessels (*b*).

Care and skill afloat and ashore.

736. There is no difference in the rules of the Court of Admiralty and the rules of courts of common law as to what amounts to negligence causing damage by collision (*c*). Yet the nature of the thing requires that in applying the rules one should look to what the nature of the accident is and to what the neglect is. If it is a case of two ships, they are to be governed by the same rules of law and evidence as if it was a case of two carts in the street; but when one comes to apply this, one must remember that a ship is a thing which cannot be stopped in an instant like a cart, and cannot be moved from one side to the other like a cart; and when one has to look out for miles instead of looking out for yards, the application of the rules becomes very different (*d*).

SUB-SECT. 2.—*Negligence Causing Damage in Exceptional Cases.*

Exceptional damage.

737. In addition to the ordinary case of collision between two vessels there are cases of negligence or fault on the part of an owner

(*q*) *The Carolus* (1837), 3 Hag. Adm. 343, n.

(*r*) *Ketch Frances* (*Owners*) v. *Steamship "Highland Loch"* (*Owners*), [1912] A. C. 312.

(*s*) *The Titan, The Rambler* (1906), 10 Asp. M. L. C. 350.

(*t*) *Cayzer* v. *Carron Co.* (1884), 9 App. Cas. 873, 881, 882.

(*a*) *Ibid.*

(*b*) *The Gertor* (1894), 7 Asp. M. L. C. 472, 473 (defendants, through not taking a tug in a gale, held liable for the cost of subsequent damage done by their vessel); *Romney Marsh* (*Bailiffs*) v. *Trinity House* (1870), L. R. 5 Exch. 204 (affirmed (1872), L. R. 7 Exch. 247, Ex. Ch.); *The Port Victoria*, [1902] P. 25 (steamship driven to slip cable to avoid collision could recover the loss); *The City of Lincoln* (1889), 15 P. D. 15, C. A. (defendants liable for grounding of vessel due to loss of charts etc. in a collision caused by them). But compare *The Douglas* (1882), 7 P. D. 151, 160, C. A. (collision with wreck of vessel sunk by collision and unlighted without fault of owners; no greater liability exists against the owners if vessel was sunk with negligence which was not criminal than if without).

(*c*) *Cayzer* v. *Carron Co.*, *supra*, at p. 882.

(*d*) *Ibid.*

SECT. 3. Negligence Causing Damage.

of a vessel or his servants causing damage by the vessel colliding with, or some part of it striking, other property than a vessel, for instance, a pier (*e*), or a person who is not on board a vessel (*f*).

Damage to another vessel without collision.

738. There are cases where, by the fault of those in charge of a vessel, damage is done to another vessel without coming into collision with her, for instance by causing a collision between her and a third vessel (*g*), or compelling her to go out of the fair-way and run aground (*h*), or negligently dragging down on her so as to compel her to slip her anchor and chain and put to sea to avoid collision (*i*).

SUB-SECT. 3.—*Cases of Negligent Navigation.*

(i) *In General.*

Liability for negligent navigation: division of the subject.

739. The liability of the owner of a vessel for negligent navigation causing damage by collision falls into three divisions, according to whether such negligence has been that of one, two, or more than two vessels. First, considering only such negligence attributable to the owner of one vessel, there is the negligent navigation by his servants to be considered, for which he is liable (*k*). Secondly, when two vessels are negligent, assuming them to belong, as they ordinarily do, to the plaintiff and the defendant, there are the instances in which the damage by collision has been wholly caused by the negligence of the plaintiff or defendant, and the instances in which it has been partly caused by the negligence of each of them (*l*). Thirdly, there are the instances in which the damage by collision has been caused by the negligence of more than two vessels (*m*).

(ii.) *Negligence of One Vessel.*

Negligence of one vessel only.

740. The simplest case of negligent navigation of a vessel is a breach of the Sea Regulations or local rules of navigation, which have been already set out (*a*). Obedience to the Sea Regulations, 1910, is ordained by statute (*b*). The Sea Regulations (*c*),

(*e*) See p. 547, *post*; compare *The Albert Edward* (1875), 44 L. J. (ADM.) 49 (vessel not liable for damage to a mooring dolphin, as it ought to have been stronger). As to damage to oyster beds, compare *The Bien*, [1911] P. 40; *The Swift*, [1901] P. 168.

(*f*) See *The Sylph* (1867), L. R. 2 A. & E. 24.

(*g*) *The Sisters* (1876), 1 P. D. 117, C. A.

(*h*) *The Industrie* (1871), L. R. 3 A. & E. 303.

(*i*) *The Port Victoria*, [1902] P. 25. As to a steamship damaging craft by her swell, see p. 487, *post*.

(*k*) See the text, *infra*.

(*l*) See pp. 507 *et seq.*, *post*.

(*m*) See p. 516, *post*.

(*a*) See pp. 373 *et seq.*, *ante*.

(*b*) M. S. Act, 1894, s. 419 (1); see p. 362, *ante*.

(*c*) *The Beryl* (1884), 9 P. D. 137, 138, C. A. (bye-laws duly made by local authority governing the navigation of a river are to be taken as evidence of what it is the duty of vessels to do in the circumstances named therein, and although the mere breach of any of them will not be sufficient reason for holding a ship to blame for a collision, yet if this breach occasions or contributes to the collision, the existence of the bye-law will afford the best reason for holding the vessel which violated it to be guilty of a breach of duty and consequently to blame for the collision). In case

and local rules of navigation (*d*), are evidence of what it is the duty of those in charge of a vessel to do, so that a breach of one of them is primary proof of negligence. But as a rule, the proof of a breach of a regulation does not cast upon the party liable for it the burden of showing that it was not the cause of the collision, but the party alleging that it contributed to the collision must show this (*e*). Other instances of negligent navigation consist of breaches of the rules of good seamanship (*f*).

(iii.) *Negligence of Two Vessels.*

Negligence of two vessels.

741. When two vessels have been in collision and both have been negligent (*g*), the owner of one vessel is usually plaintiff in the collision action, and the owner of the other vessel defendant, but as there is usually damage to both vessels and a counterclaim by the defendant, as a rule each party is in effect both plaintiff and defendant, and each is seeking to fasten on the other party and rebut from himself the same liability for negligence.

Principles of liability.

742. The principles of liability, which apply in these cases, may be stated as follows :—

When there is fault or negligence attributable to the owners of both vessels—

(1) If one party's fault has not even partly caused the damage by collision, then, if he is plaintiff, he can recover in full for the damage to his vessel caused by the other party, and if defendant, he is not liable for the damage to the other vessel (*h*).

of infringement of regulations for moorings in part of the Solent, a vessel is presumed to be in fault for injury done ; see Solent Navigation Act, 1881 (44 & 45 Vict. c. ccxix.), s. 8. Not knowing a local rule is no excuse for not obeying it (*The River Derwent* (1889), 6 Asp. M. L. C. 467, 470). There is no warranty implied in a towage contract as to obedience to local rules (*The United Service* (1883), 8 P. D. 56).

(*d*) *The Raithwaite Hall* (1874), 2 Asp. M. L. C. 210.

(*e*) *Cayzer* v. *Carron Co.* (1884), 9 App. Cas. 873, *per* Lord BLACKBURN, at pp. 882, 883, but see *per* Lord WATSON, at p. 886 ; and *The "Jesmond" and the "Earl of Elgin"* (1871), L. R. 4 P. C. 5 (violating the rule to port her helm made the vessel *primâ facie* responsible for the collision). In case of absence of lights on a vessel in collision at night, the burden lies on her to show that this non-compliance with the regulations was not the cause of the collision ; see *The "Fenham"* (1870), L. R. 3 P. C. 212, 216; *Cayzer* v. *Carron Co.*, *supra*, at p. 882. The burden of proof is on the plaintiff's vessel, though overtaken (*The Bassett Hound* (1894), 7 Asp. M. L. C. 467, 468, C. A.).

(*f*) See pp. 483 *et seq.*, *ante*.

(*g*) As to the liabilities in cases where the two vessels which are in fault for the damage by collision are one of the two which have been in collision and a third vessel, see *The Bernina* (2) (1887), 12 P. D. 58, 89, 90, C. A. ; and p. 522, *post*.

(*h*) See *Cayzer* v. *Carron Co.*, *supra*, *per* Lord BLACKBURN, at pp. 880, 881 ("Those who are injured by the accident, if they themselves are not parties causing the accident, may recover both in law and admiralty. . . . Now upon that there must always be a question whether or not, if there is neglect shown of any rule, that neglect is the cause of the accident"); *Spaight* v. *Tedcastle* (1881), 6 App. Cas. 217, *per* Lord SELBORNE, L.C., at p. 219 ("Such an omission ought not to be regarded as contributory negligence if it might in the circumstances which actually happened have been unattended with danger but for the defendant's

SECT. 3. Negligence Causing Damage.

(2) If the fault of each party has partly caused (*i*) the damage by collision, both vessels are to blame, and each party is liable to make good the damage of the other party in proportion to the degree in which his vessel was in fault (*k*).

fault, and if it had no proper connection as a cause with the damage which followed as its effect"); *The Woodrop-Sims* (1815), 2 Dods. 83, 85, approved in the House of Lords, *Hay* v. *Le Neve* (1824), 2 Sh. Sc. App. 395. These statements in the above cases and in the text express in usual language the position of a plaintiff or defendant in such circumstances both at common law and admiralty. In this view collateral negligence never "causes" the damage, and the term "contributory" negligence correctly expresses negligence which prevents the plaintiff from recovering in full in an action of collision between two ships, or from recovering at all in other actions of tort. There is, however, a different way of looking at the matter, which brings about the same result but involves a different set of expressions. Collateral negligence in collision cases has sometimes been looked at by high authorities as a "cause" of the damage (since it may usually be said to be a *causa sine quâ non*), or as having "contributed to" the damage; but then it has still been considered that this collateral negligence, though "causing" or "contributing to" the damage, did not affect the right of the party so as to prevent him from recovering damages in full if plaintiff, or so as to render him liable if defendant; and in this view the negligence which affects the right of the party was naturally described as negligence which "wholly directly causes," or "partly directly causes," or "directly contributes to," the damage, or as "directly contributory" negligence. Compare *Tuff* v. *Warman* (1857), 2 C. B. (N. S.) 740, *per* WILLES, J., who directed the jury in a collision action at common law: "If the plaintiff directly contributed to the accident, you should find for the defendant"; affirmed (1858), 5 C. B. (N. S.) 573, Ex. Ch.; *Walton* v. *London, Brighton, and South Coast Rail. Co.* (1866), Har. & Ruth. 424, 429; *Radley* v. *London and North Western Rail. Co.* (1876), 1 App. Cas. 754, *per* Lord PENZANCE, at p. 759 ("Though the plaintiff may have been guilty of negligence, and although that negligence may in fact have contributed to the accident," yet if the defendant could by ordinary care and diligence have avoided the mischief, "the plaintiff's negligence will not excuse him"); *The Bernina* (2) (1887), 12 P. D. 58, 61, 62, 63, C. A., *per* Lord ESHER, M.R. ("directly partly cause," and "partly directly cause," and "wholly directly cause"). This latter view and set of expressions appear to be as definite as the former view and set of expressions, but it is clearly desirable that the two sets of expressions should be kept apart, though it might appear that this has not always been the case; and see *Radley* v. *London and North Western Rail. Co.*, *supra*, at p. 759. The former view is adopted in the text; and the former set of expressions are accepted as preferable, because they are more usual and shorter and less involved, and because the Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (1), uses in this connexion the expression "caused" and not "directly caused."

(*i*) It is possible that each party may be negligent, and yet that the acts of negligence may be too trivial or indirect to be held to be a cause of the damage, which will then, so far as these parties are concerned, be an inevitable accident, as to which see pp. 535, 536, *post*.

(*k*) See Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (1), and see pp. 517, 518, *post;* see also *Cayzer* v. *Carron Co.* (1884), 9 App. Cas. 873, *per* Lord BLACKBURN, at p. 881 ("When the cause of the accident is the fault of both, each party being guilty of blame which causes the accident, there is a difference between the rule of admiralty and the rule of common law. . . . The rule of the admiralty is, that if there is blame causing the accident on both sides, they are to divide the loss equally, just as the rule of law is that if there is blame causing the accident on both sides, however small that blame may be on one side, the loss lies where it falls"). The word "equally" no longer applies; see Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (1). And "the rule of common law" is the rule

(3) If one party's fault has solely caused the damage by collision, then, if he is plaintiff, he cannot recover for the damage to his vessel, and if defendant he is liable for the whole of the damage to the other vessel (*l*).

Negligence causing damage.

743. The rules of law as to when an act which is in fact wrong is yet not negligent, and as to the necessity of proving that the act was not only negligent but also caused the damage, in order to establish liability, have been already set out (*m*).

For a long time hitherto the legal doctrine of cause has often been less necessary to consider in collision cases in the Admiralty Court than in cases of torts in courts of common law, owing to a presumption of fault (*n*) being imposed by statute on a vessel which disobeyed one of the Sea Regulations, thus avoiding inquiry as to whether the act of disobedience in fact caused the damage. Since presumption of fault will soon altogether disappear (*o*), the legal doctrine of cause will often need more consideration in collision cases.

Whether one or more negligent acts have caused or partly caused certain damage by collision is generally not a question of law but a question of fact (*p*); that is to say, when the particular events have been ascertained, the conclusion from these particulars, that the act was or was not the cause (*q*) or part cause of the damage, should be drawn according to the general good sense of ordinary men (*r*).

which has applied to all torts, other than actions of collision between two ships, since the Judicature Act, 1873 (36 & 37 Vict. c. 66). As to the rule of common law, see, further, *The Bernina* (2) (1887), 12 P. D. 58, C. A., *per* LINDLEY, L.J., at p. 89 ("If there has been as much want of reasonable care on A.'s part as on B.'s, or, in other words, if the proximate cause of the injury is the want of reasonable care on both sides, A. cannot sue B").

(*l*) See *Cayzer* v. *Carron Co.* (1884), 9 App. Cas. 873, *per* Lord BLACKBURN, at p. 881 ("Where the cause of the accident is the fault of one party and one party only, admiralty and common law both agree in saying that that one party who is to blame shall bear the whole of the damage of the other"). Compare *The Woodrop-Sims* (1815), 2 Dods. 83, 85 (the collision "may have been the fault of the ship which ran the other down; and in this case the innocent party would be entitled to an entire compensation from the other"); approved in the House of Lords in *Hay* v. *Le Neve* (1824), 2 Sh. Sc. App. 395.

(*m*) See pp. 500, 503 *et seq*, *ante*.

(*n*) As to presumption of fault, see pp. 534, 535, *post*.

(*o*) See pp. 534, 535, *post*.

(*p*) See *Cayzer* v. *Carron Co.*, *supra*, *per* Lord BLACKBURN, at p. 881 ("It is necessary to see that the actual transgression has been in fact the cause of the accident to some extent (it does not matter how much), and that is a matter of proof").

(*q*) "Cause" in the law of negligence means ordinarily the efficient cause, that is, by what acts of men the event came to pass; though in peculiar cases questions of material cause may arise; compare *The West Cock*, [1911] P. 208, C. A. "Efficient" cause is a metaphor taken from human action. As to the legal doctrine of cause, see, further, title TORT, Vol. XXVII., p. 471.

(*r*) See *S.S. Hero* (*Owners*) v. *Commissioners for Executing the Office of Lord High Admiral of the United Kingdom*, [1912] A. C. 300, *per* Lord LOREBURN, L.C., at p. 304 (the negligence of one vessel "in the ordinary plain common sense of the business" contributed to the damage by collision). And in a court of common law, before the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (9), the question whether the defendant's negligence had caused damage by collision, or whether the plaintiff's

SECT. 3. **Negligence Causing Damage.**

744. Cases in which both vessels have been negligent are of two kinds—either both vessels have been simultaneously negligent at or up to the last, or one vessel has been negligent last, and the other vessel's negligence has begun and often finished before it.

Negligence of two vessels.

Simultaneous negligence towards the last.

745. Where both vessels have been simultaneously negligent at or up to the last, the decision as to whether the negligence of each side was a cause of the collision damage is more simple. The usual question then is whether the act of negligence on each side was in itself so substantial (*a*) and so directly related (*b*) to the damage by collision as to amount to a cause of it. When both vessels have thus been simultaneously negligent at the last, and when the negligent act of each is substantial and directly related to the collision damage, the principle numbered (2) (*c*) is applied, each vessel is held to have partly caused the damage, and the judgment is that both are to blame.

Instances of both to blame for simultaneous negligence.

Thus, in the case of a collision with a launch, the owners of the launch have been held to blame for launching before the proper order was given by signal and the owners of the other vessel for approaching negligently (*d*). Two steamships meeting in a river have been held to blame, when one came up the reach improperly, and the other carelessly starboarded into her (*e*). So also two sailing vessels, when one failed to keep out of the way and the other to keep her course (*f*), and when one failed to keep out of the way, and the other ought to have seen her in time and done something to avoid the collision (*g*); and in fog, when a vessel at anchor was in fault for not ringing her bell, and a steamship was in fault for being under way and going too fast (*h*). When a steamer carried her anchor improperly projecting at night, and the other vessel, if she had navigated with reasonable care, would have avoided collision, each was held to have partly caused the damage done by the anchor in collision, and both were to blame (*i*).

Antecedent and subsequent negligence.

746. On the other hand, in a large number of collisions at sea (*j*) one vessel has been negligent at the last and the other

negligence contributed to it, was a question of fact for the jury, where there was evidence to support such a finding.

(*a*) See *The Argo* (1900), 9 Asp. M. L. C. 74, C. A.

(*b*) See *The "Fanny M. Carvill"* (*Owners*) v. *The "Peru"* (*Owners*), *The "Fanny M. Carvill"* (1875), 13 App. Cas. 455, n., P. C.

(*c*) See p. 508, *ante*.

(*d*) *The United States* (1865), 12 L. T. 33, P. C.

(*e*) *The Frankfort*, [1910] P. 50, 55, C. A.

(*f*) *The "Agra" and "Elizabeth Jenkins"* (1867), L. R. 1 P. C. 501.

(*g*) *The Rosalie* (1880), 5 P. D. 245.

(*h*) *The Clutha Boat* 147, [1909] P. 36.

(*i*) *The Margaret* (1881), 6 P. D. 76, C. A. In similar cases at common law before the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (9) (which provided in effect that in collision actions in which both vessels should be found in fault, the rules previously in force in the Court of Admiralty, so far as they had been at variance with the common law rules, should prevail), the plaintiff could not recover (*Sills* v. *Brown* (1840), 9 C. & P. 601; compare *The Scotia* (1890), 6 Asp. M. L. C. 541; and *The Dunstanborough* (1891), [1892] P. 363, n.; in each case a steamer and barge, both moored, were held both to blame for damage done to the barge by the steamer's anchor).

(*j*) *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1880), 5 App. Cas. 876, *per* Lord WATSON, at p. 903.

vessel's negligence has taken place before that; or, in less precise words, the acts of negligence have been antecedent and subsequent. In these cases the decision as to whether each act was or was not a cause of the collision is more difficult. The question is not simply whether each act was substantial and directly related to the damage by collision, but it must also be considered how far the subsequent act should be treated as connected with or independent of the antecedent act, and the importance of each has to be contrasted in connexion with the result (*k*).

Burden of proof.

747. As regards burden of proof in cases of antecedent and subsequent negligence, it has been said of the vessel which was antecedently negligent that she must accept the burden of showing that her neglect did not contribute to any collision or damage which may have occurred at the time or subsequently (*l*).

Cause of damage.

748. In such cases it may be that the damage by collision was caused wholly by the subsequent negligence (*m*), or that it was caused partly by the antecedent negligence of one vessel and partly by the subsequent negligence of the other, or wholly by the antecedent negligence, the subsequent negligence being then too slight a factor to be reckoned as a cause (*n*).

The following are instances of these three alternatives. When there was plenty of light in a dock, and a steam tug ran into the stern of a barge there, and it was alleged that the stern of the barge came out and presented an obstacle to the tug and that there was no one on board the barge, it was held that, even if this allegation was true (and if, therefore, there was antecedent negligence of the barge), it had nothing to do with the collision, as the tug could see perfectly well where the barge was, and her subsequent negligence alone caused the collision (*o*). As an instance of both

(*k*) When there has been antecedent and subsequent negligence, it cannot be established in law that the other party partly caused the damage merely by showing that, if they in some earlier stage of navigation had done something which they ought to have done, a different situation would have resulted; see *Spaight* v. *Tedcastle* (1881), 6 App. Cas. 217, *per* Lord SELBORNE, L.C., at p. 219.

(*l*) *Cayzer* v. *Carron Co.* (1884), 9 App. Cas. 873, *per* Lord WATSON, at p. 886; *The Winstanley*, [1896] P. 297, C. A., *per* Lord ESHER, M.R., at p. 304.

(*m*) In cases where the subsequent negligence is held to be the cause of the damage, it is not uncommon to refer to Bacon's first maxim of the law, *In jure non remota causa, sed proxima, spectatur;* see *Spaight* v. *Tedcastle, supra.* But this maxim of law is difficult to apply; and its precise meaning is uncertain, because *causa proxima* is sometimes used to express not the immediate cause (compare *Sneesby* v. *Lancashire and Yorkshire Rail. Co.* (1874), L. R. 9 Q. B. 263, *per* BLACKBURN, J., at p. 267), but the "decisive" cause (compare Pollock, Law of Torts, 9th ed., p. 477).

(*n*) In cases where the antecedent negligence is held to have caused the damage, it is sometimes referred to as the *causa causans* or real cause; see *Lloyd* v. *General Iron Screw Collier Co.* (1864), 3 H. & C. 284, 291; though in that case an antecedent act, which was an efficient cause in the ordinary sense, was compared with a subsequent natural event, which was not strictly an efficient cause, because it lacked the element of human responsibility. See also *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521, 531.

(*o*) *The Hornet*, [1892] P. 361, 365.

SECT. 3. Negligence Causing Damage.

to blame, when a steamer steered across the course of a flotilla of warships contrary to a notice of the Board of Trade, it was held that her negligence in so doing partly caused the collision, but that it was also partly caused by the warship's subsequent negligence in starboarding instead of porting (*p*). So also a vessel at anchor having no light, and another vessel which ought to have had a better look-out and so have avoided collision with her, were each held to have partly caused the collision (*q*). When two steamships have been close to each other at night green to green, and one has negligently put her helm hard-a-port, though the other steamship might be negligent afterwards in not reversing soon enough, this subsequent negligence might not have any material effect, so that the damage might be wholly caused by the antecedent negligence (*r*).

Subsidiary rule: avoidance of damage.

749. Thus, in any case where two vessels have been in collision, both of which have been negligent, whether the acts of negligence are simultaneous or antecedent and subsequent, the liability of the owner of each vessel depends on the principles above stated. A subsidiary (*s*) rule, however, has been laid down which, though it does not precisely correspond with these principles and is therefore somewhat difficult to apply, is yet recognised both in courts of common law and admiralty to be sometimes of assistance in determining whether a party's negligence has or has not caused or partly caused wrongful damage. It may be stated as follows, as regards its application to collision cases:—

In cases of antecedent and subsequent (*t*) fault or negligence,

(*p*) *S.S. Hero* (*Owners*) v. *Commissioners for Executing the Office of Lord High Admiral of the United Kingdom*, [1912] A. C. 300, 304.

(*q*) *Hay* v. *Le Neve* (1824), 2 Sh. Sc. App. 395.

(*r*) Compare *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1880), 5 App. Cas. 876, 886, 888, 889, as to the view taken by the nautical assessors in the Court of Appeal and not differed from by that court.

(*s*) This subsidiary rule (as regards the application of it to the defendant's escape from liability) is usually considered to have been first definitely formulated in 1809; see *Butterfield* v. *Forrester* (1809), 11 East, 60 (where a rider was thrown by a pole put up across a road), *per* Lord ELLENBOROUGH, C.J., at p. 61: "One person being in fault will not dispense with another's using ordinary care for himself. Two things must concur to support this action, an obstruction in the road by the fault of the defendant and no want of ordinary care to avoid it on the part of the plaintiff." And the first trace of a similar doctrine in a collision between vessels appears to be in *Lack* v. *Seward* (1829), 4 C. & P. 106 (an action between the owners of two barges), *per* Lord TENTERDEN, C.J., at p. 108: "Nor will he" (the defendant) "be liable if the accident would have been avoided but for the negligence of the plaintiff's men in not being on board his barge." Compare Beven, Negligence in Law, 3rd ed., p. 148; title TORT, Vol. XXVII., p. 501.

(*t*) Compare *Spaight* v. *Tedcastle* (1881), 6 App. Cas. 217, where Lord BLACKBURN, at p. 226, referring to this rule, points out that it can only relieve the defendant—and in the same way it will only relieve the plaintiff—in a case of antecedent and subsequent negligence ("To make a defence on this ground it must be shewn that the injured party, or those with whom for this purpose he is identified, might, by proper care, subsequently exerted, have avoided the consequences of the defendant's want of proper care"). So also *Carse* v. *North British Steam Packet Co.* (1895),

a party by his antecedent fault is not supposed to have even partly caused the damage by collision (*a*), if the other party afterwards could have avoided the damage by exercise of reasonable care (*b*) and ordinary skill (*c*).

22 R. (Ct. of Sess.) 475, *per* Lord McLAREN, at p. 484. In the case of simultaneous acts of negligence at the last, a rule is sometimes cited to the effect that if each party could by reasonable care have avoided the damage by collision, each is to be taken to have caused it, and each is accordingly liable for his share of the joint damage; see *Dublin, Wicklow and Wexford Rail. Co.* v. *Slattery* (1878), 3 App. Cas. 1155, *per* Lord BLACKBURN, at pp. 1206, 1207, in a dissenting judgment. This rule is not often used in the decision of collision cases, and therefore is not of great importance in this connexion, but similar comments apply to it as to the rule stated in the text.

(*a*) Or in other words: Notwithstanding his negligence, a party as plaintiff can recover in full for the damage he has sustained by the collision, and as defendant is not liable for the damage sustained by the other party, if etc.

(*b*) As to "reasonable care" and "reasonable skill," see p. 503, *ante*.

(*c*) Compare *Butterfield* v. *Forrester* (1809), 11 East, 60; *Lack* v *Seward* (1829), 4 C. & P. 106; *Bridge* v. *Grand Junction Rail. Co.* (1838), 3 M. & W. 244, approving *Butterfield* v. *Forrester*, *supra*. In *Bridge* v. *Grand Junction Rail. Co.*, *supra*, the law is laid down, *per* PARKE, B., at p. 248: "Although there may have been negligence on the part of the plaintiff, yet, unless he might by the exercise of ordinary care, have avoided the consequences of the defendant's negligence, he is entitled to recover; if by ordinary care he might have avoided them, he is the author of his own wrong." These terms do not appear to be quite unexceptionable, because, no doubt unintentionally, they negative the possibility of any antecedent contributory negligence by the plaintiff which would affect his right; compare also *Davies* v. *Mann* (1842), 10 M & W. 546; *Dowell* v. *General Steam Navigation Co.* (1855), 5 E. & B. 195, *per* Lord CAMPBELL, C.J., at p. 206 ("In these cases" [*i.e.*, where the plaintiff's negligence has been remotely connected with the collision] "the question arises whether the defendant, by the exercise of ordinary care and skill, might have avoided the accident, notwithstanding the negligence of the plaintiff, as in the often quoted donkey case, *Davies* v. *Mann* [*supra*]. There, although without the negligence of the plaintiff the accident could not have happened, this negligence is not supposed to have contributed to the accident within the rule upon this subject"). Compare also *Tuff* v. *Warman* (1858), 5 C. B. (N. S.) 573, Ex. Ch. (notwithstanding his negligence, the plaintiff could recover in a collision action at common law before the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (9), "if the defendant might, by the exercise of caution on his part, have avoided the consequences of the neglect or carelessness of the plaintiff"); *Walton* v. *London, Brighton and South Coast Rail. Co.* (1866), Har. & Ruth. 424; *Radley* v. *London and North Western Rail. Co.* (1876), 1 App. Cas. 754 (where Lord PENZANCE, at p. 759, laid down as a secondary proposition: "Though the plaintiff may have been guilty of negligence, and although that negligence may, in fact, have contributed to the accident, yet if the defendant could in the result, by the exercise of ordinary care and diligence, have avoided the mischief which happened, the plaintiff's negligence will not excuse him." These words are not quite beyond cavil, because they open the door to the argument that where the plaintiff and the defendant could each at the last by proper care have avoided the accident, the plaintiff can recover in full. An argument to this effect appears to have been in fact based on these words in *The Vera Cruz* (No. 1) (1884), 9 P. D. 88, 92, 93, but it was rejected). Compare also *Cayzer* v. *Carron Co.* (1884), 9 App. Cas. 873, *per* Lord WATSON, at p. 887; *The Bernina* (2) (1887), 12 P. D. 58, C. A., *per* Lord ESHER, M.R., at p. 61, proposition (5) ("If, although the plaintiff has himself or by his servants been guilty of negligence, such negligence did not directly partly cause the accident, as if,

SECT. 3. Negligence Causing Damage.

It has been suggested (*d*) that this (*e*) rule is not logically precise, but that in the great majority of cases in practice it is quite reasonable, and in certain cases it is a sufficient guide. The rule is not logically precise, because it is not directed to the strict question whether the antecedent or subsequent negligence wholly or in part caused the damage; but the rule substitutes for this question a different negative question as to what after a certain moment would have caused the damage not to happen, and requires one to consider what would have taken place if the party, who was afterwards negligent, had acted in a way in which he did not act (*f*).

This subsidiary rule, however, is well established (*g*), and it is sometimes easy to apply (*h*). On the other hand, there are frequent cases where it is a matter of extreme difficulty to decide under this

for example, the plaintiff or his servants having been negligent, the alleged wrong-doers might by reasonable care have avoided the accident, the plaintiff can maintain an action against the defendant"); and see *The Bernina* (2) (1887), 12 P. D. 58, *per* Lord ESHER, M.R., at p. 62, proposition (8); compare also *The Monte Rosa*, [1893] P. 23, 30, 31; *H.M.S. Sans Pareil*, [1900] P. 267, 283, 287, 288, C. A.; *The Etna*, [1908] P. 269, 281; *The Hero*, [1911] P. 128, 144—157, 151, 152, C. A.; affirmed on different grounds, [1912] A. C. 300.

(*d*) *Dublin, Wicklow and Wexford Rail. Co.* v. *Slattery* (1878), 3 App. Cas. 1155, *per* Lord BLACKBURN, at p. 1207, in a dissenting judgment, referring to BARRY, J.'s, criticism; though that criticism appears to have been somewhat different, see *Slattery* v. *Dublin, Wicklow and Wexford Rail. Co.* (1876), 10 I. R. C. L. 256, 266, Ex. Ch. Lord BLACKBURN'S suggestion referred to the rule in so far as it relieved the defendant, but applies to it no less in so far as it assists the plaintiff.

(*e*) This rule may be supplemented by two corollary rules to be gathered from the cases—namely, (1) a party by his antecedent fault is supposed to have partly caused the damage by collision, if his antecedent fault was such that the other party could not afterwards avoid the damage by exercise of reasonable care and reasonable skill, and if the other party by his subsequent negligence has also partly caused the damage; (2) a party by his antecedent fault is supposed to have solely caused the damage by collision, if his antecedent fault was such that the other party could not afterwards avoid the damage by exercise of reasonable care and reasonable skill, and if the other party has not by subsequent fault partly caused the damage. See *Lack* v. *Seward* (1829), 4 C. & P. 106, *per* Lord TENTERDEN, C.J., at p. 108 ("If the plaintiff's men had put this barge in such a place that persons using ordinary care would run against it, the defendant will not be liable"); *The Ovingdean Grange*, [1902] P. 208, 214, C. A.; *The Cambridge* (1902), cited [1911] P. 146, C. A., in the Admiralty Division; *The Winstanley*, [1896] P. 297, C. A. But the same comments would apply to these rules as to the rule stated in the text on pp. 512, 513, *ante*.

(*f*) Another difficulty involved in the rule is that it often cannot be known for certain whether, even if very different steps had been taken, a collision would still not have occurred. And the rule appears sometimes to press unfairly on the party who is afterwards negligent by putting out of sight what has happened before and devoting all the criticism to his conduct.

(*g*) In a case at common law it was held that the judge's direction to the jury, having regard to its terms, was bad, he having failed to call their attention to the application of the rule; see *Radley* v. *London and North Western Rail. Co.* (1876), 1 App. Cas. 754.

(*h*) *The Etna, supra*, at p. 281. The reason seems to be that the negative question as to avoidance, though more complicated in idea than the positive question as to the cause, is in fact easier to decide in certain cases, such as *Davies* v. *Mann* (1842), 10 M. & W. 546; compare *The Monte Rosa, supra*.

rule whether or not the negligence of the initial wrong-doer could have been avoided by the other party (*i*); and in such cases it appears safer to be guided by the above principles.

Instances where rule has or has not been applied.

750. Thus, in some cases a vessel has shown antecedent negligence in steering through a squadron of warships under way, and the warship which has come into collision with her has afterwards been negligent in not keeping out of her way. In the latest of these cases (*k*) the House of Lords held that the antecedent negligence of the first vessel in ordinary good sense mainly contributed to the accident, though the courts below, applying the subsidiary rule, had held this vessel not to blame for that negligence (*l*).

A corollary to this rule may be applied in case of a collision of a vessel under way with another at anchor or otherwise moored. If a vessel has been moored by her owner's servants in such a position as to require more than reasonable care and reasonable skill to avoid her on the part of those navigating a second vessel which has collided with her, the owner of the first vessel will be supposed to

(*i*) *The Hero*, [1911] P. 128, 151, C. A.

(*k*) *S.S. Hero* (*Owners*) v. *Commissioners for Executing the Office of Lord High Admiral of the United Kingdom*, [1912] A. C. 300. *The Cambridge* (1903), C. A., cited in *The Hero*, *supra*, at p. 147, was decided in the Court of Appeal in the same way, and apparently for the same reason. On the other hand, in *H.M.S. Sans Pareil*, [1900] P. 267, the Court of Appeal applied the subsidiary rule, and held the first vessel not to blame for her antecedent negligence; but it is difficult to reconcile this decision with the above cases; compare *The Hero*, *supra*, at p. 147. *The Etna*, [1911] P. 269, 281, a case on similar facts, appears to have been decided on the basis that both vessels were negligent at the last, though it was found that the initial negligence of the *Etna* could not have been avoided by the exercise of ordinary care and skill by those on the *Wear*.

(*l*) So also when a steamship proceeding against the tide negligently failed to wait above a point in the river, and the second steamship was subsequently negligent because, though she saw the wrong position of the first steamship at a sufficient distance, she tried recklessly to run between her and another vessel when there was not space enough, the House of Lords held that the antecedent neglect was not a part of the fault which occasioned the accident, and the second steamship was alone to blame; see *Cayzer* v. *Carron Co.* (1884), 9 App. Cas. 873, *per* Lord BLACKBURN, at p. 884, and Lord FITZGERALD, at p. 889; Lord WATSON, *ibid.*, p. 887, based his judgment on the ground that the consequences of the antecedent neglect of the other vessel could have been avoided by ordinary care on the part of the *Margaret*. Compare *The Winstanley*, [1896] P. 297, C. A., where a steamship came into a harbour on the wrong side and had to cross on to her right side, but the second steamship which came into collision with her was held alone to blame, because the second steamship, if handled with proper care, would not have been hampered. See also *The Ovingdean Grange*, [1902] P. 208, 210, 214, C. A., where similar antecedent neglect took place close to the second steamship, it was held that the first steamship was to blame for throwing on the second steamship the difficulty of using more than ordinary care to avoid collision, though the second steamship was also to blame; and *The Monte Rosa*, [1893] P. 23 (the anchor of a steamship in a river at daylight improperly projected to the knowledge of a tug, and the tug negligently sheered against it, and there was no time to lower the anchor when she sheered, so that the subsequent negligence was that of the tug; the rule was applied, and it was held that the damage could have been avoided by the exercise of reasonable care on the tug's part, and that she was alone to blame).

SECT. 3. Negligence Causing Damage.

have at least partly caused the accident (*a*). But the vessel thus wrongly moored is still within the pale of law, and is protected by the general rule that everyone, in the conduct of that which may be harmful if misconducted, is bound to the use of due care and skill (*b*); and a rash anchorage by one vessel will be immaterial if a collision can be avoided by the other vessel by due care (*c*).

(iv.) *Negligence of more than Two Vessels.*

Negligence of more than two vessels.

751. The collision cases where more than two vessels have been negligent have usually been cases involving one or more tugs and tows (*d*). The general principle is that, where by the fault of three or more vessels damage is caused to one or more of those vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss is in proportion to the degree in which each vessel was in fault (*e*).

SUB-SECT. 4.—*The Rule of Division of Damage or Loss in Proportion to Fault.*

Maritime Conventions Act, 1911.

752. The Maritime Conventions Act, 1911 (*f*) (hereafter in this sub-section referred to as "the Act") applies to cases of damage or loss by collision caused by the fault of two or more vessels to certain descriptions of property and persons (*g*); and the law as to division of loss in such cases has been very largely altered by the Act. The alterations fall under four heads. The first alteration establishes an entirely fresh basis for the division of loss in

(*a*) *Lack* v. *Seward* (1829), 4 C. & P. 106, 108, *per* Lord TENTERDEN, C.J., at p. 108: "If the plaintiff's men had put this barge in such a position thatpersons using ordinary care would run against it, the defendant will not be liable" (at common law); compare *The Ovingdean Grange*, [1902] P. 208, 214, C. A. In *The Batavier* (1845), 2 Wm. Rob. 407, Dr. LUSHINGTON said: "It is, I apprehend, the bounden duty of the vessel under weigh, whether the vessel at anchor be properly or improperly moored, to avoid if it be possible, with safety to herself, any collision whatever"; but this requires some such qualification, as "by the exercise of reasonable care and reasonable skill," as is shown by the context.

(*b*) *Colchester Corporation* v. *Brooke* (1845), 7 Q. B. 339, 377. In *Dalton* v. *Denton* (1857), 1 C. B. (N. S.) 672, where the bowsprit of the defendant's vessel, which was moored at a wharf, projected over the water fronting the plaintiff's adjoining wharf and over a mast which was being worked upon there, and descended on the mast with the ebb tide and broke it, it was held that the projection of the mast imposed no duty on the defendant, and he was not liable. But the circumstances are imperfectly reported, and the damage probably occurred in special circumstances which excused the defendant.

(*c*) *Carse* v. *North British Steam Packet Co.* (1895), 22 R. (Ct. of Sess.) 475.

(*d*) As to negligence in such cases, and as to vessels in tow, see p. 492, *ante*, p. 529, *post;* and compare *The Harvest Home*, [1905] P. 177, C. A.; *The Morgengry and The Blackcock*, [1900] P. 1, C. A.; *The Englishman and The Australia*, [1894] P. 239.

(*e*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (1).

(*f*) 1 & 2 Geo. 5, c. 57. This Act is to be construed (*ibid.*, s. 10) as one with the M. S. Acts, 1894—1907, and, therefore, presumably also as one with the M. S. Act, 1911 (1 & 2 Geo. 5, c. 42) (see *ibid.*, s. 2); and see note (*a*), p. 10, *ante*.

(*g*) See p. 508, *ante*.

collision cases ; the other three alterations affect the division of loss in minor degrees.

First, the Act creates a new rule for division of loss (*h*), under which the liability of the owner of one vessel in fault to pay damages to the owner of the other vessel in fault may in future be increased or decreased from the half damages, for which he would have been liable before the Act.

Secondly, the Act does away (*i*) with the special statutory rule in collision cases, by which a vessel which had infringed an article of the Sea Regulations was deemed to be in fault.

Thirdly, the Act affects the kind of damages which the owner of one wrong-doing vessel can claim to share with the owner of the other; thus, claims for loss of life under Lord Campbell's Act (*k*) or personal injuries will in future be included in the damages divisible (*l*), though not so before the Act (*m*); and the Act affects the nature of proceedings in certain matters which may be the subject of division of loss; thus, as will be seen below, claims for loss of life and personal injuries can in future be enforced by action *in rem* (*n*), which was not so before the Act.

Fourthly, the Act declares a limit of time against actions of damage or loss by collision to certain property, and actions for damages for loss of life or personal injuries ; and also a limit of time against certain actions to enforce a contribution between the owners of the different vessels in fault (*o*).

753. In all actions as to collisions etc. (*p*) begun since the 16th December, 1911 (*q*), the rule is that where by the fault (*r*) of two

Rule as to division of loss.

(*h*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1.

(*i*) *Ibid.*, s. 4 (1).

(*k*) Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93).

(*l*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 3 ; compare *ibid.*, s. 2.

(*m*) *The Circe*, [1906] P. 1, 13 ; *The General Havelock* (1905), 21 T. L. R. 438 ; but compare *Boucher* v. *Clyde Shipping Co.*, [1904] 2 I. R. 129 (pilot in charge of vessel to blame held entitled to recover half damages for property loss and personal injuries against owners of other vessel to blame).

(*n*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 5.

(*o*) *Ibid.*, s. 8. The time may, however, be extended by the court, and this was done in *The Cambric* (1912), 29 T. L. R. 69.

(*p*) The Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1, which states the rule, is headed, " Provisions as to Collisions, etc." The " etc." may possibly refer to damage or loss to a vessel otherwise than by collision, for instance by running aground.

(*q*) " This Act shall not apply in any case in which proceedings have been taken before the passing thereof " (*ibid.*, s. 9 (2)). In *The Enterprise*, [1912] P. 207, it was argued on these words unsuccessfully that the Act did not apply when proceedings were taken after the Act had passed, namely, the 16th December, 1911, but the collision had occurred before this date. As regards actions to which the Act applies, the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (9), ceases to have effect; see Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 9 (3).

(*r*) " Fault " appears to be used rather than " negligence," because it denotes wrong-doing of any kind both in its popular and legal sense, and is therefore the suitable equivalent of a similar word in other languages, this being desirable, since the Act was passed to carry out an international

SECT. 3. Negligence Causing Damage.

or more vessels (*a*) damage or loss is caused to one or more of those vessels (*b*), to their cargoes or freight (*c*), or to any property on board, the liability to make good the damage or loss is in proportion to the degree in which each vessel was in fault (*d*); and if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally (*e*).

No new liabilities.

754. This rule clearly alters liabilities which existed before the Act. But it was desirable for the legislature also to decide whether the new rule should be allowed to create new liabilities, and as to this it appears that the rule is not to be construed as imposing any new liability upon a person from which he was previously exempted by any provision of law (*f*).

Fault of the vessel.

755. In this rule, as often in statutes relating to the liability of

Convention. "Negligence" is a negative word, and is sometimes used in popular language of omissions alone, though in law it includes commissions as well; see *Grill* v. *General Iron Screw Collier Co.* (1866), L. R. 1 C. P. 600, *per* WILLES, J., at p. 612; *Blyth* v. *Birmingham Water Works Co.* (1856), 11 Exch. 781, *per* ALDERSON, B., at p. 784.

(*a*) "Damage or loss is caused . . . by the fault of two or more vessels." This appears to mean with regard to each vessel, "caused through the navigation of the vessel by the fault of those in charge of her"; compare *Currie* v. *M'Knight*, [1897] A. C. 97, *per* Lord HALSBURY, L.C., at p. 101 ("The phrase that it must be the fault of the ship itself is not a mere figurative expression, but it imports, in my opinion, that the ship against which a maritime lien for damages is claimed is the instrument of mischief, and that, in order to establish the liability of the ship itself to the maritime lien claimed, some act of navigation of the ship itself should either mediately or immediately be the cause of the damage"); and *ibid.*, *per* Lord WATSON, at pp. 106, 107. See also *The Vera Cruz* (No. 2) (1884), 9 P. D. 96, 101, C. A. (decided on the Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 7, "damage done by a ship"), *per* BOWEN, L.J. ("'Damage done by a ship' means done by those in charge of a ship, with the ship as the noxious instrument"). As to the meaning of "vessel," see p. 374, *ante*.

(*b*) This is only a figurative way of referring to the damage or loss caused to the persons interested in the vessels, their cargo or freight, or property on board (*The Cairnbahn*, [1914] P. 25, 31, C. A.). "Damage or loss" caused to one or more of the vessels, clearly includes loss by the sinking of a vessel or damage which has to be repaired. It also includes "salvage or other expenses, consequent on the fault" of the two or more vessels, which are "recoverable at law by way of damages" (Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (2)). As to such other expenses, see p. 538, *post*.

(*c*) "Freight" includes passage money and hire; see Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (2).

(*d*) *Ibid.*, s. 1 (1). For examples of allotting liability in proportion to fault, see *The Rosalia*, [1912] P. 109 (60 per cent. and 40 per cent.); *The Sargasso*, [1912] P. 192 (two-thirds and one-third); *The Barking* (1912), *Shipping Gazette*, 29th April, 1912; *The Cairnbahn*, [1914] P. 25, C. A. (equal portions); *The Bravo* (1913), 29 T. L. R. 122 (four-fifths and one-fifth). In this case the more successful party claimed that the costs should be divided in the same proportion, but EVANS, P., declined to lay down any strict rule, and said it would be best, apart from special circumstances, to adhere to the old practice in collision actions that each delinquent vessel, if she came into court either to make an attack or to repel an attack, should bear her own costs.

(*e*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (1) (a).

(*f*) *Ibid.*, s. 1 (1) (c).

shipowners (*g*), the vessel is personified; but the fault of the vessel and the liability arising therefrom seem to mean the fault and the liability (*h*) of those interested in the vessel (*i*). It can hardly be doubted that for the purpose of determining liability under this rule the expression "those interested in the vessel," when read into the rule, will include any persons, other than the ordinary owners, who are responsible for the fault of the vessel, because in any case where, by virtue of any charter or demise or for any other reason, the owners are not responsible for the navigation and management of the vessel, references in the Act to "the owners" are to be taken to be references to the charterers or other persons for the time being so responsible (*j*).

Fault causing damage or loss.

756. For this rule to apply, fault must be established on the part of each vessel of such a nature as to cause the damage or loss (*k*). But there need not be negligent manœuvring by each vessel for both to be held in fault. For instance, it will be sufficient if the impact is due to one vessel's negligence, and the damage due to improper projection of the other vessel's anchor (*l*), if its position could not reasonably have been seen beforehand on the damaged vessel (*m*).

Compulsory pilotage.

757. Nothing in the rule renders any vessel liable for any loss or damage to which her fault has not contributed (*n*). Where a collision occurs owing to the fault of one vessel and the fault of the compulsory pilot in charge of the other vessel, it may be that the owners of the vessel in charge of the pilot will not be held liable to pay for any damages arising out of the collision, as they are not liable for the fault of the pilot (*o*); or it may be argued that the rule does not apply inasmuch as there is no fault on the part of their vessel. If it is held that the rule does apply, then, just as the owners of this vessel would have been entitled before the Act to recover half their damages from the other vessel in such a case (*a*), so it seems

(*g*) For instance, in the Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 7 (damage done by any ship), and in the M. S. Amendment Act, 1862, s. 29 (now repealed) (the ship shall be deemed to be in fault).

(*h*) Compare *Murray* v. *Currie* (1870), L. R. 6 C. P. 24, *per* WILLES, J., at p. 27 ("in ascertaining who is liable for the act of a wrong-doer, you must look to the wrong-doer himself or to the first person in the ascending line who is the employer and has control over the work").

(*i*) *The Cairnbahn*, [1914] P. 25, 31, C. A.

(*j*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 9 (4).

(*k*) Just as before the Act a collision was only held to be the fault of both vessels, if each party was guilty of fault which caused the accident (*Cayzer* v. *Carron Co.* (1884), 9 App. Cas. 873, 881), though at that time a vessel might be deemed in fault for an infringement of the Sea Regulations.

(*l*) *The Margaret* (1881), 6 P. D. 76, C. A.; compare *The Dunstanborough*, [1892] P. 363, n.; *The Scotia* (1890), 6 Asp. M. L. C. 541; *The Hornet*, [1892] P. 361.

(*m*) *The Monte Rosa*, [1893] P. 23, 31.

(*n*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (1) (b).

(*o*) This was so before the Act; see *The Hector* (1883), 8 P. D. 218, 225, C. A.

(*a*) *The Hector*, *supra*, at p. 225.

SECT. 3. Negligence Causing Damage.

to follow that in future they will be entitled to recover any larger (*b*) or smaller proportion according to the degree in which the other vessel is held in fault.

Division of loss.

758. In working out the division of loss under the rule, all the damages caused to the owner of each vessel which he has to share with the owner of the other vessel have first to be ascertained. These divisible damages include damage or loss caused to his vessel or her cargo or her freight, passage money or hire (*c*), and also any salvage or other expenses consequent on the fault of his vessel which have been recovered from him at law by way of damages (*d*). The divisible damages also include damages recovered in respect of loss of life or personal injuries, as an express right to recover contribution in such cases is given by the Act (*e*).

Debt for balance.

When the divisible damages of the first owner have been thus ascertained, the liability of the second owner to make good his proportion of these first damages is only a provisional liability according to principles hitherto established, and it is not a debt due from him to the first owner (*f*). The divisible damages of the second owner must also be ascertained. Then the proportion of the first damages due from the second owner has to be set against the proportion of the second damages due from the first owner, and the smaller sum has to be deducted from the larger, and the balance is a debt due from one owner to the other. There is only one liability,

(*b*) Notwithstanding the provision that the Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1, shall not impose any liability upon any person from which he is exempted at the date of the Act; see *ibid.*, s. 1 (1) (c).

(*c*) *Ibid.*, s. 1 (1), (2).

(*d*) *Ibid.*, s. 1 (2). It is noticeable that "damages" in *ibid.* are not confined to damages which could be taken into consideration in the Admiralty Court; compare *The Circe*, [1906] P. 1, 13. The words "other expenses, consequent upon that fault, recoverable at law by way of damages" may or may not be construed to exclude expenses, consequent upon the fault, which are not legally recoverable as "damages"; for the maxim *inclusio unius est exclusio alterius*, on the one side, may be set against the principle that the purpose of words of inclusion in a statutory definition is that the thing defined may have a more extended meaning; compare *Ex parte Ferguson* (1871), L. R. 6 Q. B. 280, 291. Thus if an owner claims a right to include among his divisible damages money paid for compensation under the Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), or a payment under a similar foreign Act (compare *The Circe*, *supra*), he must show that this compensation comes within some head of damage contemplated in the Act. Possibly such compensation may be held to be included, though not aptly, under "damages" recovered against the owners of a vessel where "loss of life" or "personal injuries" are suffered by any person on board etc. (Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 3 (1)); or it is arguable that the words in *ibid.*, s. 1 (1), "damage or loss to a vessel," are to be taken as covering all expenses to the owner of the vessel thus arising and so include such compensation; see also the proviso to *ibid.*, s. 3 (1). As to cases where by the fault of two vessels a collision is caused between one of them and a third innocent vessel, see p. 522, *post*.

(*e*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 3 (1).

(*f*) So the second owner could not recover this sum from his insurers under the running-down clause (*London Steamship Owners' Insurance Co.* v. *Grampian Steamship Co.* (1890), 24 Q. B. D. 663).

and there can be only one payment (*g*). Thus in the simple case of both vessels to blame, and each being condemned in half damages, the owner who has suffered the greater damages is entitled to receive from the second owner half those damages, less half the damages which the second owner has sustained (*h*).

Limitation of liability.

759. Either owner can proceed to limit his liability (*i*), and pay into court the sum due from him in case of such limitation. And in this case the owner of the vessel who is entitled to receive the larger contribution towards his damages, and to whom therefore a balance is due, can prove against the fund for the amount of the balance (*k*).

More than two vessels in fault.

Tug and tow.

760. Where more than two vessels have been in collision, and they have all been in fault, the liability to make good the damage or loss will be distributed among them in proportion to the degree in which each vessel was in fault (*l*). Thus, when a tug, tow and third vessel are all in fault for a collision between any two of them, each vessel must be allotted its own proportion of the damages (*m*). It may be a great disadvantage to one vessel in such a case to allow judgment to go by default in an action by one of the others (*n*).

Third innocent vessel.

761. Where by the fault of two vessels a collision is caused between one of them and a third innocent vessel, the new rule of

(*g*) *London Steamship Owners' Insurance Co.* v. *Grampian Steamship Co.* (1890), 24 Q. B. D. 663, 667.

(*h*) *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1882), 7 App. Cas. 795. The text states what the law was before the Act came into operation. The old law depended on *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co., supra,* which decided that the result of the Admiralty Court rule of division of loss was only one liability, and not cross liabilities. This decision was based on the proper form of the decree in the Admiralty Court in case of division of loss, and on the Admiralty procedure which brought about the same result as if the whole controversy was dealt with in one proceeding. But under the Act division of loss turns on the new rule, which is not a mere development of British law, but springs from a Convention between nations. It is arguable, therefore, that the whole principle of division of loss is changed, and that individual liabilities are imposed on the owners of the several vessels even as regards one another. It is doubtful for many reasons if this argument can succeed, but if it does, the foundation of the Admiralty Court division of loss for the last thirty years will be taken away.

(*i*) Under M. S. Act, 1894, s. 503; see Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (1) (c).

(*k*) *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co., supra.*

(*l*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (1).

(*m*) Thus avoiding the inequalities before the Act as between the owners of the tug and tow arising from the owners of the tow being usually more substantial shipowners, and therefore being called on to pay the balance of damages due to the owners of the third vessel, and being prevented from recovering contribution from the owners of the tug owing to the rule of no contribution between tortfeasors; compare *The Englishman and The Australia,* [1894] P. 239; [1895] P. 212; see also *The Harvest Home,* [1905] P. 177, C. A.

(*n*) As it was sometimes before the Act; see *The Morgengry and The Blackcock,* [1900] P. 1.

SECT. 3. Negligence Causing Damage.

division of liability (*o*) does not directly (*p*) apply to an action by the owners of the innocent vessel against either or both of the wrong-doing vessels, and the plaintiffs are entitled to judgment against either or both of the wrong-doing vessels for the full amount of their damages (*q*).

Cargo owner.

762. As regards cargo on one vessel damaged by a collision with another vessel by the fault of both of them, it has not yet been decided whether the cargo owner is entitled to recover in full his damages from the owner of the other vessel in fault (*r*). Similarly it has not yet been decided whether he is entitled to recover in full against the owner of the vessel carrying his cargo, but any right of recovery against such owner is qualified by the contract of carriage contained, for instance, in the charterparty or bill of lading (*s*).

Passengers.

763. It has not yet been decided whether the right of a passenger in similar circumstances to recover his passage money (*t*), and his right of action for damage or loss of luggage (*u*), against the owner of the other vessel is limited by the Act. As regards a cabin passenger, his right to recover from the owner of the vessel by which he is sailing is qualified by his contract ticket (*a*).

(*o*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (1).

(*p*) As to the application of the new rule as to the division between the owners of the two wrong-doing vessels of the damages so recovered against one of the wrong-doing vessels, see pp. 523, 524, *post*.

(*q*) See *The Cairnbahn* (1912), 29 T. L. R. 60, where in an action by an innocent tow which had been damaged owing to the joint negligence of her tug and a third vessel, both of which were found to blame in equal degrees, judgment was entered against both, and owners of the tow recovered their damages in full against the owners of the third vessel. The same rule existed before the Act; see *S.S. Devonshire* (*Owners*) v. *Barge Leslie* (*Owners*), [1912] A. C. 634. It appears that, according to art. 4 of the Collision Convention between the contracting states, it was provided that even to innocent third parties a vessel was only to be liable in proportion to the degree in which she was in fault; see Roscoe and Robertson's Maritime Conventions Act, 1911, p. 8. The Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), was passed to enable this Convention to be carried into effect (see the title of the Act); but in the above respect it appears not to have done so. In *The Cairnbahn, supra*, the only collision was between the innocent vessel and one of the wrong-doing vessels; but it may be inferred that the same rule would have applied if this collision had been the result of a collision between the two wrong-doing vessels; as to the law on this point before the Act, see *The Frankland*, [1901] P. 161.

(*r*) The question whether this is so or not under the Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (1), was argued in *The Umona* (1913), 8th December, in the Admiralty Division, in which judgment is as yet reserved. Before the Act, in such an action the cargo owner could only recover half damages (*S.S. Tongariro* (*Owners of Cargo*) v. *S.S. Drumlanrig* (*Owners*), *The Drumlanrig*, [1911] A. C. 16), even if both vessels belonged to the same owners (*Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.* (1883), 10 Q. B. D. 521, C. A.).

(*s*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (1) (c); as to the law on this point before the Act, compare *Burness & Sons* v. *Persian Gulf Steamship Co., The Bushire* (1885), 5 Asp. M. L. C. 416.

(*t*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (1), (2).

(*u*) *Ibid.*, s. 1 (1), "any property on board."

(*a*) *Ibid.*, s. 1 (1) (c). The Board of Trade form (No. 729 of the year

Loss of life and personal injuries.

764. Before the Act, when any person on board a vessel suffered loss of life in a collision owing to the fault of that vessel and of any other vessel, an action *in personam* could be brought under Lord Campbell's Act (*b*) by the executor for the benefit of the parent, spouse and child of such person against the owners of either vessel, subject to any defences, to recover damages for the injury resulting to them from the death of such person; and in case of personal injuries the person could bring his own action *in personam* (*c*). But under the Act such actions may now also be brought *in rem* (*d*). In such an action the liability of the owners of each vessel in fault is both joint and several (*e*), so that the action may be brought against the owners of either (*f*) or both vessels (*g*), and full damages can be recovered from the owners of either vessel, but the owners of either vessel can limit their liability (*h*). If the action is brought against the owners of the vessel on which the person was, they can rely on any defence open to them, such as conditions in a contract or common employment (*i*).

Right of contribution in such cases.

765. When damages for loss of life or personal injuries have been recovered against the owners of one vessel, they are entitled to recover by way of contribution from the owners of the other vessel the excess by which the damages exceed the proportion in which their own vessel was in fault; and for this purpose of recovery over, the owners of the vessel have the same rights and powers as the original plaintiffs have under the Act (*k*); so it appears that they could, as if they were the original plaintiffs, bring an action against the owners of the other vessel and thus recover a proper amount of the claim. But these rights give the owners no power to recover against the other owners any amount which could not by reason of any statutory or contractual limitation of, or exemption from liability, or which could not for any other reason

1894), of steerage passenger's contract ticket, which must be given to steerage passengers in certain cases, contains no exception of negligence, and does not admit of any such exception being added (*O'Brien* v. *Oceanic Steam Navigation Co.* (1913), 29 T. L. R. 629; affirmed (1914), *Times*, 10th February, C. A.).

(*b*) Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93).

(*c*) If it was shown that the owners of a ship were probably liable to pay damages for fatal or other personal injuries sustained on, in, or about the ship, and that none of the owners resided in the United Kingdom, the ship could be detained until security to abide the event of the action had been given; see Shipowners' Negligence (Remedies) Act, 1905 (5 Edw. 7, c. 10).

(*d*) An action for loss of life could not be brought *in rem* before the Act; see *The Vera Cruz* (No. 2) (1884), 9 P. D. 96, C. A.

(*e*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 2.

(*f*) Before the Act an action in respect of the death of an innocent person on board a vessel, owing to a collision for which this vessel and another vessel were in fault, could be brought against the owner of the other vessel, in which full damages could be recovered; see *Mills* v. *Armstrong, The "Bernina"* (1888), 13 App. Cas. 1.

(*g*) Or more vessels, if more than two are concerned.

(*h*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 2, proviso.

(*i*) *Ibid.*; compare *Hedley* v. *Pinkney & Sons Steamship Co.*, [1894] A. C. 222 (common employment).

(*k*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 3.

SECT. 3. Negligence Causing Damage.

have been recovered in the first instance as damages by the persons entitled to sue therefor (*l*). When by the fault of two vessels a collision is caused between one of them and a third innocent vessel, the owner of one of the two vessels in fault, who has been compelled to pay damages in full to the innocent vessel, can recover against the owner of the other vessel in fault a proportion not only of the damage to his own vessel, but also of the damages which he has paid to the owner of the innocent vessel (*m*), but he cannot recover any proportion of the costs of unsuccessfully disputing his liability to the owner of the innocent vessel (*n*).

Limitation of time of action.

766. In case of damage or loss caused to a vessel, her cargo or freight, or any property on board, or in case of damages for loss of life or personal injury suffered by any person on board a vessel, owing to a collision caused by the fault of one or more other vessels, as a rule no action is maintainable against the other vessels or their owners, unless proceedings are commenced within two (*o*) years from the date when the damage or loss or injury was caused (*p*). In such cases of collision, no action as a rule is maintainable by the owners of one vessel in fault to enforce, against the owners of another vessel in fault, any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries, unless proceedings are commenced within one year from the date of payment (*q*). The court has power in certain circumstances to extend the time (*r*).

Application of Act.

767. The Act applies throughout His Majesty's dominions (*s*),

(*l*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 3 (1), proviso.

(*m*) *The Cairnbahn*, [1914] P. 25, C. A. As to the law of no contribution between tortfeasors, applying before the Act, see *The Avon and Thomas Joliffe*, [1891] P. 7; *The Stormcock* (1885), 5 Asp. M. L. C. 470.

(*n*) *The Cairnbahn* (No. 2) (1913), 29 T. L. R. 559; affirmed (1913), 5th December, C. A.

(*o*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 8; see *The Cambric* (1912), 29 T. L. R. 69 (application to the court under that provision to extend the time for bringing the action granted).

(*p*) In cases of loss of life and personal injuries before the Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), actions for loss of life under Lord Campbell's Act had to be commenced within twelve calendar months after the death of the person; see Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93), s. 3. In *The Caliph*, [1912] P. 213, it was decided that an action *in rem*, for damages for loss of life arising out of a collision caused by the fault of defendants' vessel, is now maintainable within two years from the date when the loss of life was caused. As regards proceedings for compensation for injury by accident arising out of a collision, the limitation of time in the Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 2, is six months; but it is perhaps doubtful whether such compensation is included in the divisible damages; see note (*d*), p. 520, *ante*. A workman on board a ship may (*Macbeth & Co.* v. *Chislett*, [1910] A. C. 220) bring an action against the shipowners under the Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), under which Act the limit prescribed is six months from the accident causing injury, or twelve months from the death; see *ibid.*, s. 4.

(*q*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 8.

(*r*) *Ibid.*, proviso; see *The Cambric*, *supra*.

(*s*) And to territories under his protection, and Cyprus (Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 9 (1)).

except the self-governing dominions (*t*). The Act applies in all cases begun on or since the 16th December, 1911, and determined in any court having jurisdiction over such a case, and in whatever waters the damage or loss in question was caused (*a*). So far as the provisions of the Act are *lex fori*, they seem to be applicable to all vessels which submit to the jurisdiction of the court, possibly including His Majesty's ships (*b*).

SECT. 3. Negligence Causing Damage.

SECT. 4.—*General Incidence and Extent of Liability.*

SUB-SECT. 1.—*Parties Liable.*

(i.) *In General.*

General presumption.

768. The person who causes a ship to collide and do damage by any negligent act or omission is liable for the damage caused by that negligent act or omission (*c*).

Liability of owner.

769. There is a presumption that the owner of the ship is liable for the damage caused by the negligence of those on board the ship, but the presumption may be rebutted by the owner showing that the negligence was not the negligence of his servant or agent, for instance that it was the negligence of a compulsory pilot, or that the act done was not done in the course of the servant's duty (*d*).

Liability for servants and agents.

770. The liability of the owner as a rule, in admiralty as at common law, rests on his responsibility for the acts of his servants

(*t*) Namely, Canada, Australia, New Zealand, South Africa, and Newfoundland; see Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 9 (1). The Act has been sent to the self-governing dominions, and they have been invited to adhere to the Conventions and to pass legislation on the lines of the Act. The Commonwealth of Australia has expressed its intention of adhering to the Conventions.

(*a*) *Ibid.*, s. 9 (2), (3).

(*b*) Though the Act, being construed as one with the M. S. Acts, 1894—1907, seems not to apply otherwise to His Majesty's ships; see M. S. Act, 1894, s. 741.

(*c*) *Stort* v. *Clements* (1792), Peake, 144 (pilot, defendant, escaped liability); *Nicholson* v. *Mouncey and Symes* (1812), 15 East, 384 (captain of His Majesty's ship held not liable for negligence of lieutenant); *Lawson* v. *Dumlin* (1850), 9 C. B. 54 (pilot, defendant, held liable); *Smith* v. *Voss* (1857), 2 H. & N. 97 (pilot, defendant, held liable).

(*d*) *Joyce* v. *Capel* (1838), 8 C. &. P. 370 (bargeman is *primâ facie* a servant of the owners); *The Druid* (1842), 1 Wm. Rob. 391 (owners held not responsible for violent detention of, and wilful damage to, a vessel by their tug-master); *The Ida* (1860), Lush. 6 (owners would not be responsible for damage done by a vessel which has been quite unwarrantably cut adrift by the master of their vessel); *Hibbs* v. *Ross* (1866), L. R. 1 Q. B. 534 (the registered owner of a ship is *primâ facie* liable for the negligence of the shipkeeper while the ship is laid up); *Frazer* v. *Cuthbertson* (1880), 6 Q. B. D. 93, 98 (a person wrongly registered as managing owner is not necessarily held out as agent of a registered owner of shares in a ship); *Smith* v. *Bailey*, [1891] 2 Q. B. 403, C. A. (owner of locomotive held not liable for negligent management by bailee on a highway); *Currie* v. *M'Knight*, [1897] A. C. 97, 107 (to render a ship liable to a maritime lien for damage, the ship itself must be the instrument which causes the damage). As to the effect of the Pilotage Act, 1913 (2 & 3 Geo. 5, c, 31), on the liability of a shipowner for negligence of a compulsory pilot, see note (*o*), p. 529, *post*.

SECT. 4. General Incidence and Extent of Liability.

and agents, and does not depend on the ownership of the vessel (*e*); though in some cases the legislature has imposed a liability on the owner of a ship for damage done by it, even though the damage is caused by the negligence of some person who is not the servant or agent of the owner (*f*).

Liability of master.

771. The master is liable for damage arising from his own negligence or breach of contract made with the owner of cargo shipped on his vessel; but he is not liable for the damage done by an act of the crew or of the pilot, whether done in the course of their duty to the shipowner or not, unless ordered by him (*g*).

(ii.) *In Case of Chartered Ship.*

Chartered ship.

772. If a vessel while on charter collides with another vessel and causes damage, the question whether the charterer of the vessel or the owner is liable depends upon whether the person guilty of the negligence which caused the collision is the servant or agent of the charterer or of the owner.

Basis of liability.

This question can only be answered by considering the terms of the agreement made between the parties. Generally, if the charterer pays and appoints the crew, he is liable for their negligence; if the owner pays and appoints them, he is liable (*h*). The *ratio*

(*e*) *Hibbs* v. *Ross* (1866), L. R. 1 Q. B. 534; *River Wear Commissioners* v *Adamson* (1877), 2 App. Cas. 743, 751 (at common law the owner would not be liable merely because he was the owner or without showing that those navigating the vessel were his servants); *Simpson* v. *Thomson* (1877), 3 App. Cas. 279, 293 (the owner of a ship is liable to an action for damage, not because he is the owner, but because he is the master of the captain and crew, whose negligence in the course of their employment occasioned the damage).

(*f*) Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), ss. 74, 75; for cases thereon, see *Dennis* v. *Tovell* (1872), L. R. 8 Q. B. 10; *The Merle* (1874), 2 Asp. M. L. C. 402; *River Wear Commissioners* v. *Adamson* (1877), 2 App. Cas. 743.

(*g*) *Stort* v. *Clements* (1792), Peake, 144; *M'Manus* v. *Crickett* (1800), 1 East, 106; *Bowcher* v. *Noidstrom* (1809), 1 Taunt. 568 (master not liable for wilful injury to another ship done by one of his crew without his privity or direction, but by order of the pilot); *Aldrich* v. *Simmons* (1816), 1 Stark. 214 (the captain cannot be responsible to the owner for the misconduct of the pilot); *Blaikie* v. *Stembridge* (1859), 6 C. B. (N. S.) 894 (a stevedore appointed by the charterer, but paid by and acting under the master's orders, held not to be the servant or agent of the master so as to render him responsible; the liabilities of the master in such cases fully considered); *Oakley* v. *Speedy* (1879), 4 Asp. M. L. C. 134 (with a compulsory pilot in charge, a master was held not criminally liable for a breach of the regulations in the absence of proof that he wrongfully interfered with the navigation).

(*h*) *Scott* v. *Scott* (1818), 2 Stark. 438 (*semble:* owner of barge is not liable for the negligence of servants of another person to whom he has lent it); *Fenton* v. *City of Dublin Steam Packet Co.* (1838), 8 Ad. & El. 835 (where the owners kept their own crew on board and were to keep the vessel in good order, they were held liable for the crew's negligence, though the crew were to be paid by the charterer); *Dalyell* v. *Tyrer* (1858), E. B. & E. 899 (a passenger who had contracted for a passage with the lessee of a ferry, held entitled to recover from the owners of a tug, hired by the lessee for one day, for injury arising from negligence of the tug's crew); *Hodgkinson* v. *Fernie* (1857), 2 C. B. (N. S.) 415 (*semble:* the owner of a transport hired

decidendi in cases in which vessels in the hands of charterers have been held liable in actions *in rem* is that the charterers are considered as *pro hâc vice* owners (*i*).

(iii.) *In Case of a Vessel in Tow.*

Collision of tug and tow.

773. In case of a collision between a tug and her tow causing damage, a liability arises in favour of the one and against the other, if the collision is due to the other not fulfilling her duties under the contract of towage. In the absence of agreement to the contrary, there is in a contract of towage an implied warranty by the owners of the tug that she is fit for her service (*k*); and it is also implied that her crew, tackle, and equipment shall be equal to the work to be accomplished in weather and other circumstances reasonably to be expected, and that reasonable skill, care, and energy shall be shown in accomplishing the work (*l*), and that neither shall negligently create unnecessary risk to the other or increase any risk incidental to the service (*m*). The tug owners are not responsible if the towing becomes impossible through no fault of theirs (*n*); nor can they recover compensation from the owners of the tow for damage incurred by the tug owing to dangerous circumstances without misconduct of the tow (*o*). The owners of the tow are liable for damage arising to the tug from improper orders of the tow, for instance to get connexion (*p*), if there is no contributory negligence of the tug (*q*).

Collision with a third vessel.

774. In case of a collision with a third vessel, the owners of the tug and the tow are of course responsible for damage caused by the negligent navigation (*r*) of their respective vessels. The owners of

by the Government for war is not responsible for damage done to another transport of the same expedition resulting from the master's obedience to the order of the commanding officer); *Baumwoll Manufactur von Carl Scheibler* v. *Furness*, [1893] A. C. 8; and as to when a charterparty amounts to a demise of the ship, see, further, pp. 85, 86, *ante*.

(*i*) *The Lemington* (1874), 2 Asp. M. L. C. 475 (chartered vessel held liable in action *in rem* for collision, as the crew were the servants of the charterers, who were *pro hac vice* owners); *The Tasmania* (1888), 13 P. D. 110 (a chartered tug held not liable in action *in rem* for collision with her tow, as charterers had contracted with the owners of the tow to be free from liability).

(*k*) *The West Cock*, [1911] P. 208, 217, C. A.; *The Maréchal Suchet*, [1911] P. 1, 12; *The Undaunted* (1886), 11 P. D. 46; but compare *Robertson* v. *Amazon Tug and Lighterage Co.* (1881), 4 Asp. M. L. C. 496, C. A. (where a master mariner contracted with a company to take a specific tug and barges to South America, it was held that there was no implied warranty by the company that the tug was reasonably efficient for the purpose).

(*l*) *The Maréchal Suchet, supra*; *The Robert Dixon* (1879), 4 P. D. 121; compare *Preston Corporation* v. *Biornstad, The* "*Ratata*," [1898] A. C. 513 (harbour authority undertook to tow a number of vessels up a tidal river with hired tugs).

(*m*) *The Julia* (1861), Lush. 224, P. C., *per* Lord KINGSDOWN, at p. 231.

(*n*) *The Maréchal Suchet, supra.*

(*o*) *The Julia, supra.*

(*p*) *Ibid.*

(*q*) See, further, p. 491, *ante*.

(*r*) As to negligence causing damage, see pp. 499, 500, *ante*; and as to the Sea Regulations, pp. 373 *et seq.*, *ante*.

SECT. 4. General Incidence and Extent of Liability.

the tow are also responsible to third parties for the negligence of the tug, when the relation of master and servant in fact exists between those in charge of the tug and the owners of the tow (*s*); or when, which appears to amount to the same thing, though the motive power is in the tug, the governing power is in the tow (*t*). Unless this relation is established, the owners of the tow are not responsible for the negligence of the tug (*a*). The owners of the tow, therefore, are not liable when the master and crew of the tug are not their servants, but the tug is in the position of an independent contractor (*b*); nor are they liable even when the tow has been controlling the tug, if the tug acts so suddenly as to prevent the tow from controlling her, unless the sudden action arises out of the previous control (*c*).

Control of tug by tow.

775. No general rule can be laid down as to when the crew of the tug are the servants of the owners of the tow, but it depends on circumstances (*d*). In the case of sea-going ships in tow, the whole direction as a rule is in the hands of the persons navigating the tow, to avoid divided command and because the officers of the tow are of a higher class than those on the tug (*e*); and the master and crew of the tug are there for navigating purposes in the position of servants of the owners of the tow, so that the owners of the tow

(*s*) *The Quickstep* (1890), 15 P. D. 196, 199; *S.S. Devonshire* (*Owners*) v. *Barge Leslie* (*Owners*), [1912] A. C. 634.

(*t*) *Union Steamship Co.* v. "*Aracan*" (*Owners*), *The* "*American*" *and The* "*Syria*" (1874), L. R. 6 P. C. 127, 132; *Stevens* v. *Gourley, The Cleadon* (1860), 14 Moo. P. C. C. 92, 97.

(*a*) Before the case of *Union Steamship Co.* v. "*Aracan*" (*Owners*), *The* "*American*" *and The* "*Syria*," *supra*, which held that when the tug had the governing power the tow could not be deemed liable for her negligence, it was sometimes considered that the owners of the tow were to be held responsible for the negligence of the tug in all cases (compare *The Ticonderoga* (1857), Sw. 215); and this seems to have been based on the doctrine that the relation of master and servant necessarily existed between the tug and tow as regards third parties as a matter of law (compare *The Sinquasi* (1880), 5 P. D. 241, 244), or on views of expediency (compare *The Quickstep, supra*, at p. 199). This doctrine, in the form of constructive negligence or otherwise, has been pressed in arguments until the present time (compare *S.S. Devonshire* (*Owners*) v. *Barge Leslie* (*Owners*), *supra*), reliance being usually placed on some general assertion in judicial decisions that the tow is for some purposes identified with the tug (compare *Union Steamship Co.* v. "*Aracan*" (*Owners*), *The* "*American*" *and The* "*Syria*," *supra*, at p. 132), and on the fact that in their steering and for some other purposes of navigation the tug and tow are to be regarded to some extent as one vessel (compare *The Seacombe, The Devonshire*, [1912] P. 21, 49, C. A.). But *The Ticonderoga, supra*, and *The Sinquasi, supra*, in so far as they purported to establish the liability above stated, are no longer law; and doctrines to a similar effect are largely discredited. See also *The Englishman and The Australia*, [1894] P. 239, where the liability of the tow was founded partly on the doctrine of identification; but the decision in this case is no longer law owing to the Maritime Conventions Act, 1911 (1 & 2 Geo 5, c. 57), s. 1; see pp. 516 *et seq.*, *ante*.

(*b*) *The Seacombe, The Devonshire, supra*, at p. 49.

(*c*) *The Niobe* (1888), 13 P. D. 55. *The Sinquasi, supra*, cannot now be considered an authority to the contrary.

(*d*) *The Quickstep, supra*, at p. 200.

(*e*) *The Niobe, supra*, at p. 59.

are responsible for their negligence (*f*). But even in the case of ships at sea the tow is not to blame if the governing power is wholly in the vessel towing (*g*); and in rivers and inland waters, where a tug is towing a single barge or other like craft, the navigation is often in the hands of the tug, and still more so when towing a group of such craft; so that in such cases the tow is not responsible for the tug's negligence (*h*).

Compulsory pilot of tow.

776. When the compulsory pilot of the tow is alone in fault for the collision, the owners neither of the tug (*i*) nor the tow (*k*) are liable. But though the tow is in charge of a compulsory pilot, the tug cannot on this ground escape liability for her own negligence (*l*).

Volunteer tug.

777. Although the tug is a volunteer, the owners of the tow will be liable for a collision due to the tug being too weak, if they choose to accept her services (*m*).

Division of loss.

778. In cases where damage or loss is caused by a collision between a third vessel and a tug or tow by the fault of the third vessel and the tug or tow or both of them, the liability to make good the damage or loss is in proportion to the degree in which each vessel is in fault (*n*).

(iv.) *In Case of Compulsory Pilotage.*

When pilotage compulsory.

779. When a collision is occasioned by the fault of a compulsory pilot who is in charge of a ship, the shipowner is not (*o*) liable

(*f*) *The Seacombe, The Devonshire*, [1912] P. 21, 49, C. A.; compare *M'Cowan* v. *Baine, The "Niobe,"* [1891] A. C. 401, 407; *Smith* v. *St. Lawrence Tow-Boat Co.* (1873), L. R. 5 P. C. 308.

(*g*) *Union Steamship Co.* v. *"Aracan"* (*Owners*), *The "American" and The "Syria"* (1874), L. R. 6 P. C. 127.

(*h*) Compare *S.S. Devonshire* (*Owners*) v. *Barge Leslie* (*Owners*), [1912] A. C. 634; *The W. H. No. 1 and The Knight Errant*, [1910] P. 199, C. A.; affirmed, [1911] A. C. 30.

(*i*) *The Duke of Sussex* (1841), 1 Wm. Rob. 270. As to the effect of the Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), on the liability of a shipowner for negligence of a compulsory pilot, see note (*o*), *infra*.

(*k*) *Marshall* v. *Moran, The "Ocean Wave"* (1870), L. R. 3 P. C. 205.

(*l*) *The Mary* (1879), 5 P. D. 14; *Spaight* v. *Tedcastle* (1881), 6 App. Cas. 217.

(*m*) *The Belgic* (1875), 2 P. D. 57, n., 59, n.

(*n*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (1); see *The Cairnbahn* (1912), 29 T. L. R. 60. Before this Act an innocent tow, damaged by collision with a third vessel by the fault of the tug and third vessel, could recover in full against the third vessel (see *The Seacombe, The Devonshire, supra*), and was not limited to recovering half damages, as in the case of fault of her compulsory pilot (*The Hector* (1883), 8 P. D. 218, C. A.).

(*o*) After the 1st January, 1918, by the Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 15 (1), notwithstanding anything in any public or local Act, the owner or master of a vessel navigating in circumstances in which pilotage is compulsory will be answerable for any loss or damage caused by the vessel or by any fault of the navigation of the vessel in the same manner as he would if pilotage were not compulsory: by *ibid.*, s. 15 (2), the operation of this provision is deferred until the 1st January, 1918, or such earlier date as His Majesty may fix by Order in Council.

SECT. 4. General Incidence and Extent of Liability.

for the damage caused by the collision (*p*). In such a case the pilot is responsible for the damage done, but if he is a licensed pilot, who has given a proper bond, he is not liable for neglect or want of skill beyond the penalty of the bond and the amount payable on account of pilotage in respect of the voyage in which he was engaged when he became so liable (*q*).

Pilot's liability.

In order that the owner may escape liability for a collision on the ground that his vessel was in charge of a compulsory pilot he must show that a qualified pilot was in charge of the vessel, that the charge was compulsory, and that the fault which occasioned the collision was that of the pilot. When the shipowner has shown that *primâ facie* the cause of the collision was the fault of a qualified compulsory pilot, the burden is shifted; and the plaintiff, in order to make out his case, must show that the defendant's servants also were negligent (*r*).

As to proof of compulsory pilotage.

It is the pilot's duty to navigate the ship, and his duty, therefore, to decide when she shall get under way (*s*). It is his duty to give the orders to the helm (*t*), and if in tow of a tug to direct

(*p*) M. S. Act, 1894, s. 633. This provision is only declaratory of the common law (*The Maria* (1839), 1 Wm. Rob. 95; *The Annapolis* (1861), Lush. 295; *The Halley* (1868), L. R. 2 P. C. 193 (owners of vessel not liable for fault of compulsory pilot by English law, though so liable by law of foreign country); *General Steam Navigation Co.* v. *British and Colonial Steam Navigation Co.* (1869), L. R. 4 Exch. 238, Ex. Ch. (owners not liable where pilot was compulsorily employed for the district, though not at the place of collision); *The Charlton* (1895), 8 Asp. M. L. C. 29, C. A.; *The Hector* (1883), 8 P. D. 218, 222, C. A. (collision due to fault of first vessel and fault of compulsory pilot on second vessel: owners of second vessel could recover half their damages from the other owners); *The Sussex*, [1904] P. 236 (failure to stay by and render assistance)). As to the liability of a shipowner under the Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 13, when that provision comes into force, and as to the repeal of the M. S. Act, 1894, s. 633, thereby, see p. 611, *post*.

(*q*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 35; and see p. 605, *post*; compare *Greenock Towing Co.* v. *Hardie* (1901), 4 F. (Ct. of Sess.) 215, 217; *Mersey Docks and Harbour Board* v. *Turner, The "Zeta,"* [1893] A. C. 468; *R.* v. *Judge of City of London Court*, [1892] 1 Q. B. 273, C. A.; *The Octavia Stella* (1887), 6 Asp. M. L. C. 182. As to a pilotage authority not being liable in respect of any act or default of a pilot, see Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 19; p. 601, *post*.

(*r*) *Clyde Navigation Co.* v. *Barclay* (1876), 1 App. Cas. 790; *The Indus* (1886), 12 P. D. 46, C. A. (owners held liable where pilot's order to helm was in fact not carried out, and the machinery, which was said to be out of order, acted well before and afterwards); *The "Velasquez"* (1867), L. R. 1 P. C. 494 (if the crew and the pilot combine consciously to put forward a false case, the owners fail to show that the fault was exclusively that of the pilot); *The Benmohr* (1904), 52 W. R. 686. If neither side calls the pilot as a witness, the court may do so; see *The Cardiff*, [1909] P. 183.

(*s*) *The Peerless* (1860), Lush. 30. It is the pilot's duty to take the assistance of a tug in getting under way if necessary (*Prowse* v. *European and American Steam Shipping Co., The Peerless* (1860), 13 Moo. P. C. C. 484). He probably has no power to engage a tug, but he should advise the master to do so (*The Julia* (1861), Lush. 224, P. C.); and the pilot ought not to get under way without the tug's assistance if it is dangerous to do so (*Kennedy* v. *Steamer Sarmatian* (1880), 2 Federal Reporter, 911). But the master is responsible for the efficiency and power of the tug (*Marshall* v. *Moran, The "Ocean Wave"* (1870), L. R. 3 P. C. 205).

(*t*) *The Schwalbe* (1861), Lush. 239.

the tug's navigation (*u*). He has to decide whether to comply with the statutory rule of the road or not (*v*), to determine the rate of speed for a steam vessel (*w*), and in the case of a sailing vessel to decide what sail is to be set (*x*), to bring the ship up and to select the place of anchorage (*y*). He should insist on having control of the ship or decline to act as pilot at all, otherwise he may not escape his liability as a compulsory pilot (*z*). But the mere fact that there is a qualified compulsory pilot in charge of the ship does not exonerate the master and crew from the proper observance of their own duty. Although the direction of the pilot may be imperative upon them as to the course the vessel is to pursue, the management of the ship itself is still under the control of the master. It is his duty to secure the safe conduct of his vessel by issuing the necessary orders, and it is the duty of the crew to carry these orders into execution (*a*). The owners must provide the pilot with a competent crew, a competent look-out, and a well-found ship (*b*). Further, it is the duty of the master to observe the conduct of the pilot, and in the case of palpable incompetency, whether arising from intoxication or ignorance, to interpose his authority (*c*).

(*u*) *Marshall* v. *Moran, The "Ocean Wave"* (1870), L. R. 3 P. C. 205. But, in the absence of orders from the pilot, it is the duty of those in charge of the tug to keep clear of other ships. "It is not necessary that the pilot should be giving orders perpetually for every movement of the helm of the tug" (*The Sinquasi* (1880), 5 P. D. 241, 244).

(*v*) *The Argo* (1859), Sw. 462.

(*w*) *Moss* v. *African Steamship Co., The "Calabar"* (1868), L. R. 2 P. C. 238.

(*x*) *Hammond* v. *Rogers, The Christiana* (1850), 7 Moo. P. C. C. 160.

(*y*) *Ibid.*; compare *The George* (1845), 2 Wm. Rob. 386; *Pollok* v. *McAlpin, The Lochlibo* (1851), 7 Moo. P. C. C. 427. His duty as to anchoring includes the mode and necessary preparations (*The Gipsey King* (1847), 2 Wm. Rob. 537); paying out of sufficient cable (*Wood* v. *Smith, The "City of Cambridge"* (1874), L. R. 5 P. C. 451); and letting go a second anchor if necessary (*The "Northampton"* (1853), 1 Ecc. & Ad. 152); and if the vessel parts from her anchor, the pilot must manœuvre her into safety again (*Wood* v. *Smith, The "City of Cambridge," supra*). When docking he must give the necessary orders to control the ship's course and speed by means of check ropes and warps (*The Rigborgs Minde* (1883), 8 P. D. 132, C. A.). Similarly, it is his duty to set head sails if necessary to help the ship round (*Marshall* v. *Moran, The "Ocean Wave," supra*). On the other hand, the master must send down the top gallant yards on anchoring, and owners have been held liable for his neglect to do so (*Hammond* v. *Rogers, The Christiana, supra*).

(*z*) *Greenock Towing Co.* v. *Hardie* (1901), 4 F. (Ct. of Sess.) 215.

(*a*) *The Diana* (1862), 1 Wm. Rob. 131.

(*b*) *The Tactician*, [1907] P. 244, C. A; *The Ape* (1914), 30 T. L. R 286. The master must not allow improper lights to be exhibited, notwithstanding the orders of the pilot (*The Ripon* (1885), 10 P. D. 65). The pilot must be informed of any defect in the vessel which makes her difficult to navigate; see *The Livia* (1872), 1 Asp. M. L. C. 204 (steering gear); *The "Iona"* (1867), L. R. 1 P. C. 426 (neglect in look-out); *The "Meteor"* (1875), 9 I. R. Eq. 567, C. A. (inadequately manned and out of trim); although the vessel need not be in the best of trim, if in ordinary safe trim (*The Argo* (1859), Sw. 462). See also, as to improper equipment, *Mann, Macneal & Co.* v. *Ellerman Lines* (1904), 7 F. (Ct. of Sess.) 213.

(*c*) *The Duke of Manchester* (1846), 2 Wm. Rob. 470. But, if a collision occurs through improper interference with the pilot, the owners will be liable; occasions which justify interference are very rare; see *The Peerless* (1860), Lush. 30, *per* Dr. LUSHINGTON, at p. 32. It has been said that the

SECT. 4. General Incidence and Extent of Liability.

Vessel acting under orders of harbour or dock master.

(v.) *In Case of Ship Acting under Harbour Authority etc.*

780. When a collision is caused by those on board a vessel following the orders of a harbour master or dock master, given within the limits of his jurisdiction, the owner of the ship is not liable for the damage caused by the collision (*d*). The orders of such an official have to be executed with care, and whether the order is properly given or not, the shipowner will be liable in the event of negligence on the part of the master or crew (*e*). The official giving the negligent order is personally liable for the damage done. The harbour or dock authority is also liable if the harbour master or dock master giving the order gave it within the scope of his authority (*a*). The fact that the harbour authorities merely levy tolls which are used to maintain their property, and do not trade for profit, makes no difference to their liability (*b*). The

master is responsible for getting under way in bad weather (*Marshall* v. *Moran, The "Ocean Wave"* (1870), L. R. 3 P. C. 205), or a thick fog (*The Oakfield* (1886), 11 P. D. 34). It has been suggested that he is responsible for not remonstrating with a pilot who was navigating a vessel in a very dense fog on the Thames in circumstances in which he ought to have brought up (*Girolamo* (1834), 3 Hag. Adm. 169); see also *The Borussia* (1860), Sw. 94. But in more recent cases it has been doubted whether the master should interfere in such a case, it being for the pilot alone to decide when the ship should be brought up, and the place of anchorage; see *Pollok* v. *McAlpin, The Lochlibo* (1851), 7 Moo. P. C. C. 427; *The North American* v. *Wild Rose* (1865), 14 L. T. 68; see also *The George* (1845), 2 Wm. Rob. 386; *Wood* v. *Smith, The "City of Cambridge"* (1874), L. R. 5 P. C. 451. In *The Tactician*, [1907] P. 244, owners were held liable where the master failed to press on the attention of the pilot that the lights of a vessel which he was taking for moving must in fact be stationary; compare *The Elysia*, [1912] P. 152 (the master should remind the pilot, if necessary, as to giving sound signals).

(*d*) *The Bilbao* (1860), Lush. 149 (master bound by statute to regulate his vessel according to the directions of the harbour master); *The Mystery*, [1902] P. 115 (owners held not liable for obedience of their ketch to improper orders of a lock foreman, acting under bye-laws as deputy of the dock master, whose orders those in charge of the ketch were bound by statute to obey); *Reney* v. *Kirkcudbright Magistrates*, [1892] A. C. 264 (the person in charge of a vessel is not at liberty to disobey the order of a harbour master because he has an idea that it is a mistake); *Taylor* v. *Burger* (1898), 8 Asp. M. L. C. 364, H. L. (though one must not knowingly run into danger by the order of a harbour master, the primary duty is to obey, even if the action on one's own responsibility would amount to negligence); see, further, p. 499, *ante*.

(*e*) *The Excelsior* (1868), L. R. 2 A. & E. 268 (vessel moved to pier by dock master, after improper refusal by master to move her; she there broke adrift in a gale and did damage, owing to insufficiency of crew, and to masts and yards being left standing contrary to dock master's orders: owners held liable); *The Belgic* (1875), 2 P. D. 57, n. (where a master accepted the offer of a tug from the harbour master, which he was not bound to supply, and the tug proved too weak, causing collision with another vessel, the owners were liable); *The Cynthia* (1876), 2 P. D. 52 (owners held liable where the damage was caused not solely by the orders of the dock master, but by carelessness in not having a rope out to a buoy).

(*a*) *The Bearn*, [1906] P. 48, C. A.; *The Rhosina* (1885), 10 P. D. 131, C. A. (orders not confined to those given within the water where the Commissioners have authority); *"Apollo"* (*Owners*) v. *Port Talbot Co., The "Apollo,"* [1891] A. C. 499 (dock owners liable for vessel grounding on sill owing to wrongful representations of harbour master); *Reney* v. *Kircudbright Magistrates*, *supra*.

(*b*) *Mersey Docks Trustees* v. *Gibbs* (1866), L. R. 1 H. L. 93.

harbour authorities are entitled in certain circumstances to limit their liability (*c*).

(vi.) *In Case of National Ship.*

Liability in case of national ship.

781. When one of His Majesty's ships negligently collides with another vessel, causing damage, the person liable is the person whose negligence caused the collision; the legal responsibility attaches to the actual wrong-doer, and the injured party must seek redress not against the parties who may be indirectly involved in the transaction, but from the person who immediately caused the injury (*d*).

Freedom from arrest.

782. Vessels owned by the Crown or a foreign state are immune from arrest. This immunity is a consequence of the absolute independence of every sovereign authority, and of the international comity which induces every sovereign state to respect the independence and dignity of every other sovereign state; and each declines to exercise, by means of its courts, any of its territorial jurisdiction over the public property which is destined to the public use of the state, or over the property of any ambassador, though such property be within its territory, and therefore, but for the common agreement, would be subject to its jurisdiction (*e*).

(vii.) *In Case of Collision with a Wreck.*

Collision with wreck.

783. When damage is done to a vessel by collision with a wreck the liability of the original owner of the wreck for the damage depends on whether he has abandoned it and so ceased to be the owner. If he has abandoned the wreck he absolves himself from responsibility to remove it or protect other vessels from colliding with it. But so long as possession, management and control of the wreck are not abandoned or properly transferred, there remains on the owners an obligation in regard to the protection of other vessels from receiving injury from it. In order to fix the owners of a wreck with liability two things must be shown: first, that in regard to

(*c*) Merchant Shipping (Liability of Shipowners and Others) Act, 1900 (63 & 64 Vict. c. 32).

(*d*) *The Mentor* (1799), 1 Ch. Rob. 179 (an action does not lie against the admiral of a station for the destruction of a vessel, after hostilities have been declared to cease, by one of His Majesty's ships acting under the admiral's general orders; the action must be against the immediate wrong-doer); *The Athol* (1842), 1 Wm. Rob. 374 (monition refused against the Lords Commissioners of the Admiralty to answer a suit for damage to a vessel by collision with His Majesty's ship); *The Volcano* (1844), 2 Wm. Rob. 337 (the commander of a Queen's ship condemned in a cause of damage); *The Birkenhead* (1848), 3 Wm. Rob. 75 (a similar case); *H.M.S. Bellerophon* (1875), 3 Asp. M. L. C. 58 (no obligation on officer in charge of His Majesty's ships to give notice of her ram, where no reasonable ground for apprehending danger); *H.M.S. Sans Pareil*, [1900] P. 267, C. A.; *S.S. Hero (Owners)* v. *Commissioners for Executing the Office of Lord High Admiral of the United Kingdom*, [1912] A. C. 300.

(*e*) *The Parlement Belge* (1880), 5 P. D. 197, C. A. (unarmed packet belonging to foreign sovereign, and carrying mails and merchandise and passengers for hire, released from arrest for collision); *The Jassy*, [1906] P. 270 (putting in bail by agents of the Government under misapprehension is no waiver).

SECT. 4. General Incidence and Extent of Liability.

the particular matter in respect of which default is alleged, the control is in them, that is to say, has not been abandoned or legitimately transferred; and secondly, that they have in the discharge of their legal duty been guilty of negligence or wilful misconduct (*f*).

If the wreck is not abandoned either to the harbour authority or otherwise, and the owner himself employs a contractor to mark the position of the wreck and raise it, and the contractor acts negligently in marking or in raising it so as to cause damage, the owner is liable for the damage (*g*). A harbour authority, which has a right to charge tolls for the use of its harbour, is under an obligation to the owners of vessels using the harbour to keep it free from wrecks which might cause injury to such vessels (*h*).

SUB-SECT. 2.—*Presumption of Fault.*

(i.) *For Breach of the Sea Regulations.*

Presumption of fault.

Breach of Sea Regulations.

784. The provisions of the Merchant Shipping Act, 1894, imposing presumption of fault for breach of the collision regulations, are repealed, except as regards proceedings commenced before the 16th December, 1911 (*i*); and in no future action can there be any such presumption of fault against a vessel. Since

(*f*) *Brown* v. *Mallett* (1848), 5 C. B. 599; *White* v. *Crisp* (1854), 10 Exch. 312; *The Douglas* (1882), 7 P. D. 151, C. A.; *S.S.* "*Utopia*" (*Owners*) v. *S.S.* "*Primula*" (*Owners and Master*), *The* "*Utopia*," [1893] A. C. 492, P. C.; *The Snark*, [1900] P. 105, C. A. As regards the duty to light wrecks, see p. 383. *ante*. As to the expenses of removal of wreck by local authority, see *Arrow Shipping Co.* v. *Tyne Improvement Commissioners, The* "*Crystal*," [1894] A. C. 508; *The Sea Spray*, [1907] P. 133; and as to wrecks generally, see pp. 551 *et seq.*, 590 *et seq.*, *post*.

(*g*) *The Snark*, [1900] P. 105, C. A.; compare *Penny* v. *Wimbledon Urban Council*, [1899] 2 Q. B. 72, C. A.

(*h*) *Parnaby* v. *Lancaster Canal Co.* (1839), 11 Ad. & El. 223, Ex. Ch.; *Dormont* v. *Furness Rail. Co.* (1883), 11 Q. B. D. 496.

(*i*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), ss. 4 (1), 9 (2). Before the 16th December, 1911, when that Act came into operation, if a collision occurred between two vessels and either of them had infringed a collision regulation made under the powers conferred by the M. S. Act, 1894, that vessel was, subject to certain exceptions, deemed to be in fault under the provisions of the M. S. Act, 1894 (*ibid.*, ss. 418, 419 (4)). Even a venial breach of a regulation was sufficient to cause a ship to be held to blame (*Ocean Steamship Co., S.S.* "*Hebe*" (*Owners*) v. *Apcar & Co., S.S.* "*Arratoon Apcar*" (*Owners*), *The* "*Arratoon Apcar*" (1889), 15 App. Cas. 37, P. C.). In exceptional cases a vessel could escape being deemed in fault for not following a regulation, namely, if it was shown that a departure from the regulation was necessary owing to the circumstances of the case (M. S. Act, 1894, s. 419 (4)), or to avoid immediate danger (Sea Regulations, 1910, art. 27), or that the breach, if any, of the regulation could not by any possibility have contributed to the collision (*The* "*Fanny M. Carvill*" (*Owners*) v. *The* "*Peru*" (*Owners*), *The* "*Fanny M. Carvill*" (1875), 13 App. Cas. 455, n., P. C.; *The Magnet* (1875), L. R. 4 A. & E. 417; *The Englishman* (1877), 3 P. D. 18; *China Merchants' Steam Navigation Co.* v. *Bignold, The* "*Hochung*," *The* "*Lapwing*" (1882), 7 App. Cas. 512, P. C.; *The* "*Glamorganshire*" (1888), 13 App. Cas. 454, P. C.; *Eastern Steamship Co.* v. *Smith, The* "*Duke of Buccleuch*," [1891] A. C. 310; *The Argo* (1900), 9 Asp. M. L. C. 74, C. A.). Proof that the breach did not in fact

presumption of fault for infringement of a collison regulation has been repealed, the legal consequences of a breach of any of the Sea Regulations, 1910, are the same as they were before 1851, when special statutory consequences were first imposed for such disobedience (*k*). These legal consequences are the same also as those which have hitherto generally (*l*) attached to a breach of a local collision regulation. Thus the principles of law with regard to breaches of regulations which were established in decisions upon general or local regulations before 1851, and in most cases upon local regulations made since then, will apply in future to a breach not only of local regulations, but of the Sea Regulations, 1910 (*m*).

(ii.) *For Failure to Stay by and Render Assistance.*

Failure to stay by.

785. In every case of collision between two vessels there is a special duty on the master or person in charge of each vessel to stay by the other vessel and render assistance; but in case of breach of this duty there is no longer any such presumption of fault as formerly existed (*n*).

SUB-SECT. 3.—*Inevitable Accident.*

Inevitable accident.

786. A collision is said to be the result of an inevitable accident if it could not have been prevented by the exercise of reasonable care and ordinary skill (*o*).

Burden of proof.

The burden of proof is on those who set up this defence. The cause of the collision may be an inevitable accident, but unless defendants who have *primâ facie* caused it can prove this, they are

contribute to the collision was not sufficient to absolve a vessel from blame (*The "Fanny M. Carvill"* (*Owners*) v. *The "Peru"* (*Owners*), *The "Fanny M. Carvill"* (1875), 13 App. Cas. 455, n., P. C.).

(*k*) The Steam Navigation Act, 1851 (14 & 15 Vict. c. 79), s. 28 (since repealed). This Act came into force on the 31st December, 1851 (*ibid.*, s. 51).

(*l*) In some few places, *e.g.*, the Mersey, statutory presumption of fault attached until recently even to a breach of the local regulations; see the Mersey Channels Act, 1897 (60 & 61 Vict. c. 21). Such presumption has disappeared, as it depended on the M. S. Act, 1894, s. 419 (4), now repealed as above stated. As to presumption of fault in the Solent, see note (*o*), p. 481, *ante*.

(*m*) But decisions in cases arising between 1851 and 1911, where a statutory presumption of fault has applied, may also be material, *e.g.*, *Tuff* v. *Warman* (1857), 2 C. B. (N. S.) 740.

(*n*) See note (*c*), p. 371, *ante*. In any action begun before the 16th December, 1911, if such a person failed to comply with this duty, and no reasonable cause for such failure was shown, the collision was, in the absence of proof to the contrary, to be deemed to have been caused by his wrongful act, neglect or default (M. S. Act, 1894, s. 422 (2); see *The Tryst*, [1909] P. 333). But in actions begun on or since the 16th December, 1911, no such presumption exists (Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 4 (2), which came into force on the 16th December, 1911, and repealed the M. S. Act, 1894, s. 422 (2)).

(*o*) *The Virgil* (1843), 2 Wm. Rob. 201, 205; *The "Marpesia"* (1872), L. R. 4 P. C. 212, 220; *The Europa* (1850), 14 Jur. 627; *The Lochlibo* (1850), 3 Wm. Rob. 310, 318; *The Schwan*, *The Albano*, [1892] P. 419, C. A.; *The Thomas Powell* v. *The Cuba* (1866), 14 L. T. 603 (extraordinary skill or extraordinary diligence not expected, but that degree of skill and that degree of diligence which is generally found in persons who discharge their duty).

SECT. 4. General Incidence and Extent of Liability.

liable (*p*). To prove it they must either show what the cause was, and that the result was not avoidable by reasonable care and skill, or they must show all the causes which could have produced the effect, and that with regard to every one of these causes the result could not have been similarly avoided (*q*). It is no excuse for a master that he could not prevent the accident when it occurred, if he neglected to use measures of precaution which would have rendered the accident less probable (*r*). This defence may arise in cases of storm (*s*), or other extraordinary weather (*t*) or unusual local circumstances (*a*), or where a vessel goes ashore (*b*) or is disabled by prior collision (*c*), or if a sailing vessel is disabled by loss of her gear (*d*), or a steamer by failure of her steering gear or machinery (*e*), or otherwise.

SUB-SECT. 4.—*Measure of Damages.*

General principles.

787. The amount of reparation due in actions of damage by collision has been differently measured by the maritime law in

(*p*) *The Annot Lyle* (1886), 11 P. D. 114, C. A.

(*q*) *The Merchant Prince*, [1892] P. 179, C. A., *per* FRY, L.J., at p. 189; *The Calderon* (1913), *Times*, 26th March.

(*r*) *The Virgil* (1843), 2 Wm. Rob. 201; *The "Marpesia"* (1872), L. R. 4 P. C. 212; *The Pladda* (1876), 2 P. D. 34, 38.

(*s*) *The Pladda*, *supra*, at p. 34 (proper precautions not taken in a storm; cables unchained from anchors, and no look-out on deck); *The Woodford*, *Shipping Gazette* (1905), 13th March, C. A. (the steamship was found not to have had sufficient steerage way; also reliance was placed on the fact that the alleged storm was not spoken to by anybody connected with the locality).

(*t*) *The Nador*, [1909] P. 300 (inevitable accident; vessel at anchor in dense fog, and her light not seen, and bell not heard by steamship, in time to avoid her); *The "Marpesia,"* *supra* (sailing vessels in fog; inevitable accident); compare *The Rosetta* (1888), 6 Asp. M. L. C. 310, as to inability to hear sound in fog not necessarily being negligence. See also *The Shannon* (1842), 1 Wm. Rob. 463 (collision in Sea Reach due to the darkness of the night).

(*a*) *The Boucau*, [1909] P. 163 (accident caused by combination of less water than usual, strong breeze, and freshet, held inevitable); *The Polynésien*, [1910] P. 28 (abnormal current alleged, but not proved); *The "City of Peking"* (1888), 14 App. Cas. 40, P. C. (exceptional current ought to have been anticipated; port anchor not ready, and delay with starboard anchor); *The Secret* (1872), 1 Asp. M. L. C. 318 (harbour entrance found obstructed; proper precautions as regards shortening sail, anchor etc. not taken).

(*b*) *The Thornley* (1843), 7 Jur. 659 (vessel ashore could not let go anchor).

(*c*) *The Aimo*, *The Amelia* (1873), 2 Asp. M. L. C. 96, P. C. (inevitable accident; vessel with duty to keep out of the way disabled from doing so by prior collision); compare *The Kjobenhavn* (1874), 2 Asp. M. L. C. 213, P. C.

(*d*) *The Calcutta* (1869), 21 L. T. 768, P. C. (ship partly disabled by carrying away her fore tack, held not to have done all she should).

(*e*) *The Virgo* (1876), 3 Asp. M. L. C. 285 (inevitable accident; latent defect in steam steering gear); *The European* (1885), 10 P. D. 99 (use in river Thames of patent steam steering gear, which had failed a few days before, held evidence of negligence); *The Indus* (1886), 12 P. D. 46, C. A. (machinery alleged to be out of order, but not so proved, as it worked well before and after); *Doward* v. *Lindsay*, *The "William Lindsay"* (1873), L. R. 5 P. C. 338 (inevitable accident; mooring buoy broke in a storm; anchor let go, but windlass jammed by accident); *The Peerless* (1860), Lush. 30 (chain catching on windlass held to be a pure accident).

different countries, and even in the same country, for instance our own, at different periods. The principle in this country, subject to varying rules as to the limitation of liability of shipowners, and other exceptions (*f*), has been to exact full compensation (*g*). The injured party is entitled to be put, as far as practicable, into the same condition as if the injury had not been suffered. *Restitutio in integrum* is the leading maxim. He is to have the full value of the property lost (*h*). But the wrong-doer is only liable for such damages as flow directly and in the usual course of things from the wrongful act (*i*). The plaintiff is bound to prove that he has sustained the loss which he alleges, and he must supply the means for ascertaining its amount (*k*).

Nature of indemnity.

788. If the settlement of the indemnification is attended with any difficulty, the party in fault must, in certain circumstances, bear the inconvenience. Incidentally the injured party may derive a greater benefit than mere indemnification, where this arises from the impossibility of otherwise effecting such indemnification without exposing him to some loss or burden; for instance, in case of repairs and supply of new articles, the wrong-doer, unlike the insurer, is not entitled to a deduction of one-third new for old (*l*).

Damages against foreign state or public authority.

789. General damages are recoverable for loss of use of a vessel, although the owners are a foreign state, or a public authority which is not authorised to use it for profit like a private individual (*m*).

(*f*) For instance, the former rule that where two ships were each to blame for the collision the innocent owner of cargo on either could recover half his damages against the other (*S.S. Tongariro* (*Owners of Cargo*) v. *S.S. Drumlanrig* (*Owners*), *The Drumlanrig*, [1911] A. C. 16); and the present rule that he can recover from the other owner in proportion to the fault of that owner (Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1).

(*g*) *Dundee* (1823), 1 Hag. Adm. 109, 120; *H.M.S. London* (1913), 30 T. L. R. 196.

(*h*) *The Clarence* (1850), 3 Wm. Rob. 283, 285; *The Clyde* (1856), Sw. 23, 24.

(*i*) *The Argentino* (1888), 13 P. D. 191, 201, C. A; compare *The Gertor* (1894), 7 Asp. M. L. C. 472; *The Anglo-Algerian Steamship Co., Ltd.* v. *Houlder Line, Ltd.*, [1908] 1 K. B. 659. If the defendants' breach of contract or duty is the primary and substantial cause of the damage suffered, the defendants will be responsible for the whole loss though it may have been increased by the wrongful act of a third person, and although that wrongful conduct may have contributed to the loss (*De La Bere* v. *Pearson, Ltd.*, [1907] 1 K. B. 483; *H.M.S. London, supra* (damage increased by delay due to strikes)).

(*k*) *The Clarence, supra.*

(*l*) *The Gazelle* (1844), 2 Wm. Rob. 279, 281; *The Egyptian* (1864), 2 Mar. L. C. 56, 58; compare title INSURANCE, Vol. XVII., pp. 440 *et seq.*

(*m*) *The Astrakhan*, [1910] P. 172; *No.* 7 *Steam Sand Pump Dredger* (*Owners*) v. *S.S.* "*Greta Holme*" (*Owners*), *The* "*Greta Holme*," [1897] A. C. 596; *S.S.* "*Mediana*" (*Owners*) v. *Lightship* "*Comet*" (*Owners, Master and Crew*), *The* "*Mediana*," [1900] A. C. 113; *Mersey Docks and Harbour Board* v. *S.S. Marpessa* (*Owners*), [1907] A. C. 241; but compare *The Bodlewell*, [1907] P. 286 (vessel worked at a loss for the time; damages not allowed, except expenses).

SECT. 4. General Incidence and Extent of Liability.

Burden of proof.

790. When the plaintiff has made a *primâ facie* case that the damage claimed is occasioned by the collision, the burden of proof then shifts on to the defendant to show that the damage was not so occasioned, for instance by showing that it is to be attributed to another or a concurrent cause for which the plaintiff is responsible. And where the misconduct of the defendant has occasioned the collision, the defendant is bound to give conclusive proof that the damage is not to be attributed to his own default (*n*).

Duty of injured party to mitigate damage.

791. If the injured party can reasonably mitigate the damage done by the collision, he is bound ordinarily to do so (*o*).

Damages in case of total loss.

792. If a vessel is totally lost by the collision, the measure of damages varies according to whether she was earning or was about to earn freight or not. If she had no prospect of freight, the shipowner is entitled to the market value of the vessel at the time she was sunk (*p*), and interest on this until payment (*q*). If the vessel was earning freight, the owner is entitled to the probable value of the ship at the end of her voyage, and of the freight which she would have earned, subject to proper allowances (*r*). When a vessel is lost while proceeding in ballast to a loading port under charter, the damages are measured in the same way (*s*).

How value ascertained.

793. In the absence of a market value for a vessel, the test is what the vessel was fairly worth to her owners from a business point of view (*t*). The opinion of competent persons, who knew the vessel, is the best evidence of her value. The elements to consider in such a valuation are the original cost of the vessel, her age, her condition, the profits she earned (*a*), and the market price of similar vessels.

Loss after collision.

794. When a vessel is seriously damaged by collison due to negligent navigation of the defendant's vessel and is subsequently lost on the voyage, there is a presumption against the defendant that she was lost in consequence of the collision (*b*). The cost of

(*n*) *The Egyptian* (1864), 2 Mar. L. C. 56, 58.
(*o*) *The Mediana*, [1899] P. 127, 137, C. A.
(*p*) *The Clyde* (1856), Sw. 23.
(*q*) *The Northumbria* (1869), L. R. 3 A. & E. 6, 12; *The Kong Magnus*, [1891] P. 223. Further claims have been disallowed (*The Columbus* (1849), 3 Wm. Rob. 158).
(*r*) *The Northumbria*, *supra*.
(*s*) *The Kate*, [1899] P. 165; *The Racine*, [1906] P. 273, C. A.
(*t*) *The Harmonides*, [1903] P. 1.
(*a*) *The Iron-Master* (1859), Sw. 441.
(*b*) *The Mellona* (1847), 3 Wm. Rob. 7; *The Pensher* (1857), Sw. 211 (reasonable abandonment); *The "Blenheim"* (1854), 1 Ecc. & Ad. 285 (a case of unreasonable abandonment); *The Thuringia* (1872), 1 Asp. M. L. C. 283; *The Hansa* (1887), 6 Asp. M. L. C. 268; *The Linda* (1857), Sw. 306 (salvage after improper abandonment); *The Flying Fish* (1865), Brown. & Lush. 436, P. C. (the partial damage became a total loss owing to plaintiffs' negligence; but the defendants were held liable for the partial damage); *The City of Lincoln* (1889), 15 P. D. 15, C. A. (stranding resulting from collision); *The George and Richard* (1871), L. R. 3 A. & E. 466 (driving ashore and loss of life due to collision); *The Bruxellesville*, [1908] P. 312 (subsequent loss not due to collision).

raising a vessel sunk in a harbour or river is recoverable as damages in a collision action if the authority has the power to charge the owners with the cost and if the charges are reasonable (*c*). In the case of a constructive total loss, if the plaintiff recovers the value of his vessel, the defendant is entitled to the wreck (*d*).

Vessel damaged but not lost.

795. When the ship is damaged but not lost, the damages recoverable generally consist of salvage or towage, repairs (including dock dues), crew's wages and other expenses of the vessel during repair, and loss of profit.

Salvage expenses incurred by reason of a collision are recoverable from the wrong-doer (*e*); so also is towage (*f*).

Cost of repairs.

796. The owner is entitled to a complete repair of all the damage done, though the result may be to render the vessel worth more than she was before the collision (*g*). The cost of the repairs recoverable is the cost at the nearest convenient port at which the repairs could have been executed (*h*). He is entitled to recover the cost of the repairs even though he does not actually repair the vessel (*i*). But he is not entitled to the renewal of rotten parts discovered by the opening up for collision repairs, though such parts might otherwise have lasted for years (*j*).

Dry docking.

797. Dues paid for dry-docking a vessel for collision repairs are recoverable. Even if her owners take the opportunity to do other work on the vessel when the collision repairs are being done, the whole of the dock dues are recoverable from the wrong-doer, if the amount paid for the hire of the dock is not increased by the owners' work (*k*). But if there are two collisions and the vessel must have been dry-docked for the injury caused by each, then each wrong-doer will only be liable for a proportion of the dock dues (*l*).

Detention of ship.

798. The shipowner is also entitled to the expenses of detention of his vessel, and the amount of profit lost (*m*). Both of these heads of damages depend upon time; and the shipowner is only entitled to

(*c*) *The Wallsend*, [1907] P. 302; *The Harrington* (1888), 13 P. D. 48; *The Emerald, The Greta Holme*, [1896] P. 192, C. A.

(*d*) *The Columbus* (1849), 3 Wm. Rob. 158. As to constructive total loss, see also *The Empress Eugénie* (1860), Lush. 138.

(*e*) *The Pensher* (1857), Sw. 211; *The Williamina* (1878), 3 P. D. 97, 99. And the plaintiff's costs in the action against his vessel by the salvors are usually recoverable (*The Legatus* (1856), Sw. 168; but see *The British Commerce* (1884), 9 P. D. 128 (commission on bail not recoverable)).

(*f*) *H.M.S. Inflexible* (1857), Sw. 200.

(*g*) *The Pactolus* (1856), Sw. 173; *The Bernina* (1886), 6 Asp. M. L. C. 65.

(*h*) *Beucker* v. *Aberdeen Steam Trawling and Fishing Co., Ltd.*, [1910] S. C. 655; *The Admiralty* v. *Aberdeen Steam Trawling and Fishing Co., Ltd.*, [1910] S. C. 553.

(*i*) *The Endeavour* (1890), 6 Asp. M. L. C. 511.

(*j*) *The Princess* (1885), 5 Asp. M. L. C. 451.

(*k*) *The Acanthus*, [1902] P. 17; *Ruabon Steamship Co.* v. *London Assurance*, [1900] A. C. 6; compare *The Alfred* (1850), 3 Wm. Rob. 232, 239.

(*l*) *The Haversham Grange*, [1905] P. 307, C. A.; compare *Marine Insurance Co.* v. *China Transpacific Steamship Co.* (1886), 11 App. Cas. 573.

(*m*) *H.M.S. Inflexible, supra.*

SECT. 4. General Incidence and Extent of Liability.

such period of time as is shown to have been necessary allowing for reasonable despatch (*n*).

Expenses of detention.

799. The burden of proving that there has been any loss by detention rests on the plaintiff. Two things are necessary, loss and reasonable proof of the amount (*o*). The ordinary expenses of a vessel in port are allowed, including master's and crew's wages and maintenance as far as necessary, coals and stores consumed, and other matters: the insurance premium, if the vessel is long in port, is usually subject to a deduction.

Loss of profits.

800. As regards the profits lost by detention, a ship is a thing by the use of which money may be ordinarily earned, and the question is as to what use the shipowner would, but for the collision, have had of his ship, and what profits would have been earned by such use, excluding elements of uncertain or speculative or special character. Where the ship is under a charter which is lost in consequence of the collision, the charterparty is admissible evidence to prove that the ship has been thrown out of employment. But a charter is not essential: other evidence may equally establish the loss of employment. In considering the profits which would have been earned by the employment, where there is a charterparty for the voyage, the difficulty is only to calculate how the voyage if continued would have worked out. Where there is no charterparty but a reasonable certainty of employment, the matter is more at large (*p*). The usual evidence given is as to the two or three previous voyages of the vessel (*q*), and sometimes as to a subsequent voyage. A fishing vessel has been allowed damages for loss due to interruption of fishing, as proved by the catches made by other vessels (*r*); and a whaling vessel which loses her season is as much entitled to recover for her loss of employment as a vessel carrying cargo (*s*), but loss of fishing in general has been held to be too problematical (*t*).

Use of another vessel.

801. Where the shipowner substitutes another vessel for the vessel detained he is entitled to be paid for reasonable losses thus incurred, but no compensation will be due for time during which the substituted vessel would have been unemployed (*u*). Damages may also be recovered for loss of future earnings, where a vessel was already under a profitable charter, on which she was to proceed after completion of her voyage (*x*). In all cases of loss of

(*n*) *The City of Buenos Ayres* (1871), 1 Asp. M. L. C. 169; compare *The Haversham Grange*, [1905] P. 307, C. A. (damage caused by second collision did not cause extra detention, and defendants not liable for that).

(*o*) *The Clarence* (1850), 3 Wm. Rob. 283, 286.

(*p*) *The Argentino* (1888), 13 P. D. 191, 201, 202, 203, C. A.

(*q*) Compare *The Hebe* (1847), 2 Wm. Rob. 530, 536.

(*r*) *The Risoluto* (1883), 8 P. D. 109.

(*s*) *The Argentino*, *supra*, at p. 202. So also in case of loss of salvage (*Betsy Caines* (1826), 2 Hag. Adm. 28).

(*t*) *The Anselma de Larrinaga* (1913), 29 T. L. R. 587.

(*u*) *The "City of Peking"* (1890), 15 App. Cas. 438, P. C.; *The Black Prince* (1862), Lush. 568. As to substituted expenses, see *The Minnetonka*, [1905] P. 206, C. A.; *The Tugela* (1913), 30 T. L. R. 101 (addition beyond period of hire of substituted vessel allowed).

(*x*) *S.S. "Gracie"* (*Owners*) v. *S.S. "Argentino"* (*Owners*), *The "Argentino"* (1889), 14 App. Cas. 519; *The Racine*, [1906] P. 273, C. A.; *The Empress of Britain* (1913), 29 T. L. R. 423.

employment proper deductions must be made from the gross freight which would have been earned, for the expenses which would have been incurred in earning it (*a*), and the saving of wear and tear to the vessel (*b*).

Other expenses.

802. It has been held that the shipowner cannot recover any general average contribution due from ship to cargo, where such loss arises from the relation of ship and cargo, and not directly from the collision (*c*). He can recover expenses which he has had to pay for repatriation of seamen, if the law of the flag puts that burden upon him (*d*), and also what he has been compelled to pay for the wreck of his vessel being removed (*e*), and any special expenses which he has properly incurred to mitigate his loss (*f*).

Cargo owners' loss.

803. Cargo owners who have lost their goods carried in one vessel in consequence of a collision due to the negligent navigation of another vessel are, as a rule (*g*), entitled to recover from the owners of the other vessel the value of the goods at the place and time and in the state at and in which they ought to have been delivered to the owner. Such value is the market price of the goods, if there is a market there. If not, such value has to be calculated, taking into account among other matters the cost price, the expenses of transit, and the importer's profit (*h*). As a rule, losses arising from delay of the goods, and due to a fall in the market price, cannot be calculated with such a reasonable degree of certainty as to make them recoverable; but wherever circumstances admit of calculations as to the time of arrival and the probable fluctuations of the market being made with the same degree of reasonable certainty in the case of sea transit as in land transit, damages for loss of market due to late delivery are recoverable (*i*).

Interest.

804. In the case both of shipowner and cargo owner, interest from the date of collision until payment is allowed on all claims proved, as being a part of the damages (*k*).

(*a*) *The Gazelle* (1844), 2 Wm. Rob. 279, 284.

(*b*) *The Star of India* (1876), 1 P. D. 466, 472.

(*c*) *The Marpessa*, [1891] P. 403; but see *The Minnetonka*, [1905] P. 206, 215, C. A.

(*d*) *The Craftsman*, [1906] P. 153; compare M. S. Act, 1906 (6 Edw. 7, c. 48), s. 42.

(*e*) *The Wallsend*, [1907] P. 302.

(*f*) Such as extra costs to save delay (*The Normandy* (1900), 16 T. L. R. 567), and other substituted expenses (*The Minnetonka, supra*), but not pensions paid by way of gratuity for which he is not legally liable (*The Amerika* (1913), 30 T. L. R. 218).

(*g*) Except, for instance, where the vessel on which their cargo was carried is partly to blame for the collision, in which case they could until recently only recover half damages from the other vessel (*S.S. Tongariro* (*Owners of Cargo*) v. *S.S. Drumlanrig* (*Owners*), *The Drumlanrig*, [1911] A. C. 16), and can now apparently recover in proportion to the fault of that vessel (Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1).

(*h*) *The Notting Hill* (1884), 9 P. D. 105, 110, C. A.; compare *Rodocanachi* v. *Milburn* (1886), 18 Q. B. D. 67, C. A.; *The Activ* (1901), 17 T. L. R. 351 (the sound value at port of destination, after deducting proceeds of forced sale).

(*i*) *Dunn* v. *Bucknall Brothers*, *Dunn* v. *Donald Currie & Co.*, [1902] 2 K. B. 614, 622, 623, C. A.; *The Parana* (1877), 2 P. D. 118, C. A.

(*k*) *The Crathie*, [1897] P. 178. See, further, on the whole subject, Roscoe, Measure of Damages in Actions of Maritime Collisions.

SECT. 5.
Rights and Remedies of Injured Parties.

SECT. 5.—*Rights and Remedies of Injured Parties.*

SUB-SECT. 1.—*Persons Entitled to Recover.*

(i.) *Owners of Injured Ship.*

Shipowner.

805. The beneficial or registered owners of the injured ship may sue for damage done to it (*l*); and so also may the bailees of a ship (*m*). The owners of the injured ship may also sue for damage done to the cargo, as they are bailees of it (*n*). If there is any doubt as to who is entitled to receive the damages, they should be paid into the Admiralty Registry, and the parties rightly claiming them can then establish their right (*o*). The amount of damages which may be recovered by the owners of the injured ship depends on the degree of fault which attaches to the vessel (*p*); and it is also limited by the right of shipowners and dock owners to limit their liability under the provisions of the Merchant Shipping Acts (*q*).

(ii.) *Owners of Cargo.*

(a) *Rights against the Carrying Vessel for Damage by Collision.*

Liability of owner of carrying ship.

806. The owners of cargo are entitled to sue the owners of the ship carrying it for breach of contract to carry their cargo safely, or for damage to it caused by negligence. Such an action is ordinarily *in personam* and not *in rem* (*r*), but if the owner of the ship is not domiciled in England or Wales, and damage has been done to any goods carried into England or Wales, the cargo owner has a right to proceed *in rem* (*s*). When the damage done to the cargo is not more than £300, the claim can be brought in a county court having admiralty jurisdiction, where it may be enforced by an action against the carrying ship, even though the shipowner is domiciled in England or Wales (*t*).

If the carrying vessel was only partly in fault for the damage by collision, it has not yet been decided whether the cargo owner is entitled to recover his damages in full against the owner of the vessel, but any such right will be qualified by the contract of carriage (*a*).

(b) *Rights against the Other Vessel for Damage by Collision.*

Liability of owner of offending ship.

807. The owners of cargo on a ship have had from ancient times a right to an action of damage by collision against the owner

(*l*) *The Ilos* (1856), Sw. 100. As to part owners, see *Sedgworth* v. *Overend* (1797), 7 Term Rep. 279; and R. S. C., Ord. 16, r. 11. As to jurisdiction and procedure, see title ADMIRALTY, Vol. I., pp. 60 *et seq.* As to sub-charterers claiming loss of difference of freight, see *The Okehampton*, [1913] P. 173.

(*m*) *The Minna* (1868), L. R. 2 A. & E. 97.

(*n*) *The Winkfield*, [1902] P. 42, C. A.

(*o*) *The Ilos, supra; The Minna, supra.*

(*p*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (1).

(*q*) As to limitation of liability, see pp. 612 *et seq.*, *post.*

(*r*) Compare *The Victoria* (1887), 12 P. D. 105.

(*s*) Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), ss. 6, 35; see *The Cap Blanco*, [1913] P. 130.

(*t*) County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 3; County Courts Admiralty Jurisdiction Amendment Act, 1869 (32 & 33 Vict. c. 51), ss. 2 (1), (2), 3; *The Alina* (1880), 5 Ex. D. 227; *The Rona* (1882), 7 P. D. 247; see title ADMIRALTY, Vol. I., pp. 126 *et seq.*

(*a*) See p. 522, *ante.*

of another vessel which has come into collision with her. They can proceed *in rem* or *in personam*, and can recover full damages if the other vessel was solely in fault (*b*).

If the other vessel was only partly in fault for the damage by collision, it has not yet been decided whether they can recover damages in full from the owner of the other vessel (*c*).

(iii.) *Crews on Vessels.*

Master and crew.

808. The master and crew of a vessel, who lose their effects by reason of a collision due to the negligence of some of them, cannot recover the value from the owners of their own vessel, because of the doctrine of common employment (*d*). If the collision is due to the fault of both vessels, they can apparently, although they are wrong-doers, just like their own wrong-doing owner, recover from the owner of the other vessel, if his vessel was more in fault than their own; and the amount of damages which they can recover will, apparently, depend on the amount by which the proportion of the other vessel's fault exceeds the proportion of their own vessel's fault (*e*). If the other vessel is alone to blame, they can recover the full value even though both colliding ships belong to the same owners (*f*). If their vessel was not to blame, but the collision is the fault of two or more other vessels, the Maritime Conventions Act applies, and it has yet to be decided whether they are entitled to recover from the owners of each of the other vessels in full, or only in proportion to the degree in which each vessel was in fault (*g*).

(iv.) *Personal Sufferers and their Representatives.*

Personal injuries to passengers.

809. Passengers can, by the common law, sue the owners of the vessel carrying them for personal injuries arising from a collision caused by negligence of those for whom the owners were responsible; and since 1846, under Lord Campbell's Act (*h*), the personal representatives of an innocent person on board a vessel, whose death was caused by a collision due to the fault of another vessel, may sue the owner of the other vessel *in personam* to recover damages (*i*). But in both cases the rights of action may depend on the terms of

(*b*) *The Milan* (1861), Lush. 388, 397.

(*c*) See p. 522, *ante*.

(*d*) *Priestley* v. *Fowler* (1837), 3 M. & W. 1; *Hedley* v. *Pinkney & Sons Steamship Co.*, [1894] A. C. 222.

(*e*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (1), "or to any property on board."

(*f*) *The Petrel*, [1893] P. 320.

(*g*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1 (1); see pp. 517, 518, *ante*.

(*h*) Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93). Under this Act an action could be brought on behalf of an unborn child; see *The George and Richard* (1871), L. R. 3 A. & E. 466.

(*i*) Even if the vessel which carried him was also in fault; see *Mills* v. *Armstrong, The "Bernina"* (1888), 13 App. Cas. 1. And since the Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 5, the action can be brought *in rem*, though this was not so before; see *Seaward* v. *"Vera Cruz"* (1884), 10 App. Cas. 59.

SECT. 5. Rights and Remedies of Injured Parties.

their contract ticket (*j*). The difficulty in the way of the crew (*k*), or crew's personal representatives (*l*), enforcing similar rights was usually the defence of common employment.

Admiralty Court Act, 1861.

810. Under the Admiralty Court Act, 1861 (*m*), and possibly by the old maritime law, a person who suffered personal injuries by a collision of the vessel on which he was with another vessel, the other vessel being in fault and being the noxious instrument of the injury, was held entitled to recover damages by action *in rem* against the other vessel (*n*), and he could have recovered damages by action *in personam* against her owners; but injury caused by shock at the sight of another vessel coming into collision with the vessel carrying him was not "damage done by a ship," and could not be the subject of an action *in rem* (*o*).

Workmen's Compensation Act, 1906.

811. Under the Workmen's Compensation Act, 1906 (*p*), a master or seaman (*q*) of a ship in collision who is injured by accident arising out of and in the course of his employment, and his dependants, where death results from the injury (*r*), have a right to compensation from his employer, and can in certain circumstances detain a foreign ship until security is given for such compensation (*s*).

Shipowners' Negligence (Remedies) Act, 1905.

812. Under the Shipowners' Negligence (Remedies) Act, 1905 (*t*), the right to detain a foreign ship until security was given was further extended to cases of personal injuries, including fatal injuries, caused by the ship or sustained on, in, or about the ship in any port or harbour in the United Kingdom, by the neglect or default of the shipowner or his employees or any defect in the ship.

(*j*) See pp. 328, 337, *ante*.

(*k*) *Priestley* v. *Fowler* (1837), 3 M. & W. 1.

(*l*) *Hedley* v. *Pinkney & Sons Steamship Co.*, [1894] A. C. 222.

(*m*) 24 & 25 Vict. c. 10, ss. 7, 35.

(*n*) *The "Beta"* (1869), L. R. 2 P. C. 447 (mate of vessel personally injured by collision); compare *The Sylph* (1867), L. R. 2 A. & E. 24 (diver injured by paddle wheel of steamer); but *The "Beta," supra*, was dissented from in *Smith* v. *Brown* (1871), L. R. 6 Q. B. 729. Before 1911 personal injuries by falling through a hatchway only covered by a tarpaulin were not "damage done by a ship" within the Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 7 (*The Theta*, [1894] P. 280); but it seems that under the Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 5, personal injuries of this kind may be the subject of an action *in rem*; see p. 517, *ante*.

(*o*) *The Rigel*, [1912] P. 99.

(*p*) 6 Edw. 7, c. 58.

(*q*) *Ibid.*, ss. 7, 13; and see title MASTER AND SERVANT, Vol. XX., pp. 157 *et seq.*; *Parker* v. *Ship Black Rock (Owners)* (1914), 30 T. L. R. 271, C. A. A workman on the ship, who is not a seaman, may have a right in case of collision to recover damages from his employer under the Employers' Liability Act, 1880 (43 & 44 Vict. c. 42); see *Macbeth & Co* v. *Chislett*, [1910] A. C. 220.

(*r*) Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I.

(*s*) *Ibid.*, s. 11. As to the employer's right of indemnity under *ibid.*, s. 6, from the person legally liable for the injury, see *The Annie*, [1909] P. 176; and *Cory & Sons, Ltd.* v. *France, Fenwick & Co., Ltd.*, [1911] 1 K. B. 114, C. A.

(*t*) 5 Edw. 7, c. 10, s. 1.

SECT. 5. Rights and Remedies of Injured Persons.

813. By the Maritime Conventions Act, 1911 (*a*), the Admiralty Court's statutory jurisdiction in respect of damage (*b*), and the limited county court admiralty jurisdiction in respect of damage (*c*), include damages for loss of life or personal injuries, and accordingly proceedings in respect thereof may be brought *in rem* or *in personam*.

Maritime Conventions Act, 1911.

SUB-SECT. 2.—*Rights in Rem.*

(i.) *Maritime Lien.*

814. A maritime lien springs into existence at once against a ship and her freight for damage by collision done by that ship caused by negligence of the servants either of the owners or of those in whom the control of the ship is, with the consent of the owners, vested, within the scope of their employment (*d*), and may be carried into effect, when opportunity offers, by a legal proceeding known as an action *in rem* (*e*).

When maritime lien arises.

The object is the satisfaction of the claim of the injured party out of the property seized; and if the owners do not appear the action only enforces the lien on the *res*, but if they do appear the action is a means of enforcing against them the complete claim of the plaintiffs (*f*).

Object of lien.

The proceeding *in rem* must be commenced within two years from the date when the damage or loss or injury was caused (*g*).

The maritime lien against the freight may be enforced by arrest of the cargo to make the owners pay the amount into court (*h*).

To what lien attaches.

The maritime lien applies against any vessel doing damage on the high seas (*i*); and whether the collision was on the high seas or in the body of a county (*k*).

(*a*) 1 & 2 Geo. 5, c. 57, s. 5.

(*b*) See Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), s. 6 (jurisdiction to decide all claims or demands in the nature of damage received by any ship); Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 7 (jurisdiction over any claim for damage done by any ship).

(*c*) See County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 3 (jurisdiction as to any claim for damage by collision); County Courts Admiralty Jurisdiction Amendment Act, 1869 (32 & 33 Vict. c. 51), s. 4 (jurisdiction extended to all claims for damage to ships, whether by collision or otherwise).

(*d*) See p. 618, *post*.

(*e*) As to the form of writ, see title ADMIRALTY, Vol. I., p. 80; and, as to county courts having admiralty jurisdiction, see *ibid.*, pp. 127 *et seq.*

(*f*) *The Dictator*, [1892] P. 304, 313, 320; *The Gemma*, [1899] P. 285, C. A.

(*g*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 8. Before this Act statutes limiting the time for actions were held not to apply to an action on a maritime lien for damage; compare *The Burns*, [1907] P. 137, C. A.; *The Longford* (1889), 14 P. D. 34, C. A.; title ADMIRALTY, Vol. I., p. 72. But the right of action might be then, and possibly may be still, lost for want of reasonable diligence; compare *The Kong Magnus*, [1891] P. 223; *The Charles Amelia* (1868), L. R. 2 A. & E. 330; *The Europa* (1863), Brown. & Lush, 89, P. C.

(*h*) *The Flora* (1866), L. R. 1 A. & E. 45; *The Roecliff* (1869), L. R. 2 A. & E. 363, 364; and, as to freight, compare *The Orpheus* (1871), L. R. 3 A. & E. 308; *The Leo* (1862), Lush. 444; *The Victor* (1860), Lush. 72.

(*i*) *The Sarah* (1862), Lush. 549 (vessel without masts or sails and usually propelled by a pole).

(*k*) *The Veritas*, [1901] P. 304, 311.

SECT. 5. Rights and Remedies of Injured Persons.

(ii.) *Statutory Powers of Arrest.*

Owners of goods.

815. A statutory jurisdiction is given to the Admiralty Court to arrest a ship in certain circumstances for damage done to cargo (*l*); and a somewhat similar jurisdiction is given to county courts having admiralty jurisdiction in case of damage to cargo, or tort in respect of goods carried, where the claim is under £300 (*m*); and such actions may arise out of a collision (*n*).

Injury by foreign ship.

816. Whenever any injury has in any part of the world been caused to any property of His Majesty's subjects by any foreign ship, for instance by collision (*o*), if the ship is found in a port or river of the United Kingdom or within three miles of the coast, a judge of any court of record may, on certain evidence being given, order her to be detained until security has been given to abide the event of the action, or otherwise (*p*).

SUB-SECT. 3.—*Rights in Personam.*

Rights *in personam.*

817. In any case of collision the jurisdiction conferred by the Admiralty Court Act, 1861 (*q*), on the High Court of Admiralty, and now vested in the Admiralty Division, over any claim for damage done by any ship, may be exercised *in personam* (*r*).

SECT. 6.—*Collision as Affecting Salvage.*

Assistance after collision.

818. The owners, master and crew of a vessel which is to blame, or partly to blame, for a collision with another, cannot recover salvage for assistance rendered to her after the collision, on the principle that no man shall profit by his own wrong (*s*). When two vessels have been in collision and are in danger from one another, and one of them is towed away from the other, salvage may be payable by both (*t*).

Damage received during salvage.

819. When a vessel is injured by collision without fault, while rendering salvage services, it is proper to ascertain the amount of the damages sustained and to award this as part of the salvage remuneration, but where this cannot be ascertained, the salvage award must be assessed on a liberal scale taking the damages sustained into

(*l*) See title ADMIRALTY, Vol. I., p. 73; but the Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 6, confers no maritime lien (*Dapueto* v. *Wyllie & Co., The "Pieve Superiore"* (1874), L. R. 5 P. C. 482); see, further, *The Cap Blanco*, [1913] P. 130.

(*m*) County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 3 (3); County Courts Admiralty Jurisdiction Amendment Act, 1869 (32 & 33 Vict. c. 51), ss. 2 (2), 3.

(*n*) As to limits of this jurisdiction, see title ADMIRALTY, Vol. I., p. 128.

(*o*) Compare *The Griefswald* (1859), Sw. 430.

(*p*) M. S. Act, 1894, s. 688; compare *The Bilbao* (1860), Lush. 149; *The Franconia* (1877), 2 P. D. 163, 173. As to the rights of action against, and powers of arrest of, a ship at the suit of personal sufferers and their representatives, see pp. 543, 544, *ante*.

(*q*) 24 & 25 Vict. c. 10.

(*r*) *Ibid.*, ss. 7, 35; and see title ADMIRALTY, Vol. I., pp. 61, 105.

(*s*) See p. 563, *post*.

(*t*) *The Vandyck* (1881), 7 P. D. 42; *The Emilie Galline*, [1903] P. 106; *The Port Caledonia and The Anna*, [1903] P. 184.

account (*u*). If the salving vessel negligently collides with and injures the vessel which she is salving, her owners do not necessarily forfeit their right to a salvage award, but they have to pay for the damage done by the collision (*a*).

If the vessel being salved is sunk by collision with the salving vessel through negligence of the salvors, the owners of the salving vessel are liable for the damage caused, as the master was acting within the scope of his authority in attempting to salve (*b*).

The salvage expenses of a vessel damaged by collision through the negligence of another vessel, though ordinarily recoverable from the owners of the wrong-doing vessel (*c*), cannot be recovered if the salvage is chargeable to improper abandonment (*d*).

SECT. 7.—*Collision with a Pier etc.*

Collision with harbour, dock or pier.

820. The former High Court of Admiralty had, and therefore the present Admiralty Division of the High Court has, jurisdiction over a claim for damage done by a ship by striking a pier or the like (*e*); and this also applies as regards damage to a ship by striking a pier (*f*). A county court having admiralty jurisdiction has no such jurisdiction over such a claim for damage by a ship to a pier (*g*), though it has such jurisdiction over a claim for damage to a ship by striking a pier (*h*).

(*u*) *S.S. Baku Standard* (*Master and Owners*) v. *Angèle* (*Master and Owners*), [1901] A. C. 549, P. C.; *The Sunniside* (1883), 8 P. D. 137; *The Mud Hopper* (*No.* 4) (1879), 4 Asp. M. L. C. 103; and see p. 579, *post.*

(*a*) *The C. S. Butler, The Baltic* (1874), L. R. 4 A. & E. 178; *The Cheerful* (1885), 11 P. D. 3 (collision by vessel attempting salvage, though avoidable by greater care and skill, held not negligence by salvor); *The Dwina*, [1892] P. 58 (salvage award diminished for collision).

(*b*) *The Thetis* (1869), L. R. 2 A. & E. 365.

(*c*) And a probable but discretionary outlay for towage, if there had been no collision, cannot be deducted from the salvage expenses; see *H.M.S. Inflexible* (1857), Sw. 200.

(*d*) *The Linda* (1857), Sw. 306. As to intervention in the salvage action by the wrong-doer, see *The Diana* (1874), 2 Asp. M. L. C. 366. As to whether costs in the salvage action are recoverable from the wrong-doer, see *The British Commerce* (1884), 9 P. D. 128; *The Legatus* (1856), Sw. 168.

(*e*) *The Uhla* (1867), 3 Mar. L. C. 148 (damage to breakwater); compare *The Excelsior* (1868), L. R. 2 A. & E. 268; *The Swift*, [1901] P. 168 (damage to oyster beds). As to the liability under the Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), see p. 644, *post.*

(*f*) See, *semble*, *Mersey Docks and Harbour Board* v. *Turner, The "Zeta,"* [1893] A. C. 468.

(*g*) *The Normandy*, [1904] P. 187; or to a floating gas buoy (*The Upcerne*, [1912] P. 160).

(*h*) *Mersey Docks and Harbour Board* v. *Turner, The "Zeta," supra*; and see title ADMIRALTY, Vol. I., p. 128.

Part XII.—Wreck.

SECT. 1. Definitions.

SECT. 1.—*Definitions.*

821. Wreck may be defined as property cast ashore within the ebb and flow of the tide after shipwreck (*a*). The property must be a ship or her cargo or a portion thereof (*b*).

"Wreck." In the Merchant Shipping Act, 1894, the term "wreck" is not defined, except as including jetsam, flotsam, lagan, and derelict found in or on the shores of the sea or any tidal waters (*c*), the intention evidently being to bring under one term the rights which pertained to the land and those that belonged to the admiral. The term "wreck" also includes all fishing boats, all their small boats, their rigging, gear, and other appurtenances, nets, lines, buoys, floats, and other fishing implements (*d*).

"Tidal waters." By "tidal waters" is meant any part of the sea, and any part of a river within the ebb and flow of the tide at ordinary spring tides, and not being a harbour (*e*).

"Jetsam." "Jetsam" means goods which are cast into the sea to lighten a ship in danger of sinking, and afterwards notwithstanding the ship perishes (*f*).

"Flotsam." "Flotsam" means goods floating on the sea from a ship which has sunk or otherwise perished (*f*).

(*a*) Wreccum maris significat illa bona quæ naufragio ad terram appelluntur (*Constable's* (*Sir Henry*) *Case* (1601), 5 Co. Rep. 106). By the Statute of Westminster I., 1275 (3 Edw. 1, c. 4), which has been repealed by the Statute Law Revision Act, 1863 (26 & 27 Vict. c. 125), but is declaratory of the common law, it was agreed that where a man, a dog, or a cat escape quick out of the ship, that such ship, nor barge, or anything within them, shall not be adjudged wreck; see also stat. (1713) 13 Anne, c. 21, which has been repealed by the Merchant Shipping Repeal Act, 1854 (17 & 18 Vict. c. 120), s. 4. The reference in these statutes to the escape of a live being from the ship is not to be construed literally, but as meaning that if the property could be identified by its owner it was not wreck (*Hamilton* v. *Davis* (1771), 5 Burr. 2732; Brac., Rolls ed., Vol. II., p. 271); but see charter of Henry III., granting that if a man escape alive it shall not be wreck, and if an animal escape alive or be found in the ship, then if claimed in three months the owners shall have the goods and chattels found in the ship (Charter Rolls, 1236, 20 Hen. 3, m. 4; and also Patent Rolls for the reign of Edward I. and Edward II. Strictly speaking, wreck of the sea at common law was confined to property cast ashore after shipwreck, the ownership of which could not be ascertained; but the term has for a long time been used to include wreck at common law and property declared by the Statute of Westminster I., 1275 (3 Edw. 1, c. 4), not to be wreck, and it is so used in the M. S. Act, 1894, ss. 518—522.

(*b*) *Palmer* v. *Rouse* (1858), 3 H. & N. 505 (timber which had drifted from its moorings); *Cargo ex Schiller* (1877), 2 P. D. 145, C. A.; *The Gas Float Whitton No.* 2, [1896] P. 42, C. A.

(*c*) M. S. Act, 1894, s. 510. As to the meaning of "wreck" in *ibid.*, s. 158, see *The Olympic*, [1913] P. 92, C. A.

(*d*) Sea Fisheries Act, 1883 (46 & 47 Vict. c. 22), s. 10, Sched. I., art. 25; see, generally, title FISHERIES, Vol. XIV., pp. 625 *et seq.*

(*e*) M. S. Act, 1894, s. 742.

(*f*) *Constable's* (*Sir Henry*) *Case*, *supra*. A contemporary report of this case in Lansdowne, M.S., 1088, fol. 69, gives POPHAM, C.J.'s

SECT. 1. Definitions.

"Lagan" means goods heavier than water cast into the sea to lighten a ship in danger of sinking which afterwards perishes, and cast out with the intention of being recovered, and therefore having attached to them some floating object by which they may subsequently be located (*g*). "Lagan."

When wreck.

Jetsam, flotsam, and lagan are not wreck, though included in that term as used in the Merchant Shipping Act, 1894, so long as they remain in or upon the sea, but if any of them be cast up on the shore, then they are wreck (*g*).

"Derelict."

"Derelict" is when a ship or cargo is abandoned and deserted at sea by those who were in charge of it, without any intention of returning to it or any hope of recovering it (*h*).

SECT. 2.—*Receivers of Wreck.*

Appointment.

822. The Board of Trade has the general superintendence throughout the United Kingdom of all matters relating to wreck. With the consent of the Treasury, the Board appoints the receivers of wreck from amongst the officers of customs, coastguard, or inland revenue (*i*).

Remuneration.

The only remuneration to which a receiver of wreck is entitled are the expenses properly incurred by him in the performance of his duties, and such fees as the Board of Trade directs (*k*). A receiver, in addition to all other rights and remedies for the recovery of his expenses and fees, has the same rights and remedies as a salvor has in respect of salvage due to him (*l*).

Disputes.

Disputes as to the amount of a receiver's fees and expenses must be determined by the Board of Trade (*m*).

SECT. 3—*Vessels in Distress.*

Duties of receiver.

823. A receiver of wreck, on learning that a British or foreign vessel is wrecked, stranded, or in distress at any place on or near

judgment as follows: "Et quant a ceo il dit que jetsam est ou in le perill de tempest les mariners ject parcell del biens hors del nief descaper le daunger par lighteninge del nief. Et cy longe come ceo est sur le meere ceo est jetsam et nemy wrecke. Floatsam est ou nief est tout ousterment swallowe par le meere et sinke al bottome et parcell del biens floate sur le ewe, et ceo nes wrecke tanque ject sur le terre, comment que soit inter le ebb et flood: et si soit ject issint que ceo touche le térre, si lewe amesna ceo arere et touts fois floatsam. Lagan est ceo que sinke et remaine al bottome . . . Et FENNER, J. dit que lagan est mort corps in le meere et tout ceo que est circa luy. Mes COOKE, J. dit que fuit appell lagan a ligando, scilicet quant chose sinke al bottome del meere, et est un boy tie al ceo pur que poit estre trove."

(*g*) *Constable's* (*Sir Henry*) *Case* (1601), 5 Co. Rep. 106; *R.* v. *Two Casks of Tallow* (1837), 3 Hag. Adm. 294, 298; *The Pauline* (1845), 2 Wm. Rob. 353.

(*h*) For the meaning of "derelict," see also p. 549, *post*.

(*i*) M. S. Act, 1894, s. 566. In special cases the Board can make appointments from outside these classes (*ibid.*).

(*k*) *Ibid.*, s. 567. The fees must not exceed the amount specified in *ibid.*, Sched. XX. (*ibid.*, s. 567 (1)). As to the application of fees, see *ibid.*, s. 567 (4); Merchant Shipping (Mercantile Marine Fund) Act, 1898 (61 & 62 Vict. c. 44), s. 1.

(*l*) M. S. Act, 1894, s. 567 (2); see pp. 579 *et seq.*, *post*.

(*m*) M. S. Act, 1894, s. 567 (3).

SECT. 3. Vessels in Distress.

the coast or any tidal water within the limits of the United Kingdom, must forthwith proceed there, and take command of all persons present, and assign such duties and give such directions to each person as he thinks fit for the preservation of the vessel, the lives of the persons belonging to her, and of her cargo and apparel. He must not, however, interfere between the master and crew of the vessel unless requested by the master to do so (*n*).

Examination.

824. Besides the duty of attending at the scene of a wreck, the receiver must, when any ship is or has been in distress on the coast of the United Kingdom, as soon as conveniently may be examine on oath any person belonging to the ship, or any other person who may be able to give any account thereof or of her cargo or stores, for the purpose of ascertaining such facts relating to the accident as he may think necessary (*o*). The examination must be taken down in writing, and a copy must be sent to the Board of Trade and the secretary of Lloyd's (*p*).

Powers.

To enable him to carry out his duties of saving life and property he may require any person to assist him, and may require the master, or other person in charge, of any vessel near at hand to give such aid with his men or vessel as may be in his power. He may demand the use of any wagon, cart, or horses that may be near at hand (*q*).

The receiver, and persons assisting him, may, on certain conditions as to damage, pass over any land near the salvage operations and deposit thereon any salved property without being guilty of trespass (*r*). Any damage sustained by the owner of the land is a charge on the salved property, and can be recovered as salvage (*s*).

Plundering, or obstructing salvage.

In the event of any person plundering or creating disorder or obstructing the salvage operations, the receiver may cause such offender to be arrested, and he may use force and call upon all His Majesty's subjects to assist him in doing so (*t*).

Rioting.

If owing to rioting damage is done to the stranded vessel or her cargo or apparel, the owner is compensated (*a*) under the provisions of the Riot (Damages) Act, 1886 (*b*).

Persons authorised to act as receivers.

825. When a receiver is not present at the salvage operations, the following persons, in succession in the order named, may do

(*n*) M. S. Act, 1894, s. 511. As to the meaning of "on or near the coasts," see *The Fulham*, [1898] P. 206, 213.

(*o*) M. S. Act, 1894, s. 517. For this examination on oath the receiver has all the powers of a Board of Trade inspector, for which see *ibid.*, s. 729. He can charge a fee of £1 for the first deposition and £1 for the subsequent depositions (*ibid.*, s. 567, Sched. XX.). These depositions are not admissible in evidence in a collision action, though deponent has died before the trial (*The Henry Coxon* (1878), 3 P. D. 156); and see title EVIDENCE, Vol. XIII., pp. 465 *et seq.*

(*p*) M. S. Act, 1894, s. 517 (2).

(*q*) Failure without reasonable cause to comply with his requests, renders a person liable to a fine not exceeding £100 (*ibid.*, s. 512).

(*r*) *Ibid.*, s. 513.

(*s*) *Ibid.*, s. 513 (2). As to salvage generally, see pp. 557 *et seq.*, *post.*

(*t*) M. S. Act, 1894, s. 514.

(*a*) *Ibid.*, s. 515.

(*b*) 49 & 50 Vict. c. 38.

anything authorised to be done by a receiver, namely: chief officer of customs (*c*), principal officer of coastguard, chief officer of inland revenue, sheriff, justice of the peace, commissioned officer on full pay in the navy, commissioned officer on full pay in the army (*d*). These persons, when acting as deputy for the receiver, are not entitled to any fees payable to receivers, but may have a claim for salvage (*e*).

SECT. 4.—*Dealing with Wreck.*

SUB-SECT. 1.—*Duties of Finders of Wreck.*

Duties of finders of wreck.

826. A person who finds or takes possession of any wreck within the limits of the United Kingdom, or any wreck found outside those limits and brought within them, must, if he is the owner, give notice to the receiver of wreck for the district of the fact and a description of the marks by which the wreck may be recognised (*f*). If he is not the owner, he must deliver such wreck to the receiver, unless he is a salvor, in which case he may deliver it to the owner (*g*).

Penalty for withholding wreck from receiver.

827. Any person, whether the owner or not, who secretes or keeps possession of or refuses to deliver to the receiver any cargo or article belonging to or separated from a vessel which is wrecked, stranded or in distress in the United Kingdom, which is washed ashore or otherwise lost or taken from the vessel, is liable to a fine not exceeding £100 (*h*). A person who fails without reasonable cause to comply with the duties of finders set out above is liable to a similar fine, and in addition, if he is not the owner, to forfeit any claim for salvage, and to pay to the owner of the wreck if it is claimed, or if unclaimed to the person entitled to the same, double the value thereof (*i*).

SUB-SECT. 2.—*Duties of Receiver.*

Receiver's duties regarding wreck.

828. In the event of cargo or articles being washed ashore or lost or taken from a vessel in distress on or near the coasts or in any tidal water within the limits of the United Kingdom, the receiver should demand the property from any person, whether the owner or not, who secretes it or keeps possession of it, and on his refusal to deliver it up the receiver may take it by force (*k*).

(*c*) This includes the collector, superintendent, principal coast officer, or other chief officer of customs (M. S. Act, 1894, s. 742).

(*d*) *Ibid.*, s. 516 (1).

(*e*) *Ibid.*, s. 516 (2); see *The Wear Packet* (1855), 2 Ecc. & Ad. 256.

(*f*) M. S. Act, 1894, s. 518 (a); M. S. Act, 1906, s. 72.

(*g*) M. S. Act, 1894, s. 518 (b); *The Zeta* (1875), L. R. 4 A. & E. 460. These provisions as to wreck only apply to criminal and improper detention whereby it is sought to practise a fraud upon the Crown or the owner; see also *The Liffey* (1887), 58 L. T. 351, where the finder took possession *bonâ fide* believing the property to be his own.

(*h*) M. S. Act, 1894, s. 519.

(*i*) *Ibid.*, s. 518. It is "a reasonable cause" for salvors to continue in possession that they do so in order to perform necessary salvage operations for the safety of the property (*The Glynoeron* (1905), 21 T. L. R. 648). A receiver of wreck also has powers in connexion with the licensing of marine store dealers, as to which see title TRADE AND TRADE UNIONS, Vol. XXVII., p. 543.

(*k*) M. S. Act, 1894, s. 519 (2), (3).

SECT. 4. **Dealing with Wreck.**

When the receiver has taken possession of any wreck, he must within forty-eight hours cause to be posted up in the custom-house nearest to the place where the wreck was found or seized by him a description thereof and of any marks by which it is distinguished. If he thinks it is worth more than £20, he must send a similar description to Lloyd's, to be posted there for inspection (*l*). Within the same time he must send a similar description of the wrecked property to any subject who may have proved his title to unclaimed wreck in respect of the place where such property was found (*m*).

Power to sell wreck.

At any time the receiver may sell wreck which in his opinion is not worth more than £5, or is so damaged or of so perishable a nature that it cannot with advantage be kept, or is not of sufficient value to pay for warehousing. The proceeds of such sale, after deducting expenses, are held by the receiver for the same purposes and subject to the same claims, rights, and liabilities as if the wreck had remained unsold (*n*).

SUB-SECT. 3.—*Claims of Owners to Wreck.*

Owner's claim to wreck.

829. Within one year of the wreck passing into the possession of the receiver of wreck the owner thereof is entitled, on proof of his ownership to the satisfaction of the receiver, to have the wreck or the proceeds of any sale thereof delivered to him immediately he has paid the salvage fees and expenses due in respect of such wreck (*o*).

Foreign ship.

If the wreck formed part of a foreign ship or of her cargo, the consul-general of the country to which the ship or in case of cargo to which the owners of the cargo may have belonged, or any consular officer of that country authorised in that behalf by any treaty or arrangement with that country, is, in the absence of the owner and of the master or other agent of the owner, deemed to be the agent of the owner so far as relates to the custody and disposal of the wreck (*p*).

SUB-SECT. 4.—*Dealing with Unclaimed Wreck.*

Right of Crown to unclaimed wreck.

830. All unclaimed wreck found in His Majesty's dominions belongs to the Crown as part of the prerogative, except when it is found in places where the Crown has granted the right to wreck to other persons (*q*). His Majesty is also entitled to all wreck found within the limits of his Duchy of Lancaster when the right thereto has not been granted to a subject (*r*). The same rule applies to the Duke of Cornwall in respect of that Duchy (*s*). Besides the

(*l*) M. S. Act, 1894, s. 520.
(*m*) *Ibid.*, s. 524 (2). If the wreck is claimed in right of the Duchy of Cornwall, notice is sent to the Receiver-General of the Duchy (*ibid.*, s. 525 (2) (b)).
(*n*) *Ibid.*, s. 522.
(*o*) *Ibid.*, ss. 521 (1), 525.
(*p*) *Ibid.*, s. 521 (2).
(*q*) *Ibid.*, s. 523 ; Statute de Prerogativa Regis, stat. (*temp. incert.*) c. 13 ; see also title CONSTITUTIONAL LAW, Vol. VII., pp. 210 *et seq.*
(*r*) M. S. Act, 1894, s. 525 (2) (a).
(*s*) *Ibid.*, s. 525 (2) (b).

prerogative rights of the Crown to wreck, the Board of Trade may purchase for His Majesty any rights to wreck in the possession of a subject, and for this purpose the provisions of the Lands Clauses Acts relating to the purchase of lands by agreement apply (*t*).

Purchase from subject for Crown.

831. A subject (*a*) who is entitled for his own use to unclaimed wreck found in any place within the district of a receiver must deliver to the receiver a statement of his title and an address to which notices may be sent (*b*).

Title to unclaimed wreck

832. In cases where the receiver is satisfied with the title, he must, on taking possession of any wreck found at any place to which the statement of title refers, within forty-eight hours send to the address delivered to him a description of the wreck and of any marks by which it is distinguished (*c*). At the expiration of the year from the time when the unclaimed wreck came into his hands, he must, if it belongs to a subject, deliver it to him after payment of all expenses, costs, fees, and salvage. When it does not belong to a subject, the receiver must sell it, and (after deducting the expenses incurred and paying salvors such amount of salvage as the Board of Trade may in such case or by any general rules determine) pay the proceeds for the benefit of the Crown as follows: if claimed in respect of the Duchy of Lancaster or Duchy of Cornwall, to the Receiver-General of the Duchy; if not so claimed, to His Majesty (*d*).

Disposal of wreck by receiver.

In the case of a dispute as to a title to unclaimed wreck, it may be determined in the same way as if it were a dispute as to salvage to be determined summarily (*e*). If either party is unwilling to have the matter determined in this summary way or is dissatisfied with the determination, he may within three months after the expiration of a year from the time when the wreck came into the receiver's hands, or from the date of the decision, take any proceedings in any court having jurisdiction in the matter for establishing his title (*f*).

Disputes.

On due delivery of the wreck or payment of the proceeds, the receiver is discharged from all liability in respect thereof, but such delivery does not prejudice or affect any question which may be raised by third parties concerning the right or title to the wreck, or to the soil of the place on which the wreck was found (*g*).

Receiver's liability discharged by delivery.

(*t*) M. S. Act, 1894, s. 528. For the Lands Clauses Acts, see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 12 *et seq.*

(*a*) This includes any admiral, vice-admiral, lord of a manor, heritable proprietor duly infeft, or any other person (M. S. Act, 1894, s. 524).

(*b*) *Ibid.*, s. 524. After the passing of the M. S. Act, 1854, the Board of Trade caused inquiries to be made as to the title of persons claiming a right to wreck, and in many cases admitted the titles proved at such inquiry. These admissions of title to unclaimed wreck are not considered by the Board of Trade to be binding in all cases on the Crown, though acted upon for over fifty years.

(*c*) M. S. Act, 1894, s. 524 (2).

(*d*) *Ibid.*, ss. 525, 676 (g). Foreign goods when wrecked are liable to customs duties (*ibid.*, s. 569).

(*e*) *Ibid.*, ss. 526 (1), 547, 548.

(*f*) *Ibid.*, ss. 526 (2), 549.

(*g*) *Ibid.*, s. 527. For the law relating to the title to the soil, see titles

SECT. 5. Removal of Wreck.

SECT. 5.—*Removal of Wreck.*

SUB-SECT. 1.—*Authorities Empowered to Remove Wreck.*

Harbour or conservancy authority.

833. The authority empowered to remove wrecks which are or may become in its opinion an obstruction or danger to navigation or to the lifeboat service (*h*) is in the case of a vessel (*i*) sunk, stranded or abandoned in any harbour (*k*) or tidal water (*l*) under the control of a harbour or conservancy authority (*m*), or in or near any approach thereto, such harbour or conservancy authority (*n*).

General lighthouse authority.

When a vessel is wrecked in any fair-way (*o*), or on the seashore, or on or near any rock, shoal, or bank in the British Islands or any of the adjacent seas or islands, and there is not any harbour or conservancy authority having jurisdiction in regard thereto, then the authority to deal with the wreck, if in its opinion such wreck is or is likely to become an obstruction or danger to navigation or the lifeboat service, is the general lighthouse authority for the locality (*p*).

Disputes.

If a question arises between the harbour or conservancy authority and the general lighthouse authority as to their respective powers for the removal of wrecks, that question may be referred to the Board of Trade, and the decision of the Board is final (*q*).

SUB-SECT. 2.—*Extent of Powers.*

Powers of authorities.

834. The empowered authorities have, in addition to any other

BOUNDARIES, FENCES, AND PARTY WALLS, Vol. III., p. 118; WATERS AND WATERCOURSES.

(*h*) "Lifeboat service" means the saving, or attempted saving, of vessels, or of life or property on board vessels, wrecked or aground or sunk, or in danger of being wrecked or getting aground or sinking (M. S. Act, 1894, s. 742).

(*i*) "Vessel" on this page and on pp. 555, 556, *post*, is used as including every article or thing, or collection of things, being or forming part of the tackle, equipment, cargo, stores, or ballast of the vessel (*ibid.*, s. 532).

(*k*) "Harbour" includes harbours properly so called, whether natural or artificial, estuaries, navigable rivers, piers, jetties, and other works in or at which ships can obtain shelter, or ship or unship goods or passengers (*ibid.*, s. 742).

(*l*) "Tidal water" means any part of the sea, and any part of a river within the ebb and flow of the tide at ordinary spring tides, and not being a harbour (*ibid.*).

(*m*) "Harbour authority" includes all persons or bodies of persons, corporate or unincorporate, being proprietors of or entrusted with the duty or invested with the power of constructing, improving, managing, regulating, maintaining, or lighting a harbour. "Conservancy authority" includes all persons or bodies of persons, corporate or unincorporate, entrusted with the duty or invested with the power of conserving, maintaining, or improving the navigation of a tidal water (*ibid.*).

(*n*) *Ibid.*, s. 530. For powers of a harbour authority under the Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), to remove wrecks, see p. 642, *post*. As to removal of wrecks in the Mersey, see Mersey Docks and Harbour Board Act, 1912 (2 & 3 Geo. 5, c. xii.).

(*o*) For meaning of "fair-way," see p. 406, *ante*.

(*p*) M. S. Act, 1894, s. 531. As to the general lighthouse authority, see pp. 627, 628, *post*.

(*q*) M. S. Act, 1894, s. 533.

SECT. 5. Removal of Wreck.

powers for a like object, power to take possession of, raise, remove, or destroy, the whole or any part of a vessel, and to light and buoy her until raised, removed, or destroyed. Such authorities may sell, in such manner as they think fit, any wreck raised or removed, and any property recovered under these powers, provided they give seven days' notice of the sale in a local newspaper. If the property is perishable or likely to deteriorate they can sell at once. The owner of any property offered for sale has the option of taking delivery on payment of the fair market value, ascertained by agreement between the owners and the authority, or, failing that, by some person named for the purpose by the Board of Trade (*r*). Out of the proceeds of any sale, or of the amount paid by the owners, the authority may reimburse itself for the expenses incurred by it in relation to the wreck, but it must hold the surplus in trust for the persons entitled thereto (*s*). Expenses incurred by a general lighthouse authority, and not reimbursed out of the proceeds of the wreck, are paid out of the General Lighthouse Fund (*t*).

Expenses.

835. When the owners, though in possession, have transferred the management and control of a wreck to a wreck-raising authority, neither are they nor is the wreck liable for any collision which may happen through insufficient lighting and buoying (*a*), but the authority may be liable for their own negligence (*b*).

Insufficient lighting and buoying.

(*r*) M. S. Act, 1894, ss. 530, 534.

(*s*) *Ibid.*, s. 530. As to what may be included in the expenses, see *The Harrington* (1888), 13 P. D. 48.

(*t*) M. S. Act, 1894, s. 531 (2); Merchant Shipping (Mercantile Marine Fund) Act, 1898 (61 & 62 Vict. c. 44), s. 1 (1) (b), (c); see pp. 632 *et seq.*, *post*. Under the M. S. Act, 1894, a wreck-raising authority has no power to recover from the owner the expenses incurred, but may have a personal remedy against the owner under a special Act for such expenses (*The Ettrick* (1881), 6 P. D. 127, C. A.). It will depend on the terms of the special Act whether the owner who is liable is the owner at the time of the wreck or at the time when the expenses were incurred. When the power to recover personally is by incorporation in the special Act of the Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 56, an owner who has abandoned the vessel as a derelict before the expenses were incurred is not liable (*Arrow Shipping Co.* v. *Tyne Improvement Commissioners, The Crystal*, [1894] A. C. 508). As to the meaning of "owner" in the Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.), see *The Wallsend*, [1907] P. 302. When there is a personal remedy against the owner under a special Act the authority can allocate the proceeds of wreck to the expenses incurred under the M. S. Act, 1894, and sue the owner for the balance (*Arrow Shipping Co.* v. *Tyne Improvement Commissioners, The Crystal, supra*). Where under a local Act the authority has power to recover from the owner, it cannot charge the owners of cargo on the wreck with the expense of removing or dispersing the wreck (*Vivian* v. *Mersey Docks Board* (1869), L. R. 5 C. P. 19).

(*a*) *S.S. Utopia* (*Owners*) v. *S.S. Primula* (*Owners and Master*), *The Utopia*, [1893] A. C. 492, P. C.; *The Douglas* (1882), 7 P. D. 151, C. A.; *Brown* v. *Mallett* (1848), 5 C. B. 599; *White* v. *Crisp* (1854), 10 Exch. 312; see pp. 533, 534, *ante*.

(*b*) *Dormont* v. *Furness Rail. Co.* (1883), 11 Q. B. D. 496; *Mersey Docks Trustees* v. *Gibbs* (1866), 11 H. L. Cas. 686; L. R. 1 H. L. 93; *Gilbert* v. *Trinity House Corporation* (1886), 17 Q. B. D. 795.

SECT. 6.
Offences in Respect of Wreck.

SECT. 6.—*Offences in Respect of Wreck.*

Selling wreck in foreign port.

836. It is a felony (*c*) to take into any foreign port and sell any wreck, or any vessel, stranded, derelict, or otherwise in distress, found on or near the coasts of the United Kingdom or any tidal water within the limits of the United Kingdom, or any part of the cargo or apparel or anything belonging thereto (*d*). It would seem that wreck taken possession of outside the limits of the United Kingdom may be taken to a foreign port, provided it has not been brought within the above limits (*e*).

Boarding wreck.

Unless a person is, or acts by the command of, the receiver of wreck, or a person lawfully acting as such, he may not go on board or endeavour to board any vessel which is wrecked, stranded, or in distress, without the leave of the master. If he does he is liable to a fine and to be repelled by force (*f*).

Obstructing salvage operations.

A person who impedes or hinders, or endeavours in any way to impede or hinder, the saving of any vessel stranded or in danger of being stranded or otherwise in distress, or of any part of the cargo or apparel thereof, or of any wreck, or who secretes any wreck or defaces or obliterates any marks thereon, or who wrongfully carries away or removes any part of such vessel or her cargo or apparel or any wreck, is liable to a fine in addition to any other punishment to which he may be liable (*g*).

Wrongful possession of wreck.

837. When a receiver suspects or receives information that any wreck is secreted or in the possession of some person who is not the owner, or is being improperly dealt with, he can obtain a search warrant from a justice of the peace to search any house, place, or vessel and detain any wreck found. If the warrant was obtained on information given and a seizure follows, the informer is entitled by way of salvage to such sum not exceeding £5 as the receiver may allow (*h*).

(*c*) Penalty, not less than three years' penal servitude and not exceeding five years (M. S. Act, 1894, s. 535); and as to alternative sentences, see title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 410.

(*d*) M. S. Act, 1894, s. 535. For definition of the terms "wreck," "derelict," "tidal water," "limits of the United Kingdom," see pp. 548, 549, note (*l*), 554, *ante*.

(*e*) Compare M. S. Act, 1906, s. 72; M. S. Act, 1894, s. 518.

(*f*) Penalty, not exceeding £50 (*ibid.*, s. 536 (1)). "Master" includes every person except a pilot having command or charge of a ship (*ibid.*, s. 742).

(*g*) *Ibid.*, s. 536 (2). Penalty, not exceeding £50; the other penalties presumably are those imposed by *ibid.*, s. 518, namely, for failure to deliver to the receiver, penalty not exceeding £100, and if the captain be not the owner, forfeiture of salvage and liability to pay double the value of the property, and by *ibid.*, s. 519, namely, for secreting, keeping possession of, or refusing to deliver to the receiver on demand, a penalty not exceeding £100; as to the application of this part of the Act, see also *The Zeta* (1875), L. R. 4 A. & E. 460; *The Liffey* (1887), 6 Asp. M. L. C. 255. As to marine store dealers, see title TRADE AND TRADE UNIONS, Vol. XXVII., p. 543; as to stealing from a wreck, see title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 640.

(*h*) M. S. Act, 1894, s. 537.

Part XIII.—Salvage.

SECT. 1.—*Nature of Salvage.*

SECT. 1. **Nature of Salvage.**

Meaning of "salvage."

838. The term "salvage" may signify either the service rendered by a salvor or the reward payable to him for his service (*a*). It is applicable to military salvage, or the rescue of property in time of war (*b*), as well as to civil salvage, which is the present subject. Civil salvage relates to the service of saving property or life in danger at sea and the compensation payable in respect of such service.

Description of salvage service.

839. Salvage service in the present sense is that service which saves or contributes to the ultimate safety of a vessel, her apparel, cargo, or wreck, or to the lives of persons belonging to a vessel when in danger at sea, or in tidal waters, or on the shore of the sea or tidal waters, provided that such service is rendered voluntarily and not in the performance of any legal or official duty or merely in the interests of self-preservation (*c*). The person who renders such service, the salvor, becomes entitled to remuneration termed "salvage reward."

How rendered.

840. Salvage services may be rendered in many different ways. They include (*d*) towing (*e*), piloting (*f*), navigating (*g*), or standing by (*h*) a vessel in danger; landing (*i*) or transhipping (*k*) cargo or persons belonging to such vessel; floating a stranded vessel (*l*); raising a sunken vessel (*m*) or cargo (*n*); saving a derelict (*o*) or wreck (*p*); setting in motion (*q*), fetching (*r*), or bringing (*s*) assistance to a vessel in danger; giving advice or information in order to

(*a*) It is also applied to the salved property in matters relating to insurance. There is no common law right to salvage; see *Falcke* v. *Scottish Imperial Insurance Co.* (1886), 34 Ch. D. 234, C. A., at pp. 248, 249 etc., and pp. 570 *et seq.*, *post*.

(*b*) See title PRIZE LAW AND JURISDICTION, Vol. XXIII., p. 293.

(*c*) See Kennedy, Civil Salvage, 2nd ed., p. 2; and *The Gas Float Whitton No.* 2, [1896] P. 42, C. A., *per* Lord ESHER, M.R., at p. 49, citing various definitions.

(*d*) See Pritchard's Admiralty Digest, 3rd ed., pp. 1920—2123.

(*e*) *The Ellora* (1862), Lush. 550; *The Madras*, [1898] P. 90.

(*f*) *The Anders Knape* (1879), 4 P. D. 213.

(*g*) *Newman* v. *Walters* (1804), 3 Bos. & P. 612; *Le Jonet* (1872), L. R. 3 A. & E. 556.

(*h*) *The Undaunted* (1860), Lush. 90, 92.

(*i*) *The Favourite* (1844), 2 Wm. Rob. 255.

(*k*) *The Columbia* (1838), 3 Hag. Adm. 428; *The Erato* (1888), 13 P. D. 163.

(*l*) *The Inchmaree*, [1899] P. 111; *The Cayo Bonito*, [1904] P. 310.

(*m*) *The Catherine* (1848), 6 Notes of Cases, Supp., xliii.

(*n*) *The Cadiz and The Boyne* (1876), 3 Asp. M. L. C. 332.

(*o*) *The Janet Court*, [1897] P. 59.

(*p*) *The Samuel* (1851), 15 Jur. 407.

(*q*) *The Marguerite Molinos*, [1903] P. 160; *The Cayo Bonito*, *supra* (launchers of a lifeboat).

(*r*) *The Sarah* (1878), 3 P. D. 39.

(*s*) *The Undaunted*, *supra*.

SECT. 1. Nature of Salvage.

save a vessel from a local danger (*a*); supplying officers or crew (*b*) or tackle (*c*) to a vessel in need of them; rescuing persons who have had to take to the boats (*d*); removing a vessel from a danger, such as a vessel or wreck which has fouled her (*e*), an icefloe (*f*), or an impending collision (*g*); putting out a fire on board (*h*); saving property or life from a vessel on fire (*i*); removing a vessel or cargo from a position in which it is in imminent danger of catching fire (*k*); protecting or rescuing a vessel, her cargo, or persons on board from pirates or plunderers (*l*); recovering and restoring a captured ship (*m*).

The right to salvage reward.

841. The right of the salvor to salvage reward does not depend on contract (*n*). It may, but does not necessarily, arise out of contract. A salvage service rendered to property so circumstanced that a prudent owner of the property would accept the service creates of itself a title to salvage reward (*o*); and the fact that an express contract for the performance of salvage services has been entered into by the salvor, who has failed to carry it out, does not preclude him from obtaining salvage reward, if the service rendered by him contributed to some extent to the ultimate safety of the property in danger (*p*).

Danger and success essential.

To maintain a claim for salvage reward it is not sufficient that services in the nature of salvage services have been rendered. It is necessary to show that the property in danger, or some part of it, has been ultimately saved, whether that result has been achieved with the aid of the salvage service or by other means (*q*); for if no part of the property in danger is ultimately saved, no salvage

(*a*) *The Eliza* (1862), Lush. 536; *The Strathnaver* (1875), 1 App. Cas. 58, 62, 63, P. C.; but see *The Vrouw Margaretha* (1801), 4 Ch. Rob. 103, *per* Lord STOWELL, at p. 104, and *The Little Joe* (1860), Lush. 88, *per* Dr. LUSHINGTON, at p. 89, where it was doubted whether this service was a salvage service.

(*b*) *The Skibladner* (1877), 3 P. D. 24.

(*c*) *The Prince of Wales* (1848), 6 Notes of Cases, 39.

(*d*) *The Cairo* (1874), L. R. 4 A. & E. 184.

(*e*) *The Vandyck* (1881), 7 P. D. 42; affirmed (1882), 5 Asp. M. L. C. 17, C. A.; compare *The Emilie Galline*, [1903] P. 106.

(*f*) *The Swan* (1839), 1 Wm. Rob. 68.

(*g*) *The Saratoga* (1839), Lush. 318.

(*h*) *The City of Newcastle* (1894), 7 Asp. M. L. C. 546.

(*i*) *The Eastern Monarch* (1860), Lush. 81.

(*k*) *The Tees, The Pentucket* (1862), Lush. 505.

(*l*) *Calypso* (1828), 2 Hag. Adm. 209; *The Erato* (1888), 13 P. D. 163.

(*m*) *The Henry* (1810), Edw. 192.

(*n*) *Five Steel Barges* (1890), 15 P. D. 142, *per* HANNEN, P., at p. 146; *Cargo ex Port Victor*, [1901] P. 243, 247, 249, C. A.

(*o*) *The Vandyck* (1881), 7 P. D. 42; affirmed (1882), 5 Asp. M. L. C. 17, C. A.; *The Liffey* (1887), 6 Asp. M. L. C. 255 (services rendered to a vessel which the salvor believed to be his own); *The Auguste Legembre*, [1902] P. 123 (services declined by master of salved vessel); and see *The Emilie Galline*, [1903] P. 106; *The Port Caledonia and The Anna*, [1903] P. 184.

(*p*) *The Hestia*, [1895] P. 193. For precedent of a salvage agreement approved by Lloyd's committee, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 167.

(*q*) *Cargo ex Sarpedon* (1877), 3 P. D. 28; *The Renpor* (1883), 8 P. D. 115, C. A.; *The Annie* (1886), 12 P. D. 50, 51; *The Elton*, [1891] P. 265, 269; *Cargo ex Port Victor*, *supra*, at pp. 243, 255, 256, C. A.

reward is recoverable. There may be special circumstances in which the master or other person in charge of the property in danger is justified in binding the owner to pay for assistance independently of the ultimate safety of the property (*a*); but such an agreement is not a salvage agreement (*b*).

SECT. 2.—*Subjects of Salvage.*

SUB-SECT. 1.—*Maritime Property.*

Property subject of salvage service.

842. No property, other than maritime property, can be the subject of a salvage service (*c*).

"Maritime property" consists of a vessel (*d*), her apparel, cargo, or wreck. "Cargo" includes all merchandise on board the salved vessel (*e*). It does not include, so far as regards the liability to arrest and contribution to salvage reward, the personal effects of the master or crew (*f*), or the clothes or personal effects of passengers, whether on the person or taken on board by them for their daily use (*g*), or, it would seem, ship's provisions (*h*).

"Maritime property."

"Cargo."

"Wreck" was originally limited to parts of a vessel or cargo which were stranded. It is now the subject of statutory definition (*i*), and for the purposes of salvage it may be treated as including, besides derelict, any fragment which previously formed part of a vessel, her apparel, or cargo, whether aground or afloat (*k*).

"Wreck."

"Derelict" is property, whether vessel or cargo (*l*), abandoned at sea by those in charge of it without hope on their part of recovering or intention of returning to it (*m*). A vessel is not derelict which is only left temporarily by her master and crew with the intention of

"Derelict."

(*a*) *S.S. Wellfield (Owners)* v. *Adamson and Short, The Alfred* (1884), 5 Asp. M. L. C. 214; compare *The Prinz Heinrich* (1888), 13 P. D. 31; *The Edenmore*, [1893] P. 79; *The Strathgarry*, [1895] P. 264. As to the effect of such an agreement upon an award, see p. 575, *post*.

(*b*) *The Hestia*, [1895] P. 193, 199; and see p. 570, *post*; title CONTRACT, Vol. VII., p. 464.

(*c*) *The Gas Float Whitton No.* 2, [1895] P. 301; [1896] P. 42, C. A.; [1897] A. C. 337; see also *Palmer* v. *Rouse* (1858), 3 H. & N. 505; *Raft of Timber* (1844), 2 Wm. Rob. 251; M. S. Act, 1894, s. 546.

(*d*) As to what is included in the words "vessel" and "ship," see pp. 14, 374, *ante*.

(*e*) As to whether "cargo" should include goods in tow, see *The Gas Float Whitton No.* 2, [1897] A. C. 337, 345.

(*f*) See Beawes, Lex Mercatoria, 6th ed. (Chitty), Vol. I., p. 242.

(*g*) *The Willem III.* (1871), L. R. 3 A. & E. 487.

(*h*) Compare *Brown* v. *Stapyleton* (1827), 4 Bing. 119.

(*i*) M. S. Act, 1894, s. 510; and see p. 548, *ante*.

(*k*) A raft of timber (*Nicholson* v. *Chapman* (1793), 2 Hy. Bl. 254) is not wreck, nor are planks of timber moored in a river which have broken adrift (*Palmer* v. *Rouse*, *supra*), nor a gas buoy which has become adrift (*The Gas Float Whitton No.* 2, *supra*), neither having formed part of a vessel, her apparel, or cargo.

(*l*) *R.* v. *Property Derelict* (1825), 1 Hag. Adm. 383; *The Coromandel* (1857), Sw. 205; *R.* v. *Forty-nine Casks of Brandy* (1836), 3 Hag. Adm. 257, 270; *The Samuel* (1851), 15 Jur. 407, 410; *Boiler ex Elephant* (1891), 64 L. T. 543.

(*m*) *The Aquila* (1798), 1 Ch. Rob. 37, 40; *The Gertrude* (1861), 30 L. J. (P. M. & A.) 130, 131; *Cossman* v. *West, Cossman* v. *British America Assurance Co.* (1887), 13 App. Cas. 160, 180, 181, P. C. For a form of notice to underwriters of abandonment of ship or cargo, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 164.

SECT. 2. Subjects of Salvage.

returning to her (*a*), even though the management of the vessel may have passed into the hands of salvors (*b*). On the other hand, a vessel deserted by her master and crew with the intention of abandoning her does not cease to be derelict because they subsequently change their intention and try to recover her (*c*). Whenever the question arises as to whether a vessel is derelict or not, the test to be applied is the intention and expectation of the master and crew at the time of quitting her, and, in the absence of direct evidence, that is determined by consideration of all the circumstances of the case (*d*).

"Freight."

"Freight" in the course of being earned by the carriage of the cargo, that is, freight at risk, is the subject of salvage if it is earned by means of salvage service (*e*). Where the freight at risk consists of money payable for the carriage of passengers, and the ship is lost and the passengers are carried to their destination by the salving vessel, it is conceived that the owner of the vessel lost would be liable to the salvor of the lives and the freight thus earned for salvage reward (*f*). But no salvage reward is payable where the passengers' contract of carriage excludes liability to forward them to their destination, and in such a case the master must base his claim on the ground that in transhipping them he is acting as their agent and not on behalf of his employers (*g*).

Exemption of British and foreign Government vessels.

843. British and foreign Government vessels, whether warships or not, and Government stores on board of them or on board a private ship, and private goods on board warships of a foreign Government which has for public purposes undertaken the care of them (*h*), are alike exempt from claims for salvage reward, no salvage action *in rem* being maintainable against them (*i*). It is open to question

(*a*) *The Aquila* (1798), 1 Ch. Rob. 37; *The Lepanto*, [1892] P. 122.

(*b*) *Cossman* v. *West*, *Cossman* v. *British America Assurance Co.* (1887), 13 App. Cas. 160, P. C.; *The Lepanto*, *supra*.

(*c*) *The Sarah Bell* (1845), 4 Notes of Cases, 144, 146.

(*d*) See, for example, *The John and Jane* (1802), 4 Ch. Rob. 216; *The Cosmopolitan* (1848), 6 Notes of Cases, Suppl. xvii., xx—xxvii.; *The Pickwick* (1852), 16 Jur. 669, 670; *The Zeta* (1875), L. R. 4 A. & E. 460.

(*e*) See p. 588, *post*.

(*f*) Compare *The Medina* (1876), 1 P. D. 275; affirmed, 2 P. D. 5, C. A., where, however, there was an agreement for the payment of salvage reward; and see Kennedy, Civil Salvage, 2nd ed., pp. 68, 69.

(*g*) *The Mariposa*, [1896] P. 273.

(*h*) *The Constitution* (1879), 4 P. D. 39.

(*i*) See *The Prinz Frederik* (1820), 2 Dods. 451; *The Constitution*, *supra*; *The Parlement Belge* (1880), 5 P. D. 197, C. A., reviewing earlier cases; *Young* v. *Steamship Scotia* (1903), 9 Asp. M. L. C. 485, P. C. (passenger ferry-boat belonging to a colonial Government). The Admiralty usually appears and submits to the judgment of the court in the case of claims for salvage of stores belonging to the Government (*Marquis of Huntly* (1835), 3 Hag. Adm. 246, 247; *Cargo ex Venus* (1866), L. R. 1 A. & E. 50, where Government stores arrested were released by consent). *Aliter*, where by the terms of the contract of carriage the stores are carried at the risk of the shipowner or charterer (*Cargo ex Port Victor*, [1901] P. 243, C. A.). In *The Simla* (1906), unreported, cited in Kennedy, Civil Salvage, 2nd ed., p. 70, n., counsel on behalf of the Admiralty stated that the practice of the Government for a considerable time had been to submit salvage claims to arbitration, at the same time reserving its rights and privileges.

whether a vessel hired by the Government as a transport is exempt from arrest in a salvage action, though such vessels have been arrested without objection to the jurisdiction (*j*).

SUB-SECT. 2.—*Life.*

Statutory duty.

844. A statutory duty is imposed upon the master or other person in charge of a vessel to render assistance, so far as he can do so without serious danger to his vessel, her crew or passengers, to every person, including the subject of a foreign enemy, who is found at sea in danger of being lost (*k*); compliance with this duty does not affect the right of the master or any other person to salvage reward (*l*).

Right to reward.

845. The right to salvage reward for the preservation of life (*m*) on board a vessel depends upon statute (*n*). In regard to British vessels, the saving of life is thereby made an independent ground for salvage reward wherever the services have been rendered. In the case of foreign vessels it is dependent upon the service having taken place wholly or partly within British waters (*o*), or from a vessel belonging to a state in regard to which an Order in Council has been made (*p*).

Claims for life salvage.

846. The claim for salvage of life against the owner of the vessel from which life was saved takes priority over all other salvage claims (*q*). But no claim for salvage reward for the saving of life can be sustained, in the absence of special agreement (*r*), unless some property—ship, cargo, or freight—has been preserved (*s*), though it matters not whether the preservation has been due to any salvage service (*t*). The person against whom alone the salvor of life can recover salvage reward is the owner of property saved or a person who has some interest in property which has been saved (*u*), and the extent of the liability of such person to pay salvage reward for the

(*j*) *Lord Nelson* (1809), Edw. 79; *Marquis of Huntly* (1835), 3 Hag. Adm. 246.

(*k*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 6 (1).

(*l*) *Ibid.*, s. 6 (2).

(*m*) Including the lives of passengers (*The Fusilier* (1865), Brown. & Lush. 341; on appeal, 3 Moo. P. C. C. (N. S.) 51).

(*n*) M. S. Act, 1894, s. 544, consolidating the provisions of the M. S. Act, 1854 (17 & 18 Vict. c. 104), ss. 458, 459; the Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 9; and the Merchant Shipping Amendment Act, 1862 (25 & 26 Vict. c. 63), s. 59.

(*o*) As to services performed wholly or partly within British waters, see *The Pacific*, [1898] P. 170; *Jörgensen* v. *Neptune Steam Fishing Co.* (1902), 4 F. (Ct. of Sess.) 992; see also *The Willem III.* (1871), L. R. 3 A. & E. 487 (decided under the Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 9).

(*p*) It has been applied only to Prussian ships; see Order in Council, 7th April, 1864 (Stat. R. & O. Rev., Vol. VIII., Merchant Shipping, p. 300).

(*q*) M. S. Act, 1894, s. 544 (2). In *The Cairo* (1874), L. R. 4 A. & E. 184, salvage reward was obtained against a vessel for the rescue of her crew, who, after collision, but without orders, took to the boats.

(*r*) *Cargo ex Sarpedon* (1877), 3 P. D. 28, 34.

(*s*) *The Renpor* (1883), 8 P. D. 115, 117, C. A.; see also *The Annie* (1886), 12 P. D. 50, 51, *per* HANNEN, P.

(*t*) *Cargo ex Schiller* (1877), 2 P. D. 145, C. A.

(*u*) *Five Steel Barges* (1890), 15 P. D. 142, 146; *Cargo ex Port Victor*, [1901] P. 243, 246, C. A.

SECT. 2. Subjects of Salvage.

saving of life is limited to the value of his property or interest salved (*a*).

SECT. 3.—*Conditions of a Salvage Service.*

Danger to property or life.

847. The essence of a salvage service is that it is a service rendered to property or life in danger. The requisite degree of danger is a real and appreciable danger. It must not be merely fanciful, but it need not be immediate or absolute (*b*). It is sufficient if at the time of the service the situation of the subject of the service is such as to cause reasonable apprehension on the part of the person in charge of it (*c*). The burden of proving the presence of danger rests upon those who claim as salvors (*d*).

Wrongful signals of distress.

848. The danger may arise from the condition of the salved vessel (*e*), or of her crew (*f*), from her position, or from the master's want of skill or his ignorance of the locality (*g*). The conduct of those on board the salved ship in giving signals of distress or in accepting help may be evidence of the presence of danger (*h*). Where signals of distress are wrongfully used, compensation is recoverable for any labour undertaken, or risk or loss incurred, by reason of persons accepting and acting upon the signals (*i*). And persons who are induced by ambiguous signals to proceed to the assistance of a vessel which is in fact damaged or in danger are entitled to claim as salvors (*k*).

Towing damaged vessel.

Where the claim is for service rendered in towing a damaged vessel, which is the most common form of salvage service, danger will be readily implied (*l*); but the damaged condition of the vessel must be such as to affect her safety or to increase the risk or difficulty of the towage (*m*).

Voluntary service.

849. The salvor's service must be voluntary. If it is rendered under contractual obligation, in pursuance of official duty, or solely

(*a*) *Cargo ex Schiller* (1877), 2 P. D. 145, C. A.

(*b*) *The Charlotte* (1848), 3 Wm. Rob. 68, *per* Dr. LUSHINGTON, at p. 71; approved in *The "Strathnaver"* (1875), 1 App. Cas. 58, 65, P. C.; and see *The Phantom* (1866), L. R. 1 A. & E. 58, *per* Dr. LUSHINGTON, at p. 60; *The Calyx* (1910), 27 T. L. R. 166; compare *The Sea Salvage* (1912), *Times*, 8th December. The *dictum* of BRETT, L.J., in *Akerblom* v. *Price* (1881), 7 Q. B. D. 129, C. A., at p. 135, that "it is essential that the ship should be in imminent danger of being lost," may be explained as referring only to the case before him, a salvage claim by a pilot, to which special considerations apply; see p. 567, *post*. For an extreme case, see *The "Batavier"* (1853), 1 Ecc. & Ad. 169.

(*c*) See the cases cited in note (*b*), *supra*.

(*d*) *The Wilhelmine* (1842), 1 Notes of Cases, 376, 378; and see *The Calyx*, *supra*.

(*e*) *The Ella Constance* (1864), 33 L. J. (P. M. & A.) 189, 191 (want of fuel).

(*f*) *The Aglaia* (1888), 13 P. D. 160 (crew suffering from frost-bite).

(*g*) *The Eugenie* (1844), 3 Notes of Cases, 430, 431.

(*h*) *The Bomarsund* (1860), Lush. 77.

(*i*) M. S. Act, 1894, s. 434, as to which see *The Elswick Park*, [1904] P. 76; and see p. 481, *ante*.

(*k*) *The Mary* (1843), 1 Wm. Rob. 448, 452, 453; *The Racer* (1874), 2 Asp. M. L. C. 217; *The Aglaia*, *supra*.

(*l*) *The "Batavier," supra; The Ellora* (1862), Lush. 550.

(*m*) *The "Kingalock"* (1854), 1 Ecc. & Ad. 263, 266; and see *The Canova* (1866), L. R. 1 A. & E. 54.

SECT. 3. Conditions of a Salvage Service.

in the interest of self-preservation, it is not a salvage service (*n*). Hence the owner, master, crew, and pilot of the salved vessel, or of a tug towing the salved vessel under a contract of towage, the ship's agent, Government officials acting within the scope of their duties, and passengers on board the salved vessel cannot ordinarily (*o*) claim as salvors for services rendered by them. So, also, insurers who incur expenses which come within the suing and labouring clause of the policy (*p*) and persons who are employed under contract with third parties to do work in saving property may be disqualified from obtaining salvage reward for their services (*q*).

Collisions.

850. Compliance with the statutory duty to render assistance to persons in danger at sea does not affect the right of persons rendering such assistance to salvage reward (*r*), and the statutory obligation on those on board a vessel which has been in collision with another vessel to stand by the other vessel and afford assistance if required (*s*) does not prevent the assistance so given from ranking as a voluntary service, unless the collision or the consequent damage was caused by the fault of those on board the salving vessel (*t*), in which case neither the owners nor the crew of the vessel in fault for the collision are entitled to salvage reward for services rendered necessary by the collision (*u*).

Success.

851. To obtain salvage reward the salvor, as a general rule, must show that his service has been successful. Salvage reward is given for benefits actually conferred, not for a service attempted to be rendered (*a*). The claimant need not, however, prove that his service alone would have produced the ultimate safety of the subject of the service. It is sufficient for him to show that he materially

(*n*) *Neptune* (1824), 1 Hag. Adm. 227, *per* Lord STOWELL, at p. 236; *Cargo ex Schiller* (1877), 2 P. D. 145, C. A., *per* BRETT, L.J., at p. 149; *Clan Steam Trawling Co.* v. *Aberdeen Steam Trawling and Fishing Co.*, [1908] S. C. 651; and see p. 566, *post*.

(*o*) As to the circumstances under which these classes of persons will be treated as salvors, see p. 566, *post*.

(*p*) *Crouan* v. *Stanier*, [1904] 1 K. B. 87.

(*q*) *The Solway Prince*, [1896] P. 120 (where the claimants were persons who had entered into such a contract with the insurers of the vessel); *The Pinna* (1912), *Times*, 28th November (persons contracting with canal company). Lifeboatmen employed to render services in saving life may be in this position; see p. 570, *post*.

(*r*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 6 (2).

(*s*) M. S. Act, 1894, s. 422; see pp. 371, 537, *ante*.

(*t*) *The Hannibal, The Queen* (1867), L. R. 2 A. & E. 53. The fact that there is a duty on a ship in collision to stand by whether she was to blame or not may be taken into account in considering whether any salvage reward should be given to her (*The Beta, The Peter Graham* (1884), 5 Asp. M. L. C. 276, C. A.).

(*u*) *Cargo ex Capella* (1867), L. R. 1 A. & E. 356; *The Glengaber* (1872), L. R. 3 A. & E. 534. This rule applies equally whether the vessel was wholly or partly to blame (*ibid.*). *The Ettrick* (1881), 6 P. D. 127, C. A. (owner of ship in fault cannot claim salvage contribution from his cargo); *The Duc d'Aumale* (No. 2), [1904] P. 60 (tug and tow in fault for collision of tow with third vessel. Neither owners, master, nor crew of tug could claim salvage from tow).

(*a*) *The Zephyrus* (1842), 1 Wm. Rob. 329, 330; *The "E. U."* (1853), 1 Ecc. & Ad. 63, 65; and see *The Killeena* (1881), 6 P. D. 193, 198; *The Camellia* (1883), 9 P. D. 27, 29; *The City of Chester* (1884), 9 P. D. 182, 202, C. A.; *The Dart* (1899), 8 Asp. M. L. C. 481, 482, 483.

SECT. 3. Conditions of a Salvage Service.

contributed to its ultimate safety (*b*), and where there is a doubt whether a service has contributed to the ultimate safety, the court inclines to the view that the service has so contributed (*c*). But if at the termination of the service the subject of the service has been left in a position not less dangerous than that in which it was at the commencement of the service, no salvage reward is recoverable, however meritorious and hazardous the service may have been, and though the property or lives in danger may have been ultimately preserved (*d*).

Exception.

852. There is one exception to the general rule that a service to be a salvage service must be successful. Where a service has been rendered at the request of the master or other person in charge of a vessel in danger under circumstances from which a promise to pay for the service can be implied, salvage reward is payable for such service if the vessel is ultimately saved, although the service did not contribute to its ultimate safety (*e*). And where, after such service has begun, and while those who have undertaken it are ready to complete it, the master of the vessel in danger discontinues the service, the service will be rewarded although no material benefit has been derived from it (*f*). The court may also give some compensation for the loss suffered by reason of the act of the master in preventing the completion of the service (*g*). The reward given in such cases is strictly a salvage reward. It is not assessed on the basis of a contract for work and labour; and, in the absence of express agreement to the contrary, it is contingent, like all other rewards for salvage proper, on the preservation of the property in danger or some part of it (*h*).

SECT. 4.—*Salvors.*

SUB-SECT. 1.—*General Rule.*

Persons entitled to salvage.

853. The general rule is that all those, and only those, who render personal (*i*) and voluntary (*k*) services in the performance of a salvage service are entitled to salvage reward. To this rule, however, there are certain exceptions.

(*b*) *The Jonge Bastiaan* (1804), 5 Ch. Rob. 322; *The Atlas* (1862), Lush. 518, P. C.; *The Camellia* (1883), 9 P. D. 27; *The Hestia*, [1895] P. 193; *The August Korff*, [1903] P. 166.

(*c*) *The "E. U."* (1853), 1 Ecc. & Ad. 63; *The "Santipore"* (1854), 1 Ecc. & Ad. 231.

(*d*) *The Cheerful* (1885), 11 P. D. 3; *The Benlarig* (1888), 14 P. D. 3; *The Lepanto*, [1892] P. 122; *The Dart* (1899), 8 Asp. M. L. C. 481.

(*e*) *The Undaunted* (1860), Lush. 90; and see *The Helvetia* (1894), 8 Asp. M. L. C. 264, n.; *The Cambrian* (1897), 8 Asp. M. L. C. 263; *The Dart*, *supra*, at pp. 482, 483, explaining the decision in *The Melpomene* (1873), L. R. 4 A. & E. 129, on the same grounds.

(*f*) *The Maude* (1876), 3 Asp. M. L. C. 338; *The Maasdam* (1893), 7 Asp. M. L. C. 400.

(*g*) See pp. 585, 586, *post*.

(*h*) See p. 558, *ante*.

(*i*) *The Charlotte* (1848), 3 Wm. Rob. 68, *per* Dr. LUSHINGTON, at p. 72. Thus a coastguard officer merely sending off sailors to a vessel in danger (*Vine* (1825), 2 Hag. Adm. 1), or a person who merely hires labourers to assist in unloading a stranded vessel (*The Watt* (1843), 2 Wm. Rob. 70), is not a salvor; and see *H.M.S. Thetis* (1833), 3 Hag. Adm. 14, 41, 42, 61.

(*k*) See pp. 566, 570, *post*.

SUB-SECT. 2.—*Personal Service.*

Associates of salvors.

854. The rule of personal service does not extend to the associates of the actual salvors or to the owners of the salving vessel. Members of the crew of a vessel (*l*) (not being a vessel engaged in public service (*a*)) who remain on board during the performance of salvage services by other members of the crew, taking no part, but willing, if called upon, to take a part in the services, are entitled to a share in the salvage reward (*b*). The owner, also, of the salving vessel, though he has taken no personal part in the salvage services, can claim salvage reward if his interests were or might have been to some extent adversely affected by the use of his vessel or the employment of his servants in the salvage services (*c*). The charterer may stand in the position of the owner of the salving vessel in this respect; whether he does so or not depends upon the terms of the charterparty. If the charterparty amounts to a demise of the vessel (*d*), or contains express provision entitling the charterer to salvage reward, he is entitled to share as charterer in the reward (*e*); otherwise he is not (*f*).

Owner.

Charterer.

Disqualifications from claiming salvage.

855. The owner, charterer, and crew of the salving vessel may, however, be disqualified from claiming salvage reward. The owner or the charterer, as the case may be, of the salving vessel is not entitled to claim salvage reward against the salved vessel if he is also the owner of the salved vessel, or the charterer of it where the charterparty amounts to a demise (*g*); though he can still claim against the cargo on board the salved vessel (*h*), unless by the terms of his

(*l*) This exception only applies to those who properly constitute the crew (*The Coriolanus* (1890), 15 P. D. 103 (cattlemen); *The Minneapolis*, [1902] P. 30 (horsemen)). But it includes the non-navigating members of the crew, such as the doctor, stewardesses, bakers and other persons of a like description; see *The Spree*, [1893] P. 147; *The Dunottar Castle*, [1902] W. N. 70; *The Minneapolis, supra.*

(*a*) *H.M.S. Thetis* (1833), 3 Hag. Adm. 14, 61; *The Emma* (1850), 3 Wm. Rob. 151; and see *Banda and Kirwee Booty* (1866), L. R. 1 A. & E. 109, 135, 250; *The Nile* (1875), L. R. 4 A. & E. 449.

(*b*) "It has been the rule of this court, from time immemorial, to allow persons who remain on board a salving ship to be considered as co-salvors, although the court has repeatedly made distinction in favour of those persons who actually have incurred the difficulty and peril of the salvage enterprise" (*The Sarah Jane* (1843), 2 Wm. Rob. 110, *per* Dr. LUSHINGTON, at p. 115); see p. 583, *post*, as to the apportionment of reward to these persons.

(*c*) *Vine* (1825), 2 Hag. Adm. 1; *The "Norden"* (1853), 1 Ecc. & Ad. 185; *The Two Friends* (1844), 2 Wm. Rob. 349. Where the salving vessel is a steamship, and is herself the principal instrument in effecting the service (as is now generally the case), the owner receives the largest share in the reward; see p. 582, *post.*

(*d*) See as to this, p. 85, *ante.*

(*e*) *The Maria Jane* (1850), 14 Jur. 857, 858; *The Collier* (1866), L. R. 1 A. & E. 83, 85.

(*f*) *The Waterloo* (1820), 2 Dods. 433; *The Scout* (1872), L. R. 3 A. & E. 512.

(*g*) *The Maria Jane, supra; The Collier, supra.*

(*h*) *The Miranda* (1872), L. R. 3 A. & E. 561; *Cargo ex Laertes* (1887), 12 P. D. 187; *The August Korff*, [1903] P. 166.

SECT. 4. Salvors.

contract of carriage of the cargo on the salved vessel he is liable for loss or injury to it, and the salvage service was rendered necessary to save it from loss or injury (*i*). If, however, only some of part owners of the salving vessel are interested in the salved vessel, the others are entitled to claim salvage reward (*k*). The inability of the owner or charterer of the salving vessel to claim salvage reward, whether against the ship or against the cargo, in such circumstances, does not affect the right to salvage reward of the master or the crew of the salving vessel (*l*).

If the salvage services were rendered necessary by the faulty navigation of the salving vessel, neither the owner nor the crew can obtain salvage reward (*m*); and in that case no distinction is made between those who were and those who were not responsible for the faulty navigation (*n*). But where a vessel has been injured by collision with another vessel, caused by the fault of the latter vessel, and is salved by a third vessel, the owner as well as the crew of the salving vessel may be entitled to claim as salvors, although the owner is also interested in the vessel at fault for the collision (*o*).

Special custom and agreement.

Where by the custom of a particular trade, or with regard to vessels of a particular port, or by special agreement, the salving and salved vessels are bound to give mutual protection (*p*), no salvage reward is recoverable.

SUB-SECT. 3.—*Voluntary Service.*

Services must be voluntary.

856. The general rule that services in order to give a right to salvage reward must be voluntary (*q*) has the effect under ordinary circumstances of excluding from any share in a salvage reward the crew, pilot, agent, and passengers of the salved vessel, the owner,

(*i*) *The Glenfruin* (1885), 10 P. D. 103.

(*k*) *The Caroline* (1861), Lush. 334; and see *The Glenfruin, supra.*

(*l*) *The "Sappho"* (1871), L. R. 3 P. C. 690; and see *The Glenfruin, supra.* But claims by seamen against a salved vessel which belongs to the owner of their own vessel are not looked upon favourably unless the services rendered by them were of a serious nature (*The Agamemnon* (1883), 5 Asp. M. L. C. 92).

(*m*) *Cargo ex Capella* (1867), L. R. 1 A. & E. 356; and see *The Altair*, [1897] P. 105; *The Harvest Home*, [1904] P. 409.

(*n*) *The Duc D'Aumale* (No. 2), [1904] P. 60.

(*o*) *The Glengaber* (1872), 1 Asp. M. L. C. 401. As to whether this decision is reconcilable with *The Glenfruin, supra*, see *The Duc D'Aumale* (No. 2), *supra.*

(*p*) *The Swan* (1839), 1 Wm. Rob. 68, 70. This defence succeeded in *Zephyr* (1827), 2 Hag. Adm. 43 (Honduras trade); *The Harriot* (1842), 1 Wm. Rob. 439 (South Sea whaling trade); and *The Maria Jane* (1850), 14 Jur. 857 (African trade). It failed in *The Waterloo* (1820), 2 Dods. 433 (vessels of the East India Company), and *The Swan* (1839), 1 Wm. Rob. 68 (northern whaling fisheries). In *The "Africa"* (1854), 1 Ecc. & Ad. 299, Dr. LUSHINGTON doubted whether such a custom could prevail with regard to services rendered by a steamship. Strict proof of the custom or agreement will be required (*The Waterloo, supra,* at p. 436; and see title CUSTOM AND USAGES, Vol. X., p. 271). In the absence of proof of custom or special agreement, there may still be a connexion "between two ships, which though it would not bar a claim for salvage might affect the quantum" (*The Collier* (1866), L. R. 1 A. & E. 83, 86; see also *The Trelawney* (1802), 4 Ch. Rob. 223, 227, 228).

(*q*) See p. 564, *ante.*

SECT. 4. Salvors.

master, and crew of the tug towing her, and public servants; but there are circumstances in which each of these classes of persons can obtain salvage reward.

Crew.

The crew of the salved vessel may claim as salvors if, prior to the performance of their services, their contracts of service have been terminated (*r*). Termination of the contract of service may take place through discharge of the seamen by the master (*s*), or abandonment (*t*) or hostile capture (*a*) of the vessel.

Pilots.

857. There must be special circumstances of danger attending the performance of the pilot's duties (*b*) in order to justify a claim by him as a salvor (*c*). They may exist at the beginning of the pilotage service (*d*) or they may supervene afterwards (*e*). Whenever they occur they must be of such a character as to make it unjust that the pilot should be paid otherwise than by a salvage reward (*f*). The burden of showing that pilotage services were converted into salvage services rests strongly on the pilot (*g*). Where, however, a pilot is called upon in any emergency to perform services outside his duties as pilot, such as rendering assistance to a vessel outside his pilotage district, or doing work other than pilotage, he is entitled to be treated as an ordinary salvor (*h*).

Ship's agents.

858. A ship's agent who renders services in assisting to save the vessel or her cargo may, in spite of his contractual obligation, obtain salvage reward (*i*). The admission of such claim is based on

(*r*) *The Sappho* (1871), L. R. 3 P. C. 690, *per* Lord STOWELL, at p. 694.

(*s*) *The Warrior* (1862), Lush. 476. The discharge will be valid even though improperly given by the master, provided that there is no fraud on the part of the crew in accepting it (*ibid.*, at p. 482).

(*t*) The abandonment must be final, *bonâ fide*, and ordered by the master in consequence of danger (*The Florence* (1852), 16 Jur. 572; *The Le Jonet* (1872), L. R. 4 A. & E. 556).

(*a*) *The Two Friends* (1799), 1 Ch. Rob. 271, 278; *The Governor Raffles* (1815), 2 Dods. 14, 17, 18 (where Lord STOWELL expressed the view that, while hostile capture did, mutiny did not discharge the contract of service). See the doubts expressed in *The Florence*, *supra*, and *Beale* v. *Thompson* (1803), 3 Bos. & P. 405, 430.

(*b*) The Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 50, re-enacting M. S. Act, 1894, s. 592, imposes a penalty upon any pilot who demands or receives, and upon any master who offers him, any other rate for pilotage than the fixed rate. In many districts the local pilotage authorities have issued bye-laws affecting salvage claims by locally licensed pilots. In some cases there has been special legislation: see, for the Humber, stat. (1832) 2 & 3 Will. 4, c. cv., s. 33; for the Mersey, the Mersey Dock Acts Consolidation Act, 1858 (21 & 22 Vict. c. xcii.), s. 163, and Mersey Docks Act, 1881 (44 & 45 Vict. c. xlix.), s. 19; and for the Bristol Channel, Bristol Channel Pilotage Act, 1861 (24 & 25 Vict. c. ccxxxvi.), ss. 36, 37.

(*c*) *The "Rosehaugh"* (1854), 1 Ecc. & Ad. 267; *The Æolus* (1873), L. R. 4 A. & E. 29, 31; *The Monarch* (1886), 12 P. D. 5; *The Aglaia* (1888), 13 P. D. 160. See also p. 604, *post*, and for the general principles affecting claims by pilots, *The Joseph Harvey* (1799), 1 Ch. Rob. 306; *Akerblom* v. *Price* (1881), 7 Q. B. D. 129, C. A.

(*d*) *The Jonge Andries* (1857), Sw. 226; affirmed (1857), Sw. 303, P. C.

(*e*) *Newman* v. *Walters* (1804), 3 Bos. & P. 612, 616.

(*f*) *Akerblom* v. *Price*, *supra*.

(*g*) *The Æolus*, *supra*, at p. 31.

(*h*) *The Hebe* (1844), 2 Wm. Rob. 246.

(*i*) *Happy Return* (1828), 2 Hag. Adm. 198; *The Favourite* (1844), 2

SECT. 4. Salvors.

public policy (*k*). His claim may, it seems, be entertained even where he has incurred no personal risk and has made no extraordinary exertion (*l*).

Passengers.

859. A passenger who remains on board a vessel in danger, being bound by a moral duty as well as by the interest of self-preservation to work for the safety of the vessel, is not entitled to claim as a salvor, unless he elects to remain on board and render assistance where he has the means of leaving, or unless he renders some special service, such as taking command of the vessel (*m*).

Tug.

860. The position of a tug under a contract to tow the salved vessel as regards salvage is very similar to that of the pilot of the salved vessel (*n*), in that circumstances existing at the beginning of the towage service or supervening afterwards may convert a towage into a salvage service. If at the time when the towage contract was entered into material facts affecting the danger of the tow or the danger or the difficulty of the towage service, such as make it unjust to expect the towage service to be undertaken at a towage rate, were not disclosed to the owner of the tug or his representative making the contract, the towage contract is disregarded and the service is treated as a salvage service (*o*). If, also, during the towage the tow becomes in danger, through no fault of the tug, and the tug then renders services, in the nature of salvage services, such as could not reasonably be held to be within the intention of the towage contract, by means of which the ship is brought into a place of safety, the towage contract is superseded by the right to salvage reward (*p*); but a slight departure from the way in which the towage contract was to be performed does not convert towage services into salvage services, and the strictest proof of the circumstances which lead to such a claim is required (*q*). In no case

Wm. Rob. 255; *Purissima Concepcion* (1849), 3 Wm. Rob. 181; *Cargo ex Honor* (1866), L R. 1 A. & E. 87; *The Kate B. Jones*, [1892] P. 366. In *The Watt* (1843), 2 Wm. Rob. 70, *The Lively* (1848), 3 Wm. Rob. 64, and *The Crusader*, [1907] P. 15, 196, C. A., the claim was rejected.

(*k*) *Purissima Concepcion, supra, per* Dr. LUSHINGTON.

(*l*) See *Happy Return* (1828), 2 Hag. Adm. 198; *Purissima Concepcion, supra; Cargo ex Honor, supra.*

(*m*) *Newman* v. *Walters* (1804), 3 Bos. & P. 612 (taking command of a vessel on the rocks); *Branston* (1826), 2 Hag. Adm. 3, n.; *The Vrede* (1861), Lush. 322; and see *Towle* v. *The Great Eastern* (1861), 2 Mar. L. C. 148 (devising and rigging temporary steering gear); *The Merrimac* (1868), 18 L. T. 92 (soldiers on troopships by organised efforts prevent ships from sinking).

(*n*) *The Saratoga* (1861), Lush. 318, 321.

(*o*) *Akerblom* v. *Price* (1881), 7 Q. B. D. 129, 132, C. A.; and compare *The "Kingalock"* (1854), Ecc. & Ad. 263; *The Canova* (1866), L. R. 1 A. & E. 54.

(*p*) See *The Minnehaha* (1861), Lush. 335, P. C.; *The Annapolis* (1861), Lush. 355, P. C.; *The White Star* (1866), L. R. 1 A. & E. 68; *Five Steel Barges* (1890), 15 P. D. 142; *The Liverpool.* [1893] P. 154; *The Westburn* (1896), 8 Asp. M. L. C. 130; *The Emilie Galline*, [1903] P. 106; *The Aboukir* (1905), 21 T. L. R. 200; *The Glenmorven*, [1913] P. 141 (towage contract expressly stating "no claim to be made for salvage" superseded); and see *The Liverpool, supra, per* GORELL BARNES, J., at p. 160, for a statement of the proposition to be found in the cases.

(*q*) *The Galatea* (1858), Sw. 349; *The Minnehaha, supra*, at p. 348; *The Liverpool, supra*, at p. 164; *The Maréchal Suchet*, [1911] P. 1.

where the danger of the tow has been created or materially contributed to by the misconduct or negligence or lack of reasonable skill or reasonable equipments on the part of the tug will the owner or crew of the tug be entitled to salvage reward (*r*), even though the tow has been guilty of contributory negligence (*s*).

Officers and men of Royal Navy.

861. Officers and men of the Royal Navy, though bound, as public servants, to perform active services for the protection of British ships, their cargo, and the lives on board (*t*), may be required to perform services which are not within the ordinary scope of their duties. In such cases they are entitled to salvage reward for their personal services (*a*) upon the same basis as other salvors (*b*); but no claim can be made in respect of any loss, damage, or risk caused to His Majesty's ship in rendering the service, or for any loss or expense sustained by His Majesty by reason of the service (*c*).

Public officers.

862. Magistrates and other persons holding a public office or appointment can only obtain salvage reward in respect of services clearly outside the scope of their official duties (*d*).

Coastguards.

863. Officers and men of the Coastguard Service have placed on them the duty of watching and protecting shipwrecked property, for which services they receive fixed remuneration (*e*). If, however, they

(*r*) *The Minnehaha* (1861), Lush. 335, 348, P. C.; *The Undaunted* (1886), 54 L. T. 542; *The Robert Dixon* (1879), 4 P. D. 121; affirmed, 5 P. D. 54, C. A.; *The Altair*, [1897] P. 105; *The Duc D'Aumale* (No. 2), [1904] P. 60; *The Harvest Home*, [1904] P. 409.

(*s*) *The Altair, supra; The Adam W. Spies* (1901), 70 L. J. (P.) 25; *The Duc d'Aumale* (No. 2), *supra*.

(*t*) *The Charlotte Wylie* (1846), 2 Wm. Rob. 495, *per* Dr. LUSHINGTON, at p. 497: "It is, I apprehend, notorious that it forms part of the instructions of every one of His Majesty's vessels that they shall render assistance to British vessels in distress." The quelling of a mutiny on board a merchant ship has been held to be within the scope of their duty (*Francis and Eliza* (1816), 2 Dods. 115). As to a vessel belonging to the Bombay Marine (Indian Marine) being regarded as a King's ship, see *The Dalhousie* (1875), 1 P. D. 271, n.; *Cargo ex Woosung* (1876), 1 P. D. 260, C. A.; and see the Indian Marine Service Act, 1884 (47 & 48 Vict. c. 38).

(*a*) *Cargo ex Ulysses* (1888), 13 P. D. 205; and see *Louisa* (1813), 1 Dods. 317; *The Iodine* (1844), 3 Notes of Cases, 140 (where the importance of the service as justifying such salvage claim is emphasised); *The Alma* (1861), Lush. 378, 381). By the M. S. Act, 1894, s. 557, the written consent of the Admiralty to the claim is required. As to the right of action *in personam* in the case of salvage services by one of His Majesty's ships, and the procedure in the case of salvage services by such ship abroad, see M. S. Act, 1894, ss. 557—564.

(*b*) *The Wilsons* (1841), 1 Wm. Rob. 172; *The Domira* (1913), 29 T. L. R. 557.

(*c*) M. S. Act, 1894, s. 557. This provision was held to apply to a vessel of the Bombay Marine (*The Dalhousie, supra*), but not to apply to a vessel belonging to Ramsgate Harbour and vested in the Board of Trade (*The Cybele* (1877), 2 P. D. 224; affirmed (1878), 3 P. D. 8; but see, as to this case, *Young* v. *Steamship Scotia* (1903), 9 Asp. M. L. C. 485, 488, P. C.).

(*d*) *The Aquila* (1798), 1 Ch. Rob. 37, *per* Sir W. SCOTT, at pp. 46—49 (dismissing the claim of a magistrate); *Purissima Concepcion* (1849), 3 Wm. Rob. 181, 184.

(*e*) M. S. Act, 1894, ss. 567, 568. And see the Board of Trade

SECT. 4. Salvors.

render services of the nature of salvage services beyond the scope of their official duties, they are entitled (*f*) to be treated as ordinary salvors in respect of those services (*g*).

Receivers of wreck.

864. A receiver of wreck can claim as salvor in respect of services rendered by him only where his services were outside his prescribed duties (*h*). But a substitute of a receiver of wreck is not deprived by reason of acting for him of any right to salvage reward (*i*).

Lifeboat crews.

865. The members of lifeboat crews are paid for services rendered in saving life by the Royal National Lifeboat Institution (*k*). But if when they reach a vessel in distress their services are required for the salvage of property alone, they are entitled to rank as salvors in respect of such services, being treated as having borrowed the lifeboat for the services (*l*). In that case lifeboatmen who merely assist in launching the lifeboat may be entitled to reward (*m*).

SECT. 5.—*Agreements as to Salvage.*

SUB-SECT. 1.—*Salvage Agreement.*

Salvage agreements.

866. A salvage agreement is an agreement which fixes the amount to be paid to the salvor for his services, but leaves untouched all the other conditions necessary to support a salvage award, one of which is the preservation of some part at least of the property in peril (*n*).

Form of agreement.

The agreement need not be in writing (*o*), but it must be clearly proved (*p*). It must state the services to be performed and the reward for them (*q*). An agreement merely to refer to arbitration does not oust the jurisdiction of the court (*r*). The agreement when

Proof.

Instructions in respect of wreck and salvage and the Admiralty Coastguard Instructions.

(*f*) As to the written consent of the Admiralty prior to a final adjudication upon their claims, see M. S. Act, 1894, s. 557.

(*g*) *Charlotta* (1831), 2 Hag. Adm. 361; *London Merchant* (1837), 3 Hag. Adm. 394; *Silver Bullion* (1854), 2 Ecc. & Ad. 70. See also Pritchard's Admiralty Digest, 3rd ed. (1887), Vol. II., p. 1920.

(*h*) M. S. Act, 1894, s. 567. For his duties with regard to vessels in distress, see *ibid.*, ss. 511, 512, and the Board of Trade Instructions, and for his fees, M. S. Act, 1894, s. 567.

(*i*) *Ibid.*, s. 516 (2).

(*k*) See the Regulations of the Institution.

(*l*) *The Auguste Legembre*, [1902] P. 123; *The Cayo Bonito*, [1904] P. 310. The burden of showing that their position has changed from that of salvors of life to that of salvors of property rests on the lifeboatmen (*The Marguerite Molinos*, [1903] P. 160 (where the claim failed)).

(*m*) *The Cayo Bonito, supra.*

(*n*) Kennedy, Civil Salvage, 2nd ed., p. 42; *The Hestia*, [1895] P. 193, 199. For precedent of a salvage agreement approved by the Committee of Lloyd's, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 167.

(*o*) *The Graces* (1844), 2 Wm. Rob. 294; *The Arthur* (1862), 6 L. T. 556, 558; *The Cumbrian* (1887), 6 Asp. M. L. C. 151.

(*p*) *The Graces, supra*, at p. 297.

(*q*) *The William Lushington* (1850), 7 Notes of Cases, 361, 363.

(*r*) *Purissima Concepcion* (1849), 3 Wm. Rob. 181; and see *The City of Calcutta* (1898), 8 Asp. M. L. C. 442, C. A.

duly proved is *primâ facie* binding, and the burden of proof lies upon the party trying to set it aside (*s*).

SECT. 5. Agreements as to Salvage.

867. A salvage agreement is set aside if it has been obtained by fraud (*t*), or by misstatement or non-disclosure, whether intentional or not (*a*), of a material fact, affecting, or not unlikely to affect, the danger of the property, or the risk, difficulty, or duration of the salvage service (*b*); and salvors are not held bound by an agreement where supervening circumstances, without the fault of either party, render the performance of the agreed service impossible, or where the service actually rendered was of a wholly different character from the agreed service (*c*).

Fraud or misrepresentation.

Non-performance of agreement.

It may be set aside also, as being inequitable, where the reward fixed by it is exorbitant (*d*) or inadequate (*e*). Where exorbitancy is the ground of a claim to set aside the agreement, the existence of circumstances showing that the master of the salved vessel was virtually compelled to enter into the agreement, though by no means essential (*f*), is an important factor in obtaining the avoidance of the agreement (*g*). The court does not, however, set aside an agreement merely because it would have awarded a rather larger or smaller sum than that fixed by the agreement, or because, in the events that happened, the services were more or less dangerous, difficult, or lengthened than was anticipated by either party at the time of the making of the agreement (*h*).

Exorbitancy or inadequacy.

A settlement made after services have been performed is not binding on the salvor if the reward to be paid is very inadequate, and either the salvor is an ignorant person who did

(*s*) *The Helen and George* (1858), Sw. 368, 369; *The Medina* (1876), 2 P. D. 5, 7, C. A.; *Akerblom* v. *Price* (1881), 7 Q. B. D. 129, 132, 133, C. A.

(*t*) *The Henry* (1851), 15 Jur. 183; *The Helen and George, supra*, at p. 369. For examples, see *The Crus. V.* (1862), Lush. 583 (bribe to agents of salved vessel); *The Generous* (1868), L. R. 2 A. & E. 57 (bribe to master of salving vessel); *The Kolpino* (1904), 73 L. J. (P.) 29, 30 (bribe to master of salved vessel). As to an agreement for salvage of ship and not cargo, see *The Westminster* (1841), 1 Wm. Rob. 229, 235.

(*a*) *The "Kingalock"* (1854), 1 Ecc. & Ad. 263, 265; *The Canova* (1866), L. R. 1 A. & E. 54.

(*b*) *The "Kingalock," supra.* For instances of concealment of facts held in the circumstances to be immaterial, see *The Henry, supra* (value of salved cargo); *The Jonge Andries* (1857), Sw. 226, 303, P. C.; *The Canova, supra* (illness of some of salved crew). As to the first case, see Kennedy, Civil Salvage, 2nd ed., pp. 228—231.

(*c*) *The Westbourne* (1889), 14 P. D. 132, C. A.; and see *The Hestia*, [1895] P. 193.

(*d*) *The Henry, supra; The Theodore* (1858), Sw. 351; *Cargo ex Woosung* (1876), 1 P. D. 260, 270, C. A.; *Akerblom* v. *Price, supra; The Strathgarry*, [1895] P. 264, 270. In *The Crusader*, [1907] P. 15, 196, C. A., the agreement was set aside though it was the deliberate choice of the master of the salved ship.

(*e*) *The Phantom* (1866), L. R. 1 A. & E. 58; and see *The Henry, supra*.

(*f*) *The True Blue* (1843), 2 Wm. Rob. 176, 179; *Akerblom* v. *Price, supra*, at pp. 132, 133; but see *Cargo ex Woosung, supra*, at pp. 263, 264; compare also *The Rialto*, [1891] P. 175, 178, 179.

(*g*) *Silver Bullion* (1854), 2 Ecc. & Ad. 70.

(*h*) *The Medina, supra; The Mark Lane* (1890), 15 P. D. 135; *The Rialto*,

SECT. 5. Agreements as to Salvage.

not appreciate the value of his services (*i*) or the circumstances in which the settlement was made are not satisfactorily explained (*k*).

Cancellation of agreement.

868. The agreement may be cancelled by mutual consent (*l*), evidenced by express agreement between the parties (*m*) or by conduct from which such consent will be inferred (*n*). The burden of proof of cancellation lies upon the party setting it up (*o*).

SUB-SECT. 2.—*Persons Bound by a Salvage Agreement.*

Owner of salved vessel.

869. The owner of the salved ship is generally bound by a salvage agreement entered into by the master (*p*), the latter having an implied authority to bind his owner for all that is reasonably necessary for the successful navigation of the ship (*q*). But the shipowner is not bound by it where he was easily accessible and gave no authority to the master to enter into it (*r*), or where in the circumstances the agreement was not reasonably necessary (*s*), or where the terms of the agreement show that it is not for the benefit of the shipowner (*t*). The implied authority to bind the owner is limited to the master or other person properly acting in command of the ship. To support a salvage agreement made by any other person strict proof of agency is required (*a*).

Owner and crew of salved vessel.

The owner (*b*) of the salving vessel, at least where he is not accessible and the master has no means of communicating with

[1891] P. 175; *The Altair*, [1897] P. 175; *The Port Caledonia and The Anna*, [1903] P. 184.

(*i*) *The True Blue* (1843), 2 Wm. Rob. 176, 180; *The Cato* (1866), 35 L. J. (ADM.) 116, 117; *The Waverley* (1871), L. R. 3 A. & E. 369; *The Strathgarry*, [1895] P. 264, 271. For precedent of a clause in a salvage agreement with reference to objections to amount of remuneration, see Encyclopædia of Forms and Precedents, Vol. XIV., p 171.

(*k*) *The Macgregor Laird*, [1867] W. N. 308.

(*l*) *The Repulse* (1845), 2 Wm. Rob. 396, 397.

(*m*) *The "Africa"* (1854), 1 Ecc. & Ad. 299.

(*n*) *The Samuel* (1851), 15 Jur. 407.

(*o*) *The Betsey* (1843), 2 Wm. Rob. 167, 172.

(*p*) *The Henry* (1851), 15 Jur. 183; *The "Africa," supra; The Waverley* (1871), L. R. 3 A. & E. 369.

(*q*) *Anderson* v. *Ocean Steamship Co.* (1884), 10 App. Cas. 107, 116; *Beldon* v. *Campbell* (1851), 6 Exch. 886; and see p. 66, *ante*.

(*r*) *The Elise* (1859), Sw. 436, 440; see also *Beldon* v. *Campbell, supra*.

(*s*) *The Mariposa*, [1896] P. 273; *The Renpor* (1883), 8 P. D. 115, 118, C. A.

(*t*) As, for example, an agreement to save lives without property (*The Mariposa, supra*, at p. 280; and see *The Kilmaho* (1900), 16 T. L. R. 155, C. A. (agreement to pay where no liability)). As to the master's power to bind his owner to submit the amount of reward to arbitration, see *The City of Calcutta* (1898), 8 Asp. M. L. C. 442, C. A.

(*a*) In *The Crus. V.* (1862), Lush. 583, the master of a ship in distress on a foreign coast and ignorant of the language was held to be entitled to delegate his authority to make a salvage agreement to the vice-consul of the flag to which the ship belonged.

(*b*) *The Britain* (1839), 1 Wm. Rob. 40, 43; *The "Africa," supra*, at p. 300. As to the master's power to bind his owner to submit the amount to arbitration, see *The City of Calcutta, supra*.

him (*c*), and the crew (*d*) are bound by a salvage agreement made by the master (*e*) with regard to future services (*f*). They are not bound by an agreement made by him after services have been performed in respect of which a right to salvage reward has arisen (*f*). The owner of the salving vessel has the same limited power to bind the master and crew by a salvage agreement, that is to say, he can bind them by agreement as to future, but not as to past, services (*g*). If a salvage agreement is entered into by the master affecting both past and future services, that part of it which relates to the past services will be set aside and the rest will be given effect to if it is otherwise valid (*h*).

SECT. 5. Agreements as to Salvage.

The owner of cargo on board the salved vessel is not bound by a salvage agreement made by the master, and it is open to him to dispute the reasonableness of the reward fixed by it (*i*).

Owners of cargo.

Where salvage services are performed by a number of different salvors or sets of salvors, one of them has no authority to bind the others by a salvage agreement (*k*).

Different salvors.

SUB-SECT. 3.—*Agreements for Apportionment.*

870. An agreement between salvors as to the apportionment of the salvage reward amongst themselves, whether made before (*l*) or after (*m*) the services have begun, is binding upon them, if it has been made fairly and honestly (*n*); and the court does not set aside such an agreement merely because it would not have made the same apportionment (*o*). At the same time the court is careful to protect seamen from improvident arrangements (*p*), and sets aside such agreements whenever they are shown to be inequitable (*q*).

Binding nature.

A seaman is prevented by statute (*r*) from abandoning by any

Abandonment of claim.

(*c*) *The Elise* (1859), Sw. 436, 440.

(*d*) See *The Elise, supra; The Macgregor Laird,* [1867] W. N. 308; *The Nasmyth* (1885), 10 P. D. 41; and *The Inchmaree,* [1899] P. 111, explaining *The Britain* (1839), 1 Wm. Rob. 40, and *The Sarah Jane* (1843), 2 Wm. Rob. 110, where the crew were held not to be so bound.

(*e*) The master of a King's ship ought not to make an agreement (*Cargo ex Woosung* (1876), 1 P. D. 260, C. A.).

(*f*) *The Inchmaree, supra;* and see *The Margery,* [1902] P. 157; *The Friesland,* [1904] P. 345.

(*g*) *The Inchmaree, supra.*

(*h*) *Anderson* v. *Ocean Steamship Co.* (1884), 10 App. Cas. 107, 117.

(*i*) *The Friesland, supra.* Where both salving and salved vessels are insured in associations under the articles of which salvage reward is to be mutually settled by committees of the associations, the arrangement does not bind the master and crew (*The Margery, supra*).

(*k*) *The Charlotte* (1848), 3 Wm. Rob. 8, 74.

(*l*) *The James Armstrong* (1875), 3 Asp. M. L. C. 46; *The Sunniside* (1883), 8 P. D. 137; *The Wilhelm Tell,* [1892] P. 337.

(*m*) *The Afrika* (1880), 5 P. D. 192.

(*n*) *The Enchantress* (1860), Lush. 93; *The Afrika, supra,* at p. 196.

(*o*) *The Afrika, supra.*

(*p*) *The Wilhelm Tell, supra,* at p. 348.

(*q*) *The Beulah* (1842), 1 Wm. Rob. 477; *The Louisa* (1843), 2 Wm. Rob. 22.

(*r*) M. S. Act, 1894, s. 156 (1), (2); see p. 54, *ante.* The corresponding provision, M. S. Act, 1854 (17 & 18 Vict. c. 104), s. 182, was held

SECT. 5. Agreements as to Salvage.

agreement any right he may have or obtain in the nature of salvage, whether such agreement is made before or after the performance of the salvage service (*s*), though this does not affect a stipulation (*t*) by a seaman belonging to a ship which, by the terms of the agreement, is to be employed on salvage service, with regard to the salvage remuneration to be paid to him (*a*); such an agreement, if it is equitable and honestly made, will be binding upon him (*b*), but will be required to be strictly proved (*c*). There is also statutory prohibition against assignment or sale of salvage reward payable to a seaman or apprentice prior to the accrual of it (*d*).

Particular usages as to division.

An agreement for the division of salvage rewards may be implied from the usage of a particular locality or occupation (*e*). Such an agreement will be upheld only if it is equitable (*e*).

SECT. 6.—*Salvage Reward.*

SUB-SECT. 1.—*General Principles.*

Amount of reward.

871. The amount of the salvage reward (*f*), in the absence of special contract, is limited to the value of the property or the interest in property salved (*g*). Subject to that limitation, the amount of the reward, unless it is fixed by agreement (*h*), is in the

not to affect equitable agreements by seamen for the apportionment of salvage reward (*The Wilhelm Tell*, [1892] P. 337); nor did it apply where a settlement had been effected by a solicitor employed by seamen to negotiate with the owners for division of the salvage (*The Afrika* (1880), 5 P. D. 152). An agreement between owner and crew that before division of the salvage reward the owner shall be entitled to deduct from the amount of the reward the cost of repairing damage sustained by the salved vessel in the service is void as being inconsistent with the statutory provision (*The Saltburn* (1894), 7 Asp. M. L. C. 474; and see *The Wilhelm Tell*, *supra*).

(*s*) *The Rosario* (1876), 2 P. D. 41, 45.

(*t*) Neither the stipulation nor the agreement need be in writing (*The Pride of Canada* (1863), Brown. & Lush. 208).

(*a*) M. S. Act, 1894, s. 156 (2). As to the corresponding provision, M. S. Amendment Act, 1862, s. 18, see *The Ganges* (1869), L. R. 2 A. & E. 370. A vessel is not within the exception merely because its articles contain a provision regulating the division of salvage rewards (*The Wilhelm Tell*, *supra* (trawler)).

(*b*) *The Ganges*, *supra*.

(*c*) *The Pride of Canada*, *supra*.

(*d*) M. S. Act, 1894, s. 212; see p. 54, *ante*.

(*e*) *The Enchantress* (1860), Lush. 93, 97. A custom on the east coast that boatmen and a tug should share the reward equally is not inequitable (*The Sandsend* (1903), *Shipping Gazette*, 22nd May, cited in Kennedy, Civil Salvage, 2nd ed., p. 262). A custom excluding from a share in the reward those in the fishing trade who receive wages is inequitable (*The John* (1846), Pritchard's Admiralty Digest (1887), 3rd ed., Vol. II., p. 1890). And see *The Sarah* (1878), 3 P. D. 39, where a custom was alleged to exist at Liverpool fixing the percentage of the reward due to the master and crew of a tug.

(*f*) A salvor's claim survives in favour of his personal representative (*Marquis of Huntly* (1835), 3 Hag. Adm. 246; *The Anna Helena* (1883), 5 Asp. M. L. C. 142).

(*g*) *Cargo ex Schiller* (1877), 2 P. D. 145, C. A.

(*h*) As to agreements, see p. 570, *ante*.

discretion of the court (*i*). As a general rule, where the owner of the salved property appears the court will not award the salvor more than a moiety of the value of the salved property, whether such property be derelict (*k*) or not (*l*).

Assessment by court.

872. The court, in assessing the reward, endeavours to combine liberality to the salvor with justice to the owner of the salved property (*m*). It regards not merely the work done in the performance of the salvage service, but the general interests of navigation and commerce (*n*). Thus it looks with favour on salvage services rendered by steamships on account of their efficiency as instruments of salvage (*o*), and more particularly on such services when rendered by steamships built and maintained for salvage services (*p*); and services rendered to passenger vessels (*a*) and by foreigners to British vessels (*b*) are liberally treated. On the other hand, as one of the main reasons why salvage remuneration is high is that unless the vessel in danger is saved no remuneration is payable at all, salvors who have acted under an agreement which entitled them to such remuneration independently of success are not rewarded on the liberal scale applicable to other salvors (*c*).

SUB-SECT. 2.—*Circumstances Affecting the Reward.*

Circumstances affecting reward.

873. Apart from the general considerations above stated, there are certain circumstances which, when present, always affect the amount of the reward fixed by the court (*d*). Upon the degree in

(*i*) *Ewell Grove* (1835), 3 Hag. Adm. 209, 221; *The Cuba* (1860), Lush. 14, 15; *The City of Chester* (1884), 9 P. D. 182, 187, C. A. For a list of salvage rewards, see Pritchard's Admiralty Digest (1887), 3rd ed., Vol. II., pp. 1920—2118; and Kennedy, Civil Salvage, 2nd ed., p. 264. The M. S. Act, 1894, s. 544, prescribes the payment of a "reasonable amount of salvage."

(*k*) For examples of awards in cases of derelict exceeding a moiety, see *The Rasche* (1873), L. R. 4 A. & E. 127; *Boiler ex Elephant* (1891), 64 L. T. 543 (but in this case judgment was allowed to go by default, and there were charges which reduced the sum ultimately received by the salvors to £37 2*s*. 3*d*.); *The Louisa*, [1906] P. 145 (where the whole of the net proceeds of sale of ship and cargo were awarded).

(*l*) But see *The Erato* (1888), 13 P. D. 163. In *The Mercator* (1910), 26 T. L. R. 450, where the owners appeared, but did not put in a defence, the whole value was awarded.

(*m*) *H.M.S. Thetis* (1833), 3 Hag. Adm. 14, 62.

(*n*) *The William Beckford* (1801), 3 Ch. Rob. 355, *per* Lord STOWELL, at p. 356; *Industry* (1835), 3 Hag. Adm. 203, *per* Sir J. NICHOLL, at p. 204; *The City of Chester*, *supra*, *per* LINDLEY, L.J., at p. 203.

(*o*) *The Ella Constance* (1864), 33 L. J. (P. M. & A.) 189, 193.

(*p*) See, for example, *The Glengyle*, [1898] P. 97, C. A.; affirmed, [1898] A. C. 519 (award of £19,000 on a salved value of £76,596).

(*a*) *Ardincaple* (1834), 3 Hag. Adm. 151, 153; *The Werra* (1886), 12 P. D. 52, 55.

(*b*) *Salacia* (1829), 2 Hag. Adm. 262, 270.

(*c*) *The Lepanto*, [1892] P. 122; *The Kate B. Jones*, [1892] P. 366; *The Edenmore*, [1893] P. 79.

(*d*) *The Charlotte* (1848), 3 Wm. Rob. 68, 71, *per* Dr. LUSHINGTON, "the many and diverse ingredients of a salvage service." There is divergence of judicial opinion as to the relative importance of these circumstances. Chief importance was attached in *The William Beckford*, *supra*, *per* Lord STOWELL, at p. 356 to the risk to salvors; *London*

SECT. 6. Salvage Reward.

which these circumstances or any of them are present the amount of the reward largely depends.

Danger to life.

874. The first consideration is the existence of danger to life, whether on board the salving or the salved vessel, arising either from the position from which the salved property has been rescued or from the performance of the salvage service (*e*). Salvage reward for the saving of human life is payable by the shipowner in priority to all other claims for salvage reward (*f*).

Danger to property.

875. The degree of danger from which property has been salved has a great influence upon the amount of the reward (*g*). Danger may arise from manifold conditions, such as the character and condition of the salved vessel and her cargo, the number, capacity, and condition of the crew, the nature of the locality, the master's knowledge of it, the season of the year, the state and prospect of the weather, the absence of other means of salvage. The greatest danger generally attaches to derelict property. In some cases of derelict (*h*) as much as a moiety or thereabouts (*i*), and in a few cases of exceptional character more than a moiety, of the value of the salved property has been awarded (*k*), and the award is rarely less than one-third of the salved value, unless the salved value is very large (*l*).

Value of property salved.

876. The value of the salved property is an important consideration in the assessment of reward (*m*); but it will not raise the reward out of due proportion to the services rendered (*n*). If the value is large, the amount of the reward is usually a smaller proportion to the value than if the value is small (*o*). As, however,

Merchant (1837), 3 Hag. Adm. 394, *per* Sir J. NICHOLL, at p. 395, to the risk to salved property; *The Werra* (1886), 12 P. D. 52, *per* HANNEN, J., at p. 53, to the value of salved property; *The City of Chester* (1884), 9 P. D. 182, C. A., *per* LINDLEY, L.J., at p. 202, to (1) the risk to salvors and salved property; (2) the value of salved property.

(*e*) *The Thomas Fielden* (1862), 32 L. J. (P. M. & A.) 61, 62.

(*f*) M. S. Act, 1894, s. 544 (2).

(*g*) As to separate awards where ship, cargo and freight have been exposed to different degrees of danger, see *The Velox*, [1906] P. 263 (cargo of herrings).

(*h*) The former practice was to award a moiety; see *The Blenden-Hall* (1814), 1 Dods. 414, 421; *Effort* (1834), 3 Hag. Adm. 165, 167. But now the fact of the salved property being derelict is merely an ingredient to be considered in assessing the reward; see *Papayanni* v. *Hocquard*, *The "True Blue"* (1866), L. R. 1 P. C. 250, 256; *The Anna Helena* (1883), 5 Asp. M. L. C. 142; *The Janet Court*, [1897] P. 59, 62, 63 (three special elements usually present in the case of a derelict are high degree of danger to property salved, special difficulty of approaching and aiding her, necessity of supplying part of salvor's crew to work her).

(*i*) See *The Livietta* (1883), 8 P. D. 24; *The Janet Court*, *supra*.

(*k*) See note (*k*), p. 575, *ante*.

(*l*) See, for example, *The "Amérique"* (1874), L. R. 6 P. C. 468 (£18,000 on a value of £190,000).

(*m*) *The "Amérique,"* *supra*, at p. 475; *The City of Chester*, *supra*, at p. 202.

(*n*) *The "Amérique,"* *supra*, at p. 475; *The Glengyle*, [1898] P. 97, 103, C. A.

(*o*) *The "Amérique,"* *supra*; *The City of Chester*, *supra*.

the small value of salved property often renders it impossible to give adequate reward (*p*), when the value is large a liberal reward is generally given in order to encourage the performance of salvage services (*q*).

Care, skill and knowledge.

877. The salvor is required to show the reasonable degree of care, skill, and knowledge to be expected from a person in his position (*r*); and if, through the absence of it, the owner of the salved property suffers loss, the reward is less than it otherwise would be (*s*). Where, however, there are any mitigating circumstances, such as a sudden emergency, allowance may be made for them in measuring the degree of care, skill, and knowledge required, and the fact that resulting damage arose in rendering assistance which was invited by the salvor may be taken into consideration (*t*).

Misconduct.

878. Misconduct on the part of salvors diminishes the reward and may cause forfeiture of all claim to reward (*a*). The burden of proof of misconduct lies upon those who allege it, and strict proof of it is required (*b*). The misconduct need not, in order to affect the reward, have occasioned actual damage (*c*). The mere demand of an extravagant reward may be such misconduct as to reduce the reward (*d*).

Negligence.

879. Where actual loss or damage results from want of the requisite care, skill, or knowledge, or from misconduct, the reward, if it is not reduced by the amount of such loss or damage (*e*), will be diminished by an amount proportionate to the degree of negligence, unskilfulness, ignorance, or misconduct proved (*f*).

Value of salving property.

880. The value of the property employed in the salvage service is an important element in the assessment of the reward (*g*). It is

(*p*) See *The Erato* (1888), 13 P. D. 163.
(*q*) *The Earl of Eglinton* (1855), Sw. 7, 8.
(*r*) *The Lockwoods* (1845), 9 Jur. 1017, 1018.
(*s*) See *The "Rosalie"* (1853), 1 Ecc. & Ad. 185 (damage caused by ignorance); *The Perla* (1857), Sw. 230 (bringing a derelict into an unsafe harbour); *The Magdalen* (1861), 31 L. J. (P. M. & A.) 22; *The Dwina*, [1892] P. 58 (collision between salved and salving vessels). In the last case the full amount of damage was deducted.
(*t*) *The C. S. Butler, The Baltic* (1874), 2 Asp. M. L. C. 237, 238, 239.
(*a*) *The Magdalen, supra; The Atlas* (1862), Lush. 518, P. C.; see also for instances *Dantzic Packet* (1837), 3 Hag. Adm. 383, and *The Martha* (1859), Sw. 489 (interfering with additional salvors); *The Yan-Yean* (1883), 8 P. D. 147 (refusing to take the master of the vessel on board of her and to accept a tug's services); *The Capella*, [1892] P. 70 (improperly retaining possession of ship and cargo). In *The Pinnas* (1888), 6 Asp. M. L. C. 313 (improperly refusing to surrender possession of the salved property), the salvors were deprived of costs.
(*b*) *The Atlas, supra*, at p. 529.
(*c*) *The Glory* (1849), 13 Jur. 991; *The Marie* (1882), 7 P. D. 203, 205.
(*d*) *The George Gordon* (1884), 9 P. D. 46 (salvors ordered to pay costs of excessive bail).
(*e*) See, for example, *The C. S. Butler, The Baltic, supra; The Dwina, supra.*
(*f*) *The Cape Packet* (1848), 3 Wm. Rob. 122, 125; *The Perla, supra*, at p. 231.
(*g*) *The City of Chester* (1884), 9 P. D. 182, C. A.; *The Werra* (1885), 12 P. D. 52, 54.

SECT. 6. Salvage Reward.

not, however, the measure or limit of the reward (*h*). Where the value is small it has little influence. The value of the cargo on board affects the reward only in so far as it increases the risks and responsibilities of the owner of the salving vessel.

Risk to salving property.

881. Intimately connected with the value of the salving property and its influence on the reward is the risk to which the salving property is exposed by the performance of the salvage service; and this is an important consideration (*i*).

Apart from the actual danger to the salving property, there are certain risks and responsibilities incurred by the salvor which are considered in the assessment of the reward. They include the risk of forfeiture of a policy of insurance, contractual liability to the owners of cargo on board the salving vessel through deviation to save property (*k*), and the responsibility involved in the use of passenger and mail steamships for salvage service (*l*).

Where any serious risk or responsibility is found to have been involved in the performance of the salvage service special consideration is shown to the claim of the master of the salving vessel as well as to that of the owner (*m*).

Length of salvage operations.

882. The length of the salvage operations is not in general a very important element for consideration, unless the services are dangerous or involve protracted exertion (*n*); though the additional loss or expense incurred by salvors by reason of the duration of their services is taken into consideration in the assessment of the reward (*o*).

Labour involved.

The labour involved in the salvage service is an important element only so far as it is accompanied by the exercise of skill, or by danger, or responsibility (*p*).

Loss or expense of salvor.

883. In addition to his reward the salvor is ordinarily entitled to recover a reasonable sum in respect of loss or expense resulting to him from the performance of the salvage service (*q*). But the claim for loss or expense is not allowed to be proved, and is not considered, with any degree of exactness (*r*). The court is content to obtain a general idea of the claim, and allows a reasonable sum,

(*h*) *The Fusilier* (1865), Brown. & Lush. 341, 350.

(*i*) *The City of Chester* (1884), 9 P. D. 182, C. A.; *The Werra* (1886), 12 P. D. 52.

(*k*) *Carmichael* v. *Brodie, The "Sir Ralph Abercrombie"* (1867), L. R. 1 P. C. 454; *Scaramanga* v. *Stamp* (1880), 5 C. P. D. 295, C. A.; *The Farnley Hall* (1881), 4 Asp. M. L. C. 499, C. A.; *The Edenmore*, [1893] P. 79. Deviation to save life does not involve risk to insurance or liability to owners of cargo; see *Scaramanga* v. *Stamp*, *supra*.

(*l*) *The Martin Luther* (1857), Sw. 287, 289. For an instance of penalties incurred by salvors in respect of the carriage of mails, see *The Silesia* (1880), 5 P. D. 177.

(*m*) See p. 583, *post*.

(*n*) *The Thomas Fielden* (1862), 32 L. J. (P. M. & A.) 61, 62; *The Strathgarry*, [1895] P. 264, 270.

(*o*) See the text, *infra*.

(*p*) Hence the seaman ordinarily receives less than the officer.

(*q*) "Salvage" includes "all expenses properly incurred by the salvor in the performance of the salvage services" (M. S. Act, 1894, s. 510).

(*r*) *The Pinnas* (1888), 6 Asp. M. L. C. 313, *per* HANNEN, P., at p. 315.

if any, in respect of it (*s*). The allowance varies according to the importance of the salvage service and the value of the salved property (*t*). It may be given in the form of a separate award, but the common practice is to include it in the general award (*u*). The losses and expenses recoverable in this manner include expenses reasonably incurred in bringing the salved property into a place of safety (*v*), and expenses, such as the cost of repairing damage (*w*), loss by detention during repairs (*x*), depreciation in value of the salving vessel (*a*), penalties under contract (*b*), and loss of profits (*c*), caused by the performance of the salvage service (*d*). If the damage which necessitated repairs occurred during the salvage service, the inference is that the damage resulted directly from the service, and the burden of proof lies upon those who dispute it (*e*).

SUB-SECT. 3.—*Recovery of Salvage Reward.*

Rights *in rem*.

884. The courts exercising admiralty jurisdiction have jurisdiction in matters relating to salvage (*f*). The machinery of these courts gives the salvor effective means of recovering the reward due to him. Not only has the salvor a possessory lien on the salved property, which will be recognised in a court of common law (*g*), but also he has in Admiralty, independently of possession, a maritime lien on the salved property. The maritime lien accrues immediately upon the performance of the salvage services, and includes the salved vessel, her cargo, and freight where freight has been

(*s*) See the judgments in *The Sunniside* (1883), 8 P. D. 137; *Bird* v. *Gibb, The "De Bay"* (1883), 8 App. Cas. 559, P. C.; *The City of Chester* (1884), 9 P. D. 182, C. A.

(*t*) See, *e.g.*, *The Erato* (1888), 13 P. D. 163; *S.S. Baku Standard* (*Master and Owners*) v. *S.S. Angèle* (*Master and Owners*), [1901] A. C. 549.

(*u*) As to where it is desirable that the former course should be adopted, see Kennedy, Civil Salvage, 2nd ed., p. 160.

(*v*) *The Le Jonet* (1872), L. R. 3 A. & E. 556 (hire of men to pump); and see *The Pinnas* (1888), 6 Asp. M. L. C. 313, 314.

(*w*) *The James Armstrong* (1875), 3 Asp. M. L. C. 46; *The Sunniside, supra*; *Bird* v. *Gibb, The "De Bay," supra*; *S.S. Baku Standard* (*Master and Owners*) v. *S.S. Angèle* (*Master and Owners*), *supra*; *The Fairport*, [1912] P. 168.

(*x*) See cases in note (*w*), *supra*.

(*a*) *Bird* v. *Gibb, The "De Bay," supra*.

(*b*) *The Silesia* (1880), 5 P. D. 177.

(*c*) Fishing vessels:—*Salacia* (1829), 2 Hag. Adm. 262, 270; *The Sunniside, supra*; *The Fairport, supra*: other vessels:—*Bird* v. *Gibb, The "De Bay," supra*; *The Edenmore*, [1893] P. 79; *The Bremen* (1906), 10 Asp. M. L. C. 229, n.).

(*d*) No interest is allowed (*Bird* v. *Gibb, The "De Bay," supra*).

(*e*) *The Thomas Blyth* (1860), Lush. 16; *S.S. Baku Standard* (*Master and Owners*) v. *S.S. Angèle* (*Master and Owners*), *supra*.

(*f*) See the M. S. Act, 1894, s. 565. The principle of salvage was unknown to the common law (*Falcke* v. *Scottish Imperial Insurance Co.* (1886), 34 Ch. D. 234, 248, 249), and the salvor had no means of enforcing his reward at common law; see *Atkinson* v. *Woodhall* (1862), 1 H. & C. 170. The common law courts would only entertain an action for salvage reward where the salvor could prove a contract of employment for reward, express or implied (see *Newman* v. *Walters* (1804), 3 Bos. & P. 612; and compare *Lipson* v. *Harrison* (1853), 2 W. R. 10, 11), and in such case he could only recover a *quantum meruit* for work and labour. See, further, on this subject, title ADMIRALTY, Vol. I., pp. 73 *et seq.*, 127, 139, 140.

(*g*) *Hartfort* v. *Jones* (1698), 1 Ld. Raym. 393.

SECT. 6. Salvage Reward.

saved (*h*). It has priority over all liens previously attaching to the salved property, and will be postponed only to a lien for subsequent damage or salvage (*i*). It is unaffected by any change in the ownership or possession of the salved property, and the benefit of it can be lost only by the laches of the salvor himself (*k*). By virtue of this lien the salvor may proceed in the Court of Admiralty against the salved property itself and procure the arrest and, if necessary, the sale of it to satisfy his claim (*l*). The remedy *in rem* is so complete that any attempt on the salvor's part to retain exclusive possession of the salved property, except where the property is derelict (*m*), or he can show that otherwise he would lose the security for his reward (*n*), or that he is justified by special circumstances (*o*), may be visited by the court with a diminution of the reward (*p*), or the loss of the costs of his action (*q*), or, in an extreme case, the forfeiture of all title to reward (*r*). In the case of derelict property the first salvor in possession has ordinarily an exclusive right to possession until his claim has been satisfied (*s*), but he may prejudice and even forfeit his claim if he insists on retaining possession and in the circumstances of the case the court is of opinion that he has no right to do so (*t*).

Rights *in personam*.

885. In addition to the right of action *in rem* the salvor also possesses in admiralty (*a*) a right of action *in personam* (*b*) against

(*h*) *The Westminster* (1841), 1 Wm. Rob. 229; *The Charlotte Wylie* (1846), 2 Wm. Rob. 495.

(*i*) *The Veritas*, [1901] P. 304. As to whether it takes priority of wages earned subsequently, see *The Sabina* (1842), 7 Jur. 182; *The Edina* (1855), 4 W. R. 91; see also pp. 622, 623, *post*.

(*k*) *The Royal Arch* (1857), Sw. 269, 285.

(*l*) *The Cella* (1888), 13 P. D. 82, 86, C. A. As to the nature of the proceeding *in rem*, see *The Parlement Belge* (1880), 5 P. D. 197, 217, 218, C. A.; title ADMIRALTY, Vol. I., p. 61.

(*m*) *Cossman* v. *West*, *Cossman* v. *British America Assurance Co.* (1887), 13 App. Cas. 160, 181, P. C.; and compare *The Gertrude* (1861), 30 L. J. (P. M. & A.) 130.

(*n*) *The Glasgow Packet* (1844), 2 Wm. Rob. 306, 312, 313.

(*o*) *The "Orbona"* (1853), 1 Ecc. & Ad. 161, 165; *The Pinnas* (1888), 6 Asp. M. L. C. 313; *The Elise*, [1899] W. N. 54.

(*p*) *The Glasgow Packet*, *supra*.

(*q*) *The Pinnas*, *supra*.

(*r*) *The Barefoot* (1850), 14 Jur. 841; *The Champion* (1863), Brown. & Lush. 69; *The Capella*, [1892] P. 70.

(*s*) *Cossman* v. *West*, *Cossman* v. *British America Assurance Co.*, *supra*.

(*t*) *The "Lady Worsley"* (1855), 2 Ecc. & Ad. 253, 255. The M. S. Act, 1894, ss. 511, 554, provides for the delivery up of a vessel, her cargo, or apparel to the receiver of wreck and for the substitution for the lien of a written agreement binding the salved property. For form of bond to secure salvage remuneration when property is in hands of a Receiver of Wreck, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 172.

(*a*) Jurisdiction *in personam* was given to the county courts by the County Courts Admiralty Jurisdiction Amendment Act, 1869 (32 & 33 Vict. c. 51), s. 3.

(*b*) *The Two Friends* (1799), 1 Ch. Rob. 271, 277; *Cargo ex Schiller* (1877), 2 P. D. 145, 149, C. A.; *Five Steel Barges* (1890), 15 P. D. 142, 146; *The Elton*, [1891] P. 265; *Cargo ex Port Victor*, [1901] P. 243, C. A. By the M. S. Act, 1894, ss. 544–546, reward for salvage of life or property in cases under that Act is payable by the owners of the vessel, cargo, apparel, or wreck.

the owners of the salved property, though, in the absence of special contract (*c*), only where property (*d*) or an interest in property (*e*) has been saved to the person sued and to the extent of such property or interest (*f*).

Success essential to maintenance of action.

886. Whether the remedy pursued by the salvor be *in rem* or *in personam*, it is a cardinal principle that the preservation of some part at least of the property to which the services have been rendered, that is ship, cargo, or freight, is essential to the maintenance of the action (*g*), unless by special agreement salvage reward is to be paid independently of the ultimate safety of the property in danger (*h*), and that the amount of reward which the salvor can recover cannot, apart from special contract, exceed the value of the property or the interest in property saved (*i*).

As a general rule, an action in respect of salvage services must be commenced within two years from the date when the salvage services were rendered (*j*).

SUB-SECT. 4.—*Appeals.*

Grounds of appeal.

887. If the reward fixed by the court is made the subject of appeal, whether on the ground of excess or inadequacy, as a general rule it will be disturbed only where it is shown that the court below has erred in principle or has misapprehended the facts (*k*). But an award may be altered on appeal on the ground of exorbitancy or inadequacy if it is clearly shown to be so greatly in excess as to be unjust to the owners of the salved property or so inadequate as to be unfair to the salvors (*l*). If an unsuccessful appeal to the Court

(*c*) *Cargo ex Sarpedon* (1877), 3 P. D. 28, 34; *The Prinz Heinrich* (1887), 13 P. D. 31, 34.

(*d*) *Cargo ex Sarpedon, supra*, at p. 34; *The Renpor* (1883), 8 P. D. 115, 117, C. A.; *The Elton*, [1891] P. 265, 269; *Cargo ex Port Victor*, [1901] P. 243, 255, 256, C. A.

(*e*) *Five Steel Barges* (1890), 15 P. D. 142, 146; *Cargo ex Port Victor, supra*, at pp. 249, 255.

(*f*) *Cargo ex Schiller* (1877), 2 P. D. 145, 157, C. A.

(*g*) *Cargo ex Sarpedon, supra; The Renpor, supra*, at p. 118.

(*h*) *S.S. Wellfield* (*Owners*) v. *Adamson and Short, The Alfred* (1884), 5 Asp. M. L. C. 214; compare also *The Prinz Heinrich, supra; The Edenmore*, [1893] P. 79; *The Strathgarry*, [1895] P. 264.

(*i*) *Cargo ex Schiller, supra.*

(*j*) See Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 8, as to limitation of actions.

(*k*) *The Star of Persia* (1889), 6 Asp. M. L. C. 220, 221, C. A.; and see, for example, *The "Amérique"* (1874), L. R. 6 P. C. 468; *Bird* v. *Gibb, The "De Bay"* (1883), 8 App. Cas. 559, P. C.; *The Accomac*, [1891] P. 349, C. A.; *The Port Hunter*, [1910] P. 343, C. A.

(*l*) *The Clarisse* (1856), Sw. 129, 134, P. C., approved in *Arnold* v. *Cowie, The "Glenduror"* (1871), L. R. 3 P. C. 589; *The Amérique* (1874), L. R. 6 P. C. 468; *The Thomas Allen* (1886), 6 Asp. M. L. C. 99, P. C.; see also the judgments in *The Lancaster* (1883), 9 P. D. 14, C. A.; *The Star of Persia, supra; The Accomac, supra; The Glengyle*, [1898] P. 97, C. A.; affirmed, [1898] A. C. 519; *The Port Hunter, supra*, to substantially the same effect. Inadequacy is as good an objection to an award as exorbitancy (*The "Chetah"* (1868), L. R. 2 P. C. 205, 210, 211). For examples of successful and unsuccessful appeals against awards, see Kennedy, Civil Salvage, 2nd ed., pp. 164—167.

SECT. 6. Salvage Reward.

of Appeal be followed by an appeal to the House of Lords, the case must be very exceptional to induce the House of Lords to interfere (*m*).

House of Lords.

Award by Court of Appeal.

Where a salvage action has been wrongly dismissed, the Court of Appeal, reversing that decision, may, if the facts are before it, itself award the amount of salvage reward (*n*).

SECT. 7.—*Apportionment.*

SUB-SECT. 1.—*By the Court.*

Who may obtain apportionment.

888. The apportionment of a salvage reward by the Admiralty Court (*o*) may be obtained (*p*) by an action for distribution of salvage or by application by any person interested in an award in the course of the salvage action or promptly after its conclusion (*q*).

When apportionment not made.

The court does not make an apportionment where there is a valid and binding agreement for division of the salvage, or where a sufficient tender has been made (*r*).

SUB-SECT. 2.—*To the Owners of Salving Vessels.*

Apportionment to owners.

889. Where the principal means of effecting the salvage service has been the salving vessel, her owners receive the largest share of the salvage reward; and their share is even larger where the salving vessel and her cargo were valuable and were exposed to great risk by the performance of the services. The salving vessel is most frequently a steamship, and in such cases the steam power is generally the main instrument of the salvage service (*s*). Where the salvage service has been effected chiefly by the services of the crew, and the salving vessel and her cargo have not been exposed to any serious risk, the crew are entitled to the larger share in the reward (*t*). In cases where the salving vessel is the chief instrument in effecting the salvage, the share of the owners in a salvage reward is now generally approximate to three-quarters (*a*), but there is no rule of practice on the point. The apportionment depends upon the particular circumstances of each case (*b*); and there are many examples of variation in apportionment to owners (*c*). Special favour is always shown to the owners of fishing vessels on account of the interruption of their occupation and the high rate of wages paid to their crews (*d*).

(*m*) *The Glenqyle*, [1898] A. C. 519, 520.

(*n*) *The Minnehaha* (1861), Lush. 335, P. C.

(*o*) Apportionment is not a proper subject for an action at law (*Atkinson* v. *Woodhall* (1862), 1 H. & C. 170).

(*p*) M. S. Act, 1894, ss. 555, 556.

(*q*) Reasonable time will be allowed to a seaman (*The Spirit of the Age* (1857), Sw. 286, 287).

(*r*) *The Enchantress* (1860), Lush. 93, 95. As to these agreements, see p. 573, *ante*.

(*s*) *The Enchantress*, *supra*, at p. 96.

(*t*) *Jane* (1831), 2 Hag. Adm. 338, 343; *The Nicolina* (1843), 2 Wm. Rob. 175.

(*a*) Before 1870 one-half was the most given, from 1870—1883 it was usually two-thirds, and since 1883 it has been usually three-quarters.

(*b*) *The Gipsy Queen*, [1895] P. 176, 177, C. A.

(*c*) See Kennedy, Civil Salvage, 2nd ed., pp. 172 *et seq.*

(*d*) *Albion* (1837), 3 Hag. Adm. 254, 256; *The Louisa* (1843), 2 Wm. Rob. 22, 25, 26, 27.

SECT. 7.
Apportionment.

SUB-SECT. 3.—*To the Master, Crew, and Passengers.*

Master.

890. The master of the salving ship usually receives a special apportionment by reason of the special responsibility which he undertakes in the performance of a salvage service (*e*). The share given to him varies according to the degree of responsibility cast upon him. It has often been from one-half to one-third of the balance of the award after deducting the sum apportioned to the owners. In cases of salvage by steamships it is frequently one-third of the balance (*f*). There is, however, no rule of practice governing his share (*g*).

Officers and crew.

891. Officers and crew generally share in the sum awarded to them collectively according to their ratings, subject to an exception in favour of navigating officers with ratings lower than that of engineers, who are allowed to rank for the purpose of salvage as of the same ratings as engineers (*h*). Special rewards are given to officers or members of the crew who have rendered special services (*i*).

Associates of salvors.

892. The shares of the associates (*k*) of the actual salvors depend upon the amount of additional labour and danger imposed upon them through the services of the actual salvors (*l*).

Passengers.

The amount of the reward of passengers who become entitled to salvage reward depends upon the nature and circumstances of the services (*m*).

(*e*) *The Martin Luther* (1857), Sw. 287, 289, 290; *The Charles* (1872), L. R. 3 A. & E. 536, 538.

(*f*) See Kennedy, Civil Salvage, 2nd ed., p. 175; Williams and Bruce, Admiralty Practice, 3rd ed., p. 169, note (a).

(*g*) *The Gipsy Queen*, [1895] P. 176, 177, C. A.

(*h*) *The Birnam* (1907), 10 Asp. M. L. C. 462. The crew includes "runners," or men engaged for a single "run," who may share on the basis of the rating of the persons whose posts they are filling (*The Persia*, [1902] W. N. 210; but see *The Rasche* (1873), L. R. 4 A. & E. 127, where they were treated as A.B.'s), and apprentices, with regard to whom there is no special scale of reward (*Hope* (1838), 3 Hag. Adm. 423 (shares of seamen of lowest rank); *The Beulah* (1842), 1 Wm. Rob. 477 (one-half of A.B.'s shares); *The George Dean* (1857), Sw. 290 (two-thirds of A.B.'s shares); *The Rasche, supra* (A.B.'s shares); *The Punta Lara* (1910), 26 T. L. R. 268 (O.S.'s shares); *The "Valkyrie,"* [1910] W. N. 138 (A.B.'s shares). For form of receipt by officers and crew for salvage awarded, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 173.

(*i*) See, for example, *The Golondrina* (1867), L. R. 1 A. & E. 334; *The Rasche, supra; The Skibladner* (1877), 3 P. D. 24; *The Santiago* (1900), 9 Asp. M. L. C. 147; *The Minneapolis*, [1902] P. 30.

(*k*) As to who are included in this term, see p. 565, *ante*.

(*l*) The non-navigating members of the crew were given in *The Spree*, [1893] P. 147, one-half shares, according to their ratings; in *The Dunottar Castle*, [1902] W. N. 70, and *The Minneapolis, supra*, one-third shares, according to their actual rating. In *The Punta Lara, supra*, the master's wife, rated as stewardess at one shilling per month, was refused any share.

(*m*) See *Hope, supra* (shares of A.B.'s); *The Perla* (1857), Sw. 230 (foreign master and seaman passengers on salving vessel given A.B.'s shares, the master taking a double share). For very special services, see *Newman* v. *Walters* (1804), 3 Bos. & P. 612 (£400); *Towle* v. *The*

SECT. 7. Apportionment.

SUB-SECT. 4.—*To Officers and Men of the Royal Navy and Other Services.*

Royal Navy.

893. Officers and men of the Royal Navy can obtain an apportionment from the court. If an apportionment is not made by the court, the distribution of salvage is regulated by the naval prize proclamation in force at the time (*n*).

Coastguards and crews of revenue cruisers.

Similarly, officers and men of the Coastguard Service and of revenue cruisers may either obtain an apportionment by the court or rely on the rules laid down by the Admiralty for the distribution of salvage among them (*o*).

Lifeboat crews.

Lifeboat crews who become entitled to rank as salvors may obtain an apportionment from the court.

SUB-SECT. 5.—*To Independent Salvors.*

Independent salvors.

894. Where persons who perform salvage services are independent salvors, as distinguished from members of a crew or others who act in association, the apportionment to them is determined by consideration of the risk, labour, skill, responsibility, and value of their respective services (*p*).

SUB-SECT. 6.—*To Separate Sets of Salvors.*

Separate sets of salvors.

895. Where salvage services have been performed by several independent sets of salvors, if their services have been contemporaneous their shares of a salvage award are determined by the principles applicable to the assessment of the whole award (*q*). Accordingly a set of salvors who save both life and property usually receive a higher apportionment than a set of salvors who have salved property only (*r*).

First salvors favoured.

896. Where the services have not been contemporaneous, but subsequently to the inception of the services another set of salvors, with the consent of the first set, have joined in the services or have succeeded the first set, who, after rendering some assistance, have been compelled by circumstances, through no fault of their own, to abandon the services, special favour is usually shown to the first set of salvors. The object of so doing is to encourage promptitude in the rendering of salvage services and willingness to accept additional assistance where such assistance is advisable (*s*).

When salvage not awarded to second set of salvors.

If a second set of salvors dispossess the original salvors against the will of the latter and while they are willing to continue their services, the second set of salvors are entitled to no reward unless they can prove that there was no reasonable probability that the services of the

Great Eastern (1861), 2 Mar. L. C. 148, United States District Court of Admiralty (£3,000).

(*n*) *Mary Ann* (1823), 1 Hag. Adm. 158, 161.

(*o*) See the Board of Trade Instructions to Receivers of Wreck and other Officers and the Admiralty Coastguard Instructions.

(*p*) See, for example, *Nicholaas Witzen* (1837), 3 Hag. Adm. 369.

(*q*) Where a tender is made and the circumstances are within the knowledge of the salved vessel, independent salvors may require the defendant to apportion the sum tendered (*The Burnock* (1914), 30 T. L. R. 274).

(*r*) *The Clarisse* (1856), Sw. 129, P. C.; *The Anna Helena* (1883), 5 Asp. M. L. C. 142.

(*s*) *The "Santipore"* (1854), 1 Ecc. & Ad. 231; *The "E. U."* (1853), 1 Ecc. & Ad. 63.

first salvors would have met with success (*t*); in default of such proof the whole reward is given to the first salvors (*u*). If, however, the second set of salvors in dispossessing the first set acted under an honest and not unreasonable, though mistaken, belief that their interference was necessary, they may receive some reward, and in that case the original salvors are entitled to the same reward which they would have been awarded if they had completed the salvage service (*a*).

When awarded.

So also if the services of the original salvors have been intermittent, and during an interval in the performance of them a second set of salvors have intervened against their wishes and rendered beneficial services, the second set of salvors receive reward, though if the interference of the second salvors is accompanied by the exercise of force the reward is very much reduced (*b*).

897. If the property in danger was not derelict and was in charge of the owner or the master or other representative of the owner, and such person accepted the services of salvors, a second set of salvors intervening receive no reward (*c*); but original salvors have no right to insist upon the continuance of their services or to refuse additional assistance in defiance of the wishes of the owner of the property in danger or his representative or of the interests of the property.

Second set of salvors intervening.

Unless the property in danger is strictly derelict, the salvors are bound to submit to the orders of the owner of the property or his representative (*d*). If they fail to do so the reward is diminished or perhaps forfeited altogether (*e*). Even in the case of derelict property where the salvor has a vested interest and a right of exclusive possession (*f*), the first salvors may not refuse further assistance if the interests of the property demand it (*g*). If they are dispossessed or superseded by the orders of the owner of the property in peril or his representative while they are able and willing to complete the salvage service, they receive a liberal reward (*h*), and the court is not very careful to inquire whether the dispossession

Salvor subject to orders of owner.

(*t*) The burden of proof is on the second set of salvors (*Eugene* (1834), 3 Hag. Adm. 156, 160).

(*u*) *The Fleece* (1850), 3 Wm. Rob. 278, 280, and *The Samuel* (1851), 15 Jur. 407, 409, 410, approving *The Blenden-Hall* (1814), 1 Dods. 414; and see *The Pickwick* (1852), 16 Jur. 669.

(*a*) *Maria* (1809), Edw. 175; *Charlotta* (1831), 2 Hag. Adm. 361.

(*b*) *The Clarisse* (1856), Sw. 129, P. C.

(*c*) *The Glasgow Packet* (1844), 2 Wm. Rob. 306, 313; *The Fleece*, *supra*, at p. 281; *The Barefoot* (1850), 14 Jur. 841, 842; *The Samuel*, *supra*, at p. 410.

(*d*) *The Champion* (1863), Brown. & Lush. 69, 71. For a case where refusal to allow intervention of the master of the salved ship was held to be justified, see *The Elise*, [1899] W. N. 54.

(*e*) *The Dantzic Packet* (1837), 3 Hag. Adm. 383 (forcibly excluding assistance); *The Glasgow Packet*, *supra* (insisting on continuing services dispensed with); and see *The Capella*, [1892] P. 70.

(*f*) *Cossman* v. *West*, *Cossman* v. *British America Assurance Co.* (1887), 13 App. Cas. 160, 181, P. C.

(*g*) *The Cambria* (1848), Pritchard's Admiralty Digest (1887), 3rd ed., Vol. II., p. 1822.

(*h*) *The Maude* (1876), 3 Asp. M. L. C. 338.

SECT. 7. Apportionment.

or supersession was necessary and proper (*i*). If the intervention of the second salvors was necessary for the safety of the property, the first salvors are liberally rewarded for any beneficial services rendered by them (*k*).

Misconduct of salvors.

898. The misconduct of one set of salvors does not affect the right of another set to obtain reward, unless they were involved in the misconduct (*l*).

SECT. 8.—*Contribution.*

SUB-SECT. 1.—*General Principles.*

Liability to contribute.

899. Every interest benefited by the salvage services, generally ship, freight, and cargo, except the wearing apparel and personal effects of the crew and passengers on board the salved vessel (*m*) and bottomry and respondentia bonds (*n*), contributes to the salvage reward (*o*). Each part of the salved property contributes rateably according to its value, without regard to the degree of risk from which or difficulty with which that part has been salved as compared with the rest of the salved property (*p*); though where the various interests in the salved property have been exposed to different degrees of risk the court in its discretion may make a separate award in respect of each portion of the salved property (*q*). The liability to contribute is not limited to the legal ownership of the salved property. It falls also upon persons who have merely an interest in the salved property and whose interest has been saved by means of the salvage service (*r*).

As between cargo owner and shipowner.

900. Where the salved cargo has not been benefited by the salvage services, as happens where the freight exceeds the value of the salved cargo (*s*), or where the services were rendered necessary by an actionable fault on the part of the shipowner or his servants (*t*), the cargo owner is entitled to require the shipowner to discharge the whole burden of the salvage reward; and in either of such cases if the cargo owner has had to pay the shipowner for

(*i*) *The Maasdam* (1893), 7 Asp. M. L. C. 400, 401.

(*k*) *The Pickwick* (1852), 16 Jur. 669; *The Magdalen* (1861), 31 L. J. (P. M. & A.) 22.

(*l*) *The Neptune* (1841), 1 Wm. Rob. 297; *Kirby* v. "*Scindia*" (*Owners*), *The* "*Scindia*" (1866), L. R. 1 P. C. 241.

(*m*) *The Willem III.* (1871), L. R. 3 A. & E. 487.

(*n*) Park, Marine Insurance, pp. 897—899.

(*o*) *The Fleece* (1850), 3 Wm. Rob. 278, 282; *The Fusilier* (1865), Brown. & Lush. 341, 352, P. C.

(*p*) *The Jonge Bastiaan* (1804), 5 Ch. Rob. 322; *The Longford* (1881), 6 P. D. 60 (specie); and see Marvin, Wreck and Salvage, art. 162.

(*q*) *The Velox*, [1906] P. 263.

(*r*) *Five Steel Barges* (1890), 15 P. D. 142; *Cargo ex Port Victor*, [1901] P. 243, C. A.

(*s*) *Cox* v. *May* (1815), 4 M. & S. 152.

(*t*) *The Ettrick* (1881), 6 P. D. 127, C. A.; and see *Strang, Steel & Co.* v. *Scott* (*A.*) *& Co.* (1889), 14 App. Cas. 601, 608, P. C. As to whether the shipowner has a right of indemnity from the cargo owner where the service was necessitated by fault in the cargo, see Carver, Carriage by Sea, 4th ed., arts. 277—280.

SECT. 8. Contribution.

salvage he may recover back the amount so paid (*a*). In all other cases the cargo owner is equally liable with the shipowner for payment of the reward, and if the latter pays the cargo owner's share he is entitled to recover it from the cargo owner.

Liability proportioned.

901. Each interest is liable only for its proportionate share of the salvage reward (*b*), unless the salvors and the master of the salved vessel have entered into a binding salvage agreement fixing the amount of the reward, in which case the shipowner is liable for the whole of the reward due under the agreement (*c*).

Life salvage.

902. For salvage reward for the saving of life, ship, freight, and cargo contribute rateably, so far as they have been preserved (*d*), whether life has been saved by the persons who salved the other interests or by independent salvors, or without any other salvage service having been performed (*e*). If the vessel is saved but the cargo is lost, the shipowner is alone liable for payment of salvage reward. Conversely, if the vessel is lost, but lives and cargo are saved, and no freight is payable, salvage reward is payable wholly by the cargo owner (*f*).

When value of salved property is assessed.

903. The value of the salved property, in the absence of agreement, is generally assessed at the port of arrest (*g*). The proper principle, however, seems to be to assess it at the time and place when and where the salvage services ended (*h*).

SUB-SECT. 2.—*Values of Ship, Cargo, and Freight.*

Value of ship.

Deductions allowed on valuation of ship.

904. The value of the ship is her value in her condition as salved to her owner as distinguished from her market value (*i*). In assessing it deduction may be made for charges and expenses which have been incurred by the owners in connexion with the ship subsequently

(*a*) *The Princess Royal* (1870), L. R. 3 A. & E. 41.

(*b*) *The Raisby* (1885), 10 P. D. 114; *The Mary Pleasants* (1857), Sw. 224; and see *The Elton*, [1891] P. 265. In practice the shipowner frequently pays the whole reward in the first instance, protecting himself by security from the cargo owner or relying on his lien on the cargo while it remains in his possession for the cargo owner's proportion (*Hingston* v. *Wendt* (1876), 1 Q. B. D. 367; *The Prinz Heinrich* (1888), 13 P. D. 31, 34).

(*c*) Both *in rem* and *in personam* (*The Cumbrian* (1887), 6 Asp. M. L. C. 151; *The Prinz Heinrich*, *supra*).

(*d*) M. S. Act, 1894, ss. 544—546.

(*e*) See p. 561, *ante*.

(*f*) *Cargo ex Sarpedon* (1877), 3 P. D. 28.

(*g*) *The Norma* (1860), Lush. 124, 127; see Carver, Carriage by Sea, 4th ed., arts. 351, 352. In assessing the value allowance is made for any salvage reward ordered by another court to be paid to other salvors out of the proceeds of the salved property (*The Antilope* (1873), L. R. 4 A. & E. 33).

(*h*) *The George Dean* (1857), Sw. 290; *The Stella* (1867), L. R. 1 A. & E. 340; *The Georg*, [1894] P. 330; *The Germania*, [1904] P. 131. The value may be agreed or an affidavit of value filed on an application for release (see title ADMIRALTY, Vol. I., p. 88), and, if the plaintiff considers the value therein stated to be incorrect a commission of appraisement may be ordered (*ibid.*, p. 89). Failing these methods the court will form an estimate at the hearing (*The Werra* (1886), 12 P. D. 52).

(*i*) *The Hohenzollern*, [1906] P. 339.

SECT. 8. Contribution.

to the inception of the salvor's interest and were beneficial to that interest (*k*).

Deductions allowed on valuation of cargo.

905. In assessing the value of cargo an allowance may be made for reasonable and proper expenses of the discharge, storage, and sale of the cargo (*l*), but not for prepaid freight (*m*), primage (*n*), insurance (*o*), or a gratuity to the master of the carrying vessel (*p*).

Freight at risk.

906. Freight which was at risk at the time of the salvage service may be included in the value of the cargo or assessed separately. If the cargo owner has paid salvage reward in respect of both cargo and freight at risk assessed together and has not paid the freight, he can deduct from the freight when it is payable to the shipowner the amount which he has paid in respect of salvage of freight. If he has paid the freight, he can recover the amount which he has paid in respect of salvage of freight from the shipowner (*q*).

Salvage service ending at port other than port of destination.

907. Where the salvage service ends at a place which is not the port of destination and where there is no market for the cargo, and the cargo is carried on to its destination and sold there, the value may be assessed by allowing a *pro ratâ* freight to the place where the salvage service ended and deducting from the proceeds of sale a percentage of freight and other charges in respect of the voyage from the latter place to the port of destination (*r*). Where under similar circumstances the cargo has not been carried on from the place where the service ended, its value may be assessed at the nearest convenient market, deducting the estimated cost of carriage to that point and the expenses reasonably incident to its sale there (*s*).

Salvage service ending at port of destination.

908. Where the salvage service continues until the salved vessel reaches the port of destination, the whole net freight unpaid and at risk when the salvage service commenced, and preserved to the shipowner by the service, contributes to the salvage reward (*t*). Where the salvage service ends at a place other than the port of destination, and the cargo is not carried on to its destination, the following rules govern contribution :—If the cargo owner has prevented the shipowner from carrying it on, the whole

(*k*) *The Selina* (1842), 2 Notes of Cases, 18 (crew's wages after service began and bottomry bond taken up by salvors) ; *The Watt* (1843), 2 Wm. Rob. 70 (unloading cargo after vessel beached and taking her round to a port). Deduction was refused in *The Selina*, *supra*, in respect of crew's wages before salvage service ; and in *The Fleece* (1850), 3 Wm. Rob. 278, in respect of costs of prosecuting wreckers who took forcible possession of ship.

(*l*) Custom-house charges, weighing, brokerage, and commission (*The Peace* (1856), Sw. 115, 116).

(*m*) *The Charlotte Wylie* (1846), 2 Wm. Rob. 495, 497 ; *The Fleece*, *supra*, at p. 282.

(*n*) *The Fleece*, *supra*.

(*o*) *Ibid.*

(*p*) *The Peace*, *supra*.

(*q*) *The Charlotte Wylie*, *supra*, at p. 497 ; *The Fleece*, *supra*, at p. 282 ; and see *The Westminster* (1841), 1 Wm. Rob. 229, 233.

(*r*) *The George Dean* (1857), Sw. 290, 291.

(*s*) See Kennedy, Civil Salvage, 2nd ed., pp. 216, 217.

(*t*) It may be valued separately or with the cargo.

freight is earned and therefore contributes (*a*). If the cargo owner, having a choice, elects to take delivery of the cargo where it is (*b*), the whole (*c*) or a *pro ratâ* freight (*d*), according to the express or implied agreement on delivery (*e*), is due to the shipowner and has to be brought into contribution. If the failure to carry the cargo on is not due to the intervention or election of the cargo owner, no freight is due, and therefore there is no freight to contribute.

Where the cargo is carried on to the port of destination from the place where the salvage service ended, the contributory value of the freight is the estimated proportion of the freight in respect of the voyage up to the point where the service ended (*f*), less an allowance in respect of the shipowner's expenses incurred in the further transit (*g*).

Derelict.

909. In the case of a derelict, if the vessel is not taken by the salvors to her port of destination, and her owners have taken no steps to carry the cargo on, the cargo owner is entitled to delivery of the cargo without payment of any freight (*h*), and in that case there is no freight to contribute. Recovery of the derelict by the shipowner at the port of discharge, after the cargo owner has exercised his right of treating the abandonment of the ship as a determination of the contract of carriage, does not revive the contract of carriage, and no freight is due from the cargo owner (*i*).

Finality of award.

910. An award once made is generally final. If after an award has been made it is found that a miscalculation has been made as to the values, the court has power to reopen and readjust its award (*k*), but the power is exercised with great caution (*l*).

(*a*) *The Cargo ex Galam* (1863), 33 L. J. (P. M. & A.) 97, P. C.

(*b*) *Hunter* v. *Prinsep* (1808), 10 East, 378; *Vlierboom* v. *Chapman* (1844), 13 M. & W. 230; *Hopper* v. *Burness* (1876), 1 C. P. D. 137; *Metcalfe* v. *Britannia Ironworks Co.* (1877), 2 Q. B. D. 423, C. A.

(*c*) *Christy* v. *Row* (1808), 1 Taunt. 300.

(*d*) *The Soblomsten* (1866), L. R. 1 A. & E. 293; *Mitchell* v. *Darthez* (1836), 2 Bing. (N. C.) 555.

(*e*) See Carver, Carriage by Sea, 4th ed., arts. 557, 559.

(*f*) *The Norma* (1860), Lush. 124. This is a departure from the common law doctrine that freight is not apportionable; compare *The Dorothy Foster* (1805), 6 Ch. Rob. 88.

(*g*) *The Norma*, *supra*, at p. 127; *The James Armstrong* (1875), 3 Asp. M. L. C. 46, 49.

(*h*) *The Kathleen* (1874), L. R. 4 A. & E. 269; *The Cito* (1881), 7 P. D. 5, C. A. If the cargo owner has applied for delivery at the port of refuge and offered bail for its value, and by order of the court the ship has been taken to the port of destination, there is no *pro ratâ* freight due in respect of carriage to the port of refuge, and the cargo owner is not liable for the expenses either of carriage thence to the port of destination or of delivery there; see Kennedy, Civil Salvage, 2nd ed., p. 222, citing *The Argonaut* (1884), unreported.

(*i*) *The Arno* (1895), 8 Asp. M. L. C. 5, C. A.

(*k*) *The James Armstrong* (1875), L. R. 4 A. & E. 380 (where the cargo owner contributed upon the value of the cargo without deducting freight due on delivery and the freight was assessed too low). For a form of clause in a salvage agreement with reference to objections to the amount of remuneration, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 171.

(*l*) *The Georg*, [1894] P. 330 (readjustment claimed on ground of selling price of salved property proving lower than assessed value refused).

Part XIV.—Shipping Casualties.

SECT. 1. **Reports of Accidents and Loss of Ship.**

SECT. 1.—*Reports of Accidents and Loss of Ship.*

Duty to report casualties.

911. The owner or master of a British steamship, or of a foreign steamship carrying passengers between places in the United Kingdom, has a duty imposed by statute (*a*), and enforceable by penalty (*b*), to report to the Board of Trade by letter the occurrence of any accident causing serious injury to any person, or material injury to any portion of the ship, within twenty-four hours of the happening of such accident or damage, or as soon as possible thereafter. The letter must be signed by the owner or master, and, in addition to a report of the details of the accident or damage, must state the probable occasion (*c*) thereof, the name of the ship, her official number, the port to which she belongs, and the place where she is at the time when the report is made.

Form of report.

Loss of ship.

912. The managing owner (*d*) or, in the event of there being no managing owner, the ship's husband of any British ship, when he has reason to apprehend that the ship has been wholly lost, has a statutory duty (*e*), the neglect of which is punishable by fine (*f*), to give notice to the Board of Trade in writing of the loss and the probable occasion (*g*) thereof. This notice must state the name of the ship, her official number, and the port to which she belongs.

Floating derelicts.

913. The master or other person for the time being in command of any British ship is bound by statute (*h*) to give notice of any floating derelict vessel of the existence of which he may become aware to the Lloyd's agent at his next place of arrival. If there be no Lloyd's agent there, he must notify the secretary of Lloyd's, London, and a penalty is attached to the neglect of either of these obligations (*i*). The society of Lloyd's must publish any information thus received, and also communicate it to the Board of Trade (*k*).

(*a*) M. S. Act, 1894, s. 425.

(*b*) *Ibid.*, s. 425 (2). The Boiler Explosions Act, 1882 (45 & 46 Vict. c. 22), and the Boiler Explosions Act, 1890 (53 & 54 Vict. c. 35), apply to British ships (*ibid.*, s. 2); the same notice must by *ibid.*, s. 3, be given of explosions as of other casualties under the M. S. Act, 1894, s. 425, but notice under the latter provision alone is sufficient; see, further, title FACTORIES AND SHOPS, Vol. XIV., pp. 474, 475.

(*c*) The word "occasion" is used both in the M. S. Act, 1894, and in the M. S. Act, 1854, s. 326, from which the provision in the later Act is drawn. It would seem to be employed in the sense of "cause," and not in that of "time," for the time would naturally be the first detail mentioned in the report.

(*d*) "Managing owner" is not defined in the M. S. Act, 1894, and is a commercial and not a legal expression; see *Frazer* v. *Cuthbertson* (1880), 6 Q. B. D. 93, *per* BOWEN, J., at p. 98; compare M. S. Act, 1894, s. 59.

(*e*) *Ibid.*, s. 426.

(*f*) *Ibid.*, s. 426 (2).

(*g*) Compare note (*c*), *supra*.

(*h*) Derelict Vessels (Report) Act, 1896 (59 & 60 Vict. c. 12), s. 2.

(*i*) *Ibid.*, ss. 2, 3.

(*k*) *Ibid.*, s. 4.

SECT. 2.—*Inquiries and Investigations.*

SECT. 2. Inquiries and Investigations.

914. For the purpose of holding inquiries and investigations into shipping casualties, a "shipping casualty" is deemed to have occurred when any ship is lost, abandoned, or materially injured, or causes loss or material damage to any other ship, or loss of life ensues by reason of a casualty on board a ship, or a ship has been stranded or damaged and any witness is found in the United Kingdom, provided either such event occurs on or near the coasts (*l*) of the United Kingdom or occurs elsewhere and a witness is found in the United Kingdom, or when any British ship (*m*) is lost or supposed to have been lost and any evidence is obtainable in the United Kingdom as to the circumstances under which she proceeded to sea or was last heard of (*n*).

What is meant by "shipping casualty."

915. There are five classes of inquiry or investigation which may be held into the causes of such casualties, namely:—(1) preliminary inquiries (*o*); (2) formal investigations (*p*); (3) inquiries in case of loss of life from a fishing vessel's boat (*q*); (4) inquiries by colonial courts (*r*); and (5) inquiries by naval courts (*s*).

Classes of inquiries.

916. In the case of a shipping casualty occurring on or near the coasts of the United Kingdom a preliminary inquiry may be held by the inspecting officer of the coastguard or chief officer of the customs (*t*) residing at or near the place at which the casualty occurs (*u*). Where the casualty occurs elsewhere, such an inquiry may be held by the inspecting officer of the coastguard or chief officer of customs residing at or near any place at which the witnesses with respect to the casualty arrive, or are found, or can be conveniently examined (*v*). In any case a preliminary inquiry respecting a shipping casualty may be held by any person appointed for the purpose by the Board of Trade (*a*).

Preliminary inquiries.

Preliminary inquiries are in practice usually conducted by a Receiver of Wreck, who possesses for this purpose the same powers as inspectors of the Board of Trade (*b*), namely:—to board or inspect any ship or any part thereof (*c*); to enter or inspect any premises (*d*); to require, by summons, the attendance of any witnesses he thinks fit to call before him (*e*); to enforce the

(*l*) *Semble*, within the territorial limit; see *The Fulham*, [1898] P. 206, *per* BARNES, J., at pp. 213, 214.
(*m*) Compare M. S. Act, 1894, ss. 1, 2, 72.
(*n*) *Ibid.*, s. 464.
(*o*) *Ibid.*, s. 465.
(*p*) *Ibid.*, s. 466.
(*q*) *Ibid.*, s. 468; see title FISHERIES, Vol. XIV., p. 633.
(*r*) M. S. Act, 1894, s. 478.
(*s*) *Ibid.*, s. 480.
(*t*) Compare *ibid.*, s. 742, for definition.
(*u*) *Ibid.*, s. 465 (1) (a).
(*v*) *Ibid.*, s. 465 (1) (b).
(*a*) *Ibid.*, s. 465 (1) (c).
(*b*) Compare *ibid.*, ss. 517, 729; and see pp. 649 *et seq.*, *post.*
(*c*) M. S. Act, 1894, s. 729 (1) (a).
(*d*) *Ibid.*, s. 729 (1) (b).
(*e*) *Ibid.*, s. 729 (1) (c). Including witnesses for the defence (*R.* v.

SECT. 2. Inquiries and Investigations.

production of books, papers, or documents (*f*); and to administer oaths, or, instead, to require witnesses examined by him to sign a declaration of the truth of their statements (*g*).

When formal investigations to be held.

917. Formal investigations must be held by a court of summary jurisdiction when any of the persons authorised to make preliminary inquiries decide, either with or without such preliminary inquiry, that a formal investigation should be held, and in any case when directed by the Board of Trade (*h*).

Formal investigations.

918. Formal investigations are held by a wreck commissioner (*i*) or by a court of summary jurisdiction (*k*), assisted in either case by one or more assessors possessing nautical, engineering, or other special skill, appointed according to regulations made with regard thereto (*l*) from a list approved for that purpose by a Secretary of State (*m*). Where it appears probable that the certificate of an officer may have to be dealt with as a result of the investigation, not less than two assessors having experience of the merchant service must be called to the assistance of the court (*n*). Such a court of investigation, or a naval court, has power to cancel or suspend the certificate of a master, mate, or engineer wherever the court finds that loss or abandonment of or serious damage to any ship or loss of life has been caused by his wrongful act or default, provided that, in the case of courts of summary jurisdiction, at least one of the assessors concurs in the finding of the court (*o*).

Collingridge (1864), 34 L. J. (Q. B.) 9), the expense of witnesses so summoned to be borne by the public (M. S. Act, 1894, s. 729 (2)).

(*f*) *Ibid.*, s. 729 (1) (d).

(*g*) *Ibid.*, s. 729 (1) (e); and compare *R.* v. *Tomlinson* (1866), L. R. 1 C. C. R. 49 (false swearing in inquiry is indictable perjury). As a matter of practice the receivers of wreck usually take depositions on oath and send them to the Board of Trade and to Lloyd's, and the public have a right to bespeak copies of such depositions; see p. 550, *ante*.

(*h*) M. S. Act, 1894, s. 466 (1). The court may proceed with an inquiry into the conduct of a captain although the Board of Trade has indicated an intention not to prefer a charge against him, but where formal intimation is given that the Board will not prefer a charge, no charge can be made on the suggestion of the court (*Ex parte Minto* (1877), 35 L. T. 808).

(*i*) M. S. Act, 1894, s. 466 (2). Wreck commissioners are appointed under *ibid.*, s. 477.

(*k*) *Ibid.*, s. 466 (1).

(*l*) *Ibid.*, s. 466 (3).

(*m*) *Ibid.*, s. 467.

(*n*) *Ibid.*, s. 466 (4).

(*o*) *Ibid.*, s. 470 (1) (a). The court cannot suspend certificates where there has only been a stranding without material damage (*Ex parte Story* (1878), 3 Q. B. D. 166). It is necessary that there should be evidence showing that the certificated officer or engineer has by his conduct caused or contributed to the casualty (*The Arizona* (1880), 5 P. D. 123). The words "wrongful act or default" do not include "an error of judgment at a moment of great difficulty and danger" (*The Famenoth* (1882), 7 P. D. 207, *per* HANNEN, P., at p. 215; see also *Watson* v. *Board of Trade* (*Sc.*) (1884), 22 Sc. L. R. 22), but do include cases where the master has had time to consider his actions (*The Golden Sea* (1882), 7 P. D. 194), or where the master has surrendered his judgment "to the influence of unreasonable panic" (*Brown* v. *Board of Trade* (1890), 28 Sc. L. R. 401).

As regards the summoning of witnesses and other powers connected with the hearing, the courts of formal investigation have all the powers of courts of summary jurisdiction acting in exercise of their ordinary jurisdiction (*p*). Where a formal investigation is held at a place where a stipendiary magistrate is a member of the local marine board, the investigation must be held before that magistrate (*q*).

Inquiries in British possessions.

919. In any British possession the legislature may authorise a court to hold inquiries as to shipping casualties in all cases where a casualty occurs to a British ship, on or near the coasts of the British possession, or in the course of a voyage to a port within that British possession (*r*), or where a casualty occurs to a British ship registered in the British possession wheresoever occurring (*a*), or where competent witnesses, members of the crew of a British ship to which a casualty has occurred, are found in the British possession (*b*). No inquiry, however, can be held into a matter which has been the subject of an investigation or inquiry and has been reported on by a competent court in any part of the King's dominions, or in respect of which the certificate of a master, mate, or engineer has been suspended by a naval court (*c*), or with reference to which an inquiry has already been commenced in the United Kingdom (*d*).

Jurisdiction of colonial courts.

Such colonial courts have the same jurisdiction over the matter in question as if it had occurred within their ordinary jurisdiction, subject to all provisions, restrictions, and conditions which would in that case have been applicable (*e*), and they have the same power of dealing with the certificates of officers as courts holding similar inquiries or investigations in the United Kingdom (*f*).

Inquiry by naval officers.

920. A naval officer in command of a King's ship on any foreign station, or, in the absence of such an officer, any consular officer, may hold a court of inquiry upon receipt of a complaint from the captain or any officer or member of the crew of a British ship (*g*), or, in the interest either of the owner of a British ship or of the owner of the cargo therein, whenever he thinks fit (*h*), and also in cases of wreck, abandonment, or loss of any British ship in the vicinity of the station, or on the arrival at the station of any part of the crew of a British ship which has been wrecked, abandoned, or lost abroad (*i*).

(*p*) M. S. Act, 1894, s. 466 (10). As to costs, compare *The British Standard, Shipping Gazette* (1912), 7th February (power over costs must be judicially exercised; no power to inflict fine *nomine expensarum*).
(*q*) M. S. Act, 1894, s. 476 (1).
(*r*) *Ibid.*, s. 478 (1) (a).
(*a*) *Ibid.*, s. 478 (1) (b).
(*b*) *Ibid.*, s. 478 (1) (c).
(*c*) *Ibid.*, s. 478 (3).
(*d*) *Ibid.*, s. 478 (4).
(*e*) *Ibid.*, s. 478 (2).
(*f*) *Ibid.*, s. 478 (5).
(*g*) *Ibid.*, s. 480 (i.).
(*h*) *Ibid.*, s. 480 (ii.).
(*i*) *Ibid.*, s. 480 (iii.).

SECT. 2. Inquiries and Investigations.

921. The procedure in shipping investigations is governed by the Shipping Casualties and Appeals and Re-hearings Rules, 1907 (*k*), a copy of which must be kept at every custom-house and mercantile marine office in the United Kingdom, and be there open to public inspection (*l*).

Procedure.

The owner, the master, and any certificated officer, or any other person upon whom a notice of investigation has been served, has a right to appear at the hearing, and any other person who obtains the leave of the judge may appear; all persons so appearing become parties to the proceedings (*m*). The witnesses produced by the Board of Trade may be cross-examined by any of the parties (*n*), and, after the hearing of such evidence is concluded, the Board of Trade must state in open court the questions upon which the opinion of the court is desired (*o*), after which the parties are entitled to address the court and to adduce evidence (*p*). The Board of Trade has the right of final reply (*q*).

Judge's report.

922. In every case, at the conclusion, the judge must report to the Board of Trade (*r*). In his report he may supplement his decision with reasons not stated at the time judgment was delivered (*s*). Where the certificate of an officer is cancelled or suspended, the court must give judgment in open court (*a*), and the Board of Trade must, on the application of any party to the proceedings, give him a copy of the report made to the Board (*b*).

Judgment.

Rehearing and appeals.

923. The Board of Trade may order the case to be generally or in part reheard; and must do so if new and important evidence, which could not be produced at the investigation or inquiry, has been discovered, or if for any other reason there has in the opinion of the Board been ground for suspecting that a miscarriage of justice has occurred (*c*).

The Board of Trade may order the case to be reheard by the original court or authority, by the wreck commissioner (*d*), or in England by the High Court (*e*), in Ireland by the High Court, and in Scotland by the Senior Lord Ordinary, or any other judge of the Court of Session appointed for that purpose by the Lord President of that court (*f*). Where a decision relates to the cancelling or suspension of the certificate of a master, mate or engineer, and application for a rehearing has not been made or

(*k*) See Stat. R. & O. Rev., 1907, p. 702.
(*l*) Shipping Casualties and Appeals and Re-hearings Rules, 1907, r. 31.
(*m*) *Ibid.*, r. 5.
(*n*) *Ibid.*, r. 10.
(*o*) *Ibid.*, r. 11.
(*p*) *Ibid.*, r. 12.
(*q*) *Ibid.*, r. 13.
(*r*) *Ibid.*, r. 17.
(*s*) *The Kestrel* (1881), 6 P. D. 182.
(*a*) Shipping Casualties and Appeals and Re-hearings Rules, 1907, r. 15.
(*b*) *Ibid.*, r. 18.
(*c*) M. S. Act, 1894, s. 475 (1).
(*d*) *Ibid.*, s. 475 (2).
(*e*) *Ibid.*, and compare R. S. C. (Merchant Shipping), 1894, r. 1.
(*f*) M. S. Act, 1894, s. 475 (2).

has been refused, an appeal lies to the Probate, Divorce and Admiralty Division of the High Court if the decision is given in England or by a naval court, to either division of the Court of Session if the decision is given in Scotland, and to the High Court if given in Ireland (*g*).

Any party appealing, other than the Board of Trade, must give such security for the costs of the appeal as the judge from whose decision the appeal is brought may direct (*h*).

Procedure.

924. On an appeal or rehearing the court, which must be assisted by not less than two assessors selected from the Elder Brethren of the Trinity House, or from the list kept by the Secretary of State (*i*), may order any person other than the parties served with the notice of appeal to be added as a party for the purposes of the appeal (*k*); but any party to the proceedings may object to the appearance of any other party as unnecessary (*l*). The court has full powers to receive further evidence either *vivâ voce*, by deposition, or by affidavit, and may give special leave to adduce evidence as to matters which have occurred since the date of the decision under appeal (*m*), but no evidence on questions of nautical knowledge or skill will be allowed, since it is the duty of the assessors to supply the court with such knowledge (*n*). The court has power to deal with the costs of the appeal as it may think just (*o*). On the conclusion of an appeal the court must send to the Board of Trade a report of the case (*p*).

(*g*) M. S. Act, 1894, s. 475 (3). If the Board of Trade refuses to grant a rehearing where it ought to be granted, the proper remedy is mandamus, and not an appeal under this provision (*The Ida* (1886), 11 P. D. 37). As to an appeal under this provision, see *The Carlisle*, [1906] P. 301.

(*h*) Shipping Casualties and Appeals and Re-hearings Rules, 1907, r. 20 (c).

(*i*) *Ibid.*, r. 20 (e).

(*k*) *Ibid.*, r. 20 (f).

(*l*) *Ibid.*

(*m*) *Ibid.*, r. 20 (h). Where it is desired to adduce fresh evidence on appeal, application for leave so to do should be made before the hearing (*The Famenoth* (1882), 7 P. D. 207).

(*n*) *The Kestrel* (1881), 6 P. D. 182, 189.

(*o*) Shipping Casualties and Appeals and Re-hearings Rules, 1907, r. 20 (1). An unsuccessful appellant is usually mulcted in the whole of the costs, and in the case of a successful appeal against the suspension of a certificate at the instance of the Board of Trade the Board will be ordered to pay the costs of the appellant (*The Famenoth, supra*), unless he has been guilty of such misconduct as rendered an inquiry reasonable (*The Arizona* (1880), 5 P. D. 123; and compare *The British Standard* (1912), *Shipping Gazette*, 7th February). Where the Board failed to advise the court below whether a master's certificate should be dealt with, and the certificate was in fact suspended, the Board was ordered to pay the costs of the master who appealed successfully against the suspension (*The Carlisle, supra*, at p. 315). Where a decision suspending a certificate was affirmed but the court recommended that the Board of Trade should shorten the time of suspension, the parties were left to bear their own costs of the appeal (*The Kestrel, supra*); and where, before the right of appeal had been extended to owners, the court was compelled to dismiss the appeal of the owners, but was of opinion that the appeal should upon the merits have succeeded, the appeal was dismissed without costs (*The Golden Sea* (1882), 7 P. D. 194).

(*p*) Shipping Casualties and Appeals and Re-hearings Rules, 1907, r. 20 (k).

Part XV.—Pilotage.

SECT. 1.

SECT. 1.—*The Pilotage Act*, 1913.

The Pilotage Act, 1913.

Purpose and effect of Act.

925. On the 1st April, 1913, the Pilotage Act, 1913 (*q*), came into operation (*a*). It provides machinery for the complete reorganisation and revision of pilotage in each district, and it also at the same time consolidates and amends the general law (*b*). It is the intention of the Act to substitute for the great mass of confused and frequently inconsistent legislation, both general and local: (1) a general pilotage Act applying to the United Kingdom and the Isle of Man (*c*); (2) a Pilotage Order applying to the particular district; (3) bye-laws of the local pilotage authority. Certain provisions of the Merchant Shipping Acts are repealed (*d*), but any enactments, orders, charters, customs etc. affecting any pilotage district in particular are to remain in force until provision is made for their repeal by a Pilotage Order (*e*). The Act must be construed as one with the Merchant Shipping Acts, 1894—1907 (*f*).

SECT. 2.—*Revision of Pilotage Organisation.*

Revision of pilotage organisation.

926. With a view to making pilotage law easily accessible, and rendering its administration as far as possible uniform, the Board of Trade must prepare Pilotage Orders applying to the particular districts (*g*). Existing bye-laws must at the same time be revised, and the Board of Trade may recommend bye-laws to be made where none exist at present, or the substitution of new bye-laws for those already in existence (*h*). For the purpose of preparing Pilotage Orders and revising the bye-laws, the Board of Trade may hold local inquiries (*i*) by means of Commissioners

(*q*) 2 & 3 Geo. 5, c. 31; in this part of the title sometimes referred to as "the Act."

(*a*) *Ibid.*, s. 59 (except s. 15, abolishing the defence of compulsory pilotage; see p. 611, *post*). Prior to this Act the law of pilotage was contained partly in general Acts and partly in local Acts, provisions, or orders applying to each locality. The M. S. Act, 1894, Part X., was the general Act dealing with pilotage. It re-enacted in many particulars the M. S. Act, 1854, and certain intermediate statutes, but owing to its provisions reference had also to be made to other repealed statutes to ascertain the law (M. S. Act, 1894, s. 574).

(*b*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), ss. 1—6.

(*c*) *Ibid.*, s. 61.

(*d*) The repealed provisions are the M. S. Act, 1894, ss. 572—632, Sched. XXI.; M. S. (Exemption from Pilotage) Act, 1897; M. S. Act, 1906, s. 73. Any Orders in Council etc., or any person or body elected or constituted under these repealed statutes, continue as if made or constituted under the Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31) (*ibid.*, s. 60).

(*e*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 59.

(*f*) *Ibid.*, s. 62.

(*g*) *Ibid.*, s. 1.

(*h*) *Ibid.*, s. 2. If the pilots are not represented on the pilotage authority they must be consulted (*ibid.*, s. 6).

(*i*) Notice of the time and place of the inquiry must be published in such a way as the Board of Trade thinks fit. Any person holding an inquiry has power to require the attendance of witnesses, and also to require the production of any books or documents (*ibid.*, s. 5).

appointed by the Board (*k*). A pilotage authority may submit a scheme for the purpose of the reorganisation of pilotage, and if the Board of Trade is satisfied that the scheme is adequate for the purpose, no inquiry need be held (*l*). If a pilotage authority fail to submit bye-laws in accordance with the recommendations of the Board of Trade, the latter may treat the bye-laws recommended by it as if they were submitted by the pilotage authority (*m*).

SECT. 2. Revision of Pilotage Organisation.

SECT. 3.—*Pilotage Orders.*

927. A Pilotage Order for any particular district may be made by the Board of Trade, either for the purpose of revising pilotage organisation, or on the application in writing of any person interested in the operation or administration of the pilotage laws in that district (*n*).

When to be made.

928. A Pilotage Order may provide for (*o*):—(1) the establishment of new or the abolition of existing pilotage authorities; (2) the creation of pilotage committees and the delegation of any of the powers of the pilotage authority to the committee (*p*); (3) the alteration in the constitution of a pilotage authority, including provision for the representation thereon, or upon the pilotage committee, of pilots (*q*), shipowners (*r*), and harbour or dock authorities (*s*); (4) the incorporation of a pilotage authority; (5) the separation of accounts where the pilotage authority has other powers and duties besides those of pilotage authority (*t*); (6) bye-laws to be made by the pilotage authority providing for the issue by them of deep sea certificates (*a*); (7) the establishment of new, or the abolition or alteration of existing pilotage districts (*b*); (8) the definition of the limits of a pilotage district, distinguishing where necessary between that portion of the district where pilotage is compulsory and that portion where it is not compulsory.

Pilotage authorities and districts.

(*k*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 3. The appointment of Commissioners is not to take effect beyond the 1st January, 1917, or, if the Treasury approves, for a period not exceeding five years beyond that date (*ibid.*). The limit on expenditure under the Act is £6,000 in any one year (*ibid.*, s. 56). The Board of Trade Arbitrations, etc. Act, 1874 (37 & 38 Vict. c. 40), applies to the Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 57.

(*l*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 4.

(*m*) *Ibid.*, s. 2.

(*n*) *Ibid.*, s. 7 (4).

(*o*) *Ibid.*, s. 7.

(*p*) Pilotage committees may include persons not members of the authority (*ibid.*, s. 7 (1) (d)).

(*q*) Pilots in any district where there are more than six have a statutory right to be represented on either the pilotage authority or the pilotage committee (*ibid.*, s. 7 (2)).

(*r*) Where provision has been made for the representation of pilots, shipowners are also entitled to be represented (*ibid.*).

(*s*) Any dock or harbour authority, having jurisdiction within a pilotage district, is entitled to be represented on the pilotage authority if represented at the date of the passing of the Act (*ibid.*, s. 7 (3)).

(*t*) Many pilotage authorities are also harbour authorities.

(*a*) See p. 601, *post.*

(*b*) Provision may be made for compensation being paid to pilots in consequence of any loss occasioned by the alteration or abolition of any pilotage district (Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 7 (1) (k)).

SECT. 3. **Pilotage Orders.**

Compulsory pilotage.

929. A Pilotage Order may provide that:—

(1) pilotage shall be compulsory in any district where it is now not compulsory, but in such a case the liability of a shipowner or master, for damage done by the negligent navigation of his ship, shall be the same as if pilotage was not compulsory (*c*);

(2) pilotage shall not be compulsory in any district where now it is compulsory, but only in connexion with any rearrangement of the district (*d*).

Local Acts.

930. A Pilotage Order may provide for the repeal of any Act other than the Pilotage Act, or of any order, charter, custom, bye-law, regulation, or provision, so far as it relates to pilotage (*e*); but until such Pilotage Order is made, any enactment, order, charter etc. affecting any pilotage district in particular remains in force (*f*).

Confirmation of Pilotage Orders.

931. A Pilotage Order, if it is made for the purpose of re-organising pilotage, or if, for whatever purpose it is made, a petition is presented to Parliament against it by persons interested in the administration of pilotage in the district to which the Pilotage Order relates, requires confirmation by Parliament (*g*). A Pilotage Order requiring confirmation by Parliament may be submitted to Parliament by the Board of Trade, and if the Bill confirming such order is petitioned against the same procedure as in the case of private Bills is followed. Any Act confirming a Pilotage Order may be repealed, altered, or amended by a subsequent Pilotage Order (*h*). A Pilotage Order which does not require confirmation by Parliament takes effect as if enacted in the Pilotage Act (*i*).

SECT. 4.—*Pilotage Authorities and Districts.*

SUB-SECT. 1.—*In General.*

"Pilotage authority."

932. The expression "pilotage authority" formerly included all bodies and persons authorised to appoint and license pilots, or to exercise any jurisdiction in respect of pilotage (*k*). All pilotage

(*c*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), ss. 7 (1) (h), 14. As to compulsory pilotage generally, see pp. 609 *et seq.*, *post*.

(*d*) Subject also to provision being made for compensation to pilots for any loss or damage (Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 7 (1) (h)).

(*e*) *Ibid.*, s. 7 (1) (j). Any provision so repealed may be partly or wholly re-enacted in the Pilotage Order, so far as it is not inconsistent with the Pilotage Act (*ibid.*).

(*f*) *Ibid.*, s. 59.

(*g*) *Ibid.*, s. 7 (5). A Pilotage Order for the London district of the Trinity House was confirmed by the Pilotage Order (London) Confirmation Act, 1913 (3 & 4 Geo. 5, c. clxv.).

(*h*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), Sched. I.; see title PARLIAMENT, Vol. XXI., pp. 727 *et seq.*

(*i*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 7 (6). The Board of Trade may make rules relating to the application for Pilotage Orders and the publication of notices. A notice stating the object proposed to be effected by the Order must be published once at least in two successive weeks in the month immediately succeeding the date of the application. If the pilotage authority is not itself the applicant for the Order, the Order must be referred to it, and the Board of Trade must consider any objections, whether made by it or by any persons appearing to the Board of Trade to be interested. The making of the Order is *primâ facie* evidence that all the requirements of the Act in respect of proceedings to be taken have been complied with (*ibid.*, Sched. I.).

(*k*) M. S. Act, 1894, s. 573. Although the Board of Trade may in

authorities in existence at the date of the passing of the Pilotage Act are to continue until some other provision is made by a Pilotage Order. The expression "pilotage authority" will then mean the authority as established and constituted by such Pilotage Order. Similarly, the expression "pilotage district" will mean the district as established and defined by the Pilotage Order (*l*).

In future the establishment of new pilotage authorities and districts, the alteration in the constitution of the authority or in the limits of the district, will be effected by means of a Pilotage Order (*m*).

SUB-SECT. 2.—*The Trinity House.*

Trinity House.

933. The Trinity House (*n*) is the pilotage authority for the London district and also for a number of ports called outports (*o*). Pilotage at the outports is controlled by the Trinity House by means of sub-commissioners at present appointed by it (*p*). In future the appointment of sub-commissioners and the manner in and conditions under which they are to exercise the duties of the Trinity House as pilotage authority are to be provided for by a Pilotage Order (*q*).

SECT. 5.—*Powers and Duties of Pilotage Authorities.*

SUB-SECT. 1.—*Bye-laws.*

Purposes for which bye-laws may be made.

934. Pilotage authorities may by bye-law provide for the following matters (*r*) :—

(1) The qualifications to be required of persons applying for licences.

(2) The method of examination for a licence, the term for which it is in force, and the conditions under which it will be renewed.

(3) The method of examination and the qualifications required for a pilotage certificate, and the conditions under which it will be renewed.

(4) The limitation on the number of pilots.

(5) The good government of pilots and apprentices, and the punishment of offences by fines (*s*).

certain cases exercise the powers of a pilotage authority, it no longer appears to come within the definition of a pilotage authority.

(*l*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 8. For list of existing pilotage authorities and limits of the pilotage districts, see Digby and Cole, Pilotage, pp. 69—85.

(*m*) See pp. 597, 598, *ante*.

(*n*) For the meaning of the Trinity House, see M. S. Act, 1894, s. 742.

(*o*) "Outports" means those ports which are now under the jurisdiction of sub-commissioners, or may hereafter be declared to be outports (Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 52).

(*p*) Sub-commissioners are apparently not a pilotage authority; see M. S. Act, 1894, s. 617.

(*q*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 52. Although both the Trinity Houses of Hull and Newcastle-upon-Tyne at the present time appoint sub-commissioners for certain ports, there is no power under the Act to make provision for this as in the case of the Trinity House.

(*r*) *Ibid.*, s. 17.

(*s*) These bye-laws may be made to apply to masters and mates holding pilotage certificates (*ibid.*, s. 17 (1) (o)).

SECT. 5. Powers and Duties of Pilotage Authorities.

(6) The system to be adopted with regard to the supply and employment of pilots (*t*).

(7) The approval, licensing, and working of pilot boats, and establishment of pilot boat companies.

(8) The basis, scale, and amount of pilotage rates.

(9) The pooling of the earnings of the pilots if it appears to the authority to be generally desired by them.

(10) The deduction from the pilots' earnings of sums to meet administrative expenses.

(11) Bonds being given by pilots not exceeding £100 for the purpose of the provisions of the Pilotage Act, 1913 (*u*), limiting their liability.

(12) The establishment of pilots' benefit funds, and the deduction from pilots' earnings of contributions thereto.

(13) The granting of deep sea certificates if so authorised by a Pilotage Order.

(14) The contribution to be required of shipowners, whose masters or mates hold pilotage certificates, towards the pilot fund or account of the pilotage district.

Objections to bye-laws.

935. Where at any port either a majority of the pilots or not less than six persons being masters, owners, or insurers of ships using the port, or any dock or harbour authority, object to any bye-law in force or desire any new bye-law, the Board of Trade has power to revoke or alter the bye-law, or to call upon the pilotage authority to submit a new bye-law (*a*).

Board of Trade must confirm bye-laws.

936. Bye-laws do not take effect until they are confirmed by the Board of Trade, and prior to their being submitted for confirmation must be published as the Board of Trade directs (*b*).

SUB-SECT. 2.—*Licences.*

Pilots' licences.

937. Every pilotage authority has power to grant licences to pilots who have fulfilled the conditions laid down in the bye-laws (*c*). The licence is to be in the form approved by the Board of Trade (*d*), and is subject to periodical renewal (*e*). Every licensed pilot, when acting as a pilot, must be furnished with his licence (*f*), and on request must produce it to his employer (*g*). A pilotage authority

(*t*) For example, the conditions under which special pilots may be appropriated to particular ships, frequently called "choice pilotage."

(*u*) 2 & 3 Geo. 5, c. 31.

(*a*) *Ibid.*, s. 18.

(*b*) *Ibid.*, s. 17.

(*c*) *Ibid.*, s. 16. Such fees as may be fixed by bye-law are payable by pilots on examination or on the grant or renewal of a licence (*ibid.*, s. 29). For the special power of the Trinity House to make provisions as to "exempt pilots," see *ibid.*, s. 54.

(*d*) *Ibid.*, s. 20.

(*e*) *Ibid.*, s. 17 (1) (a).

(*f*) *Ibid.*, s. 33. The pilotage authority must also furnish the pilot with copies of the Pilotage Act, Pilotage Order and bye-laws, which must be produced on request to the employer (*ibid.*, s. 33).

(*g*) *Ibid.*, s. 36. A master is not obliged to take the services of a pilot who fails to produce his licence (*Hammond* v. *Blake* (1830), 10 B. & C. 424).

may require a pilot to produce his licence to it, and on the death of a pilot the person into whose hands the licence comes must transmit it without delay to the pilotage authority (*h*). Pilotage authorities may also in certain circumstances (*i*) issue certificates to persons certifying that they are competent to act as pilots for the deep sea outside the districts of other pilotage authorities (*k*).

Revocation or suspension of licences.

938. A pilotage authority may revoke or suspend a licence for any offence under the Act, or breach of bye-laws, or for any neglect, incompetence, or misconduct affecting the holder's capability as a pilot (*l*). Where pilots are directly represented upon the pilotage committee, that committee has the same powers as the pilotage authority with regard to the revocation and suspension of licences, unless and until a Pilotage Order is made regulating the relations between the pilotage authority and the committee (*m*).

Grant of licence implies no liability.

939. The grant of a licence by a pilotage authority does not impose any liability upon the authority for any loss or damage occasioned by the default of the pilot (*n*).

SUB-SECT. 3.—*Pilotage Certificates.*

Pilotage certificates.

940. On the application of a master or mate of any ship, the pilotage authority may grant him a pilotage certificate, provided that he is a British subject, if after examination the authority is satisfied that his local knowledge, skill, and experience are such that he is capable of piloting his ship within the district of the authority (*o*). The pilotage authority may by bye-law restrict the grant of the pilotage certificate to masters or mates who hold at least a mate's certificate of competency (*p*).

May extend to more than one ship.

941. A pilotage certificate may be granted so as to extend to more than one ship, provided that the ships to which it extends are of substantially the same class and belong to the same owner (*q*). It is

(*h*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 20. If the licence is revoked or suspended it must be delivered up to the pilotage authority (*ibid.*).

(*i*) *Ibid.*, ss. 7 (1) (i.), 17 (1) (n).

(*k*) As to effect of these licences, see p. 604, *post.*

(*l*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 26.

(*m*) *Ibid.*

(*n*) *Ibid.*, s. 19; and see *Shaw, Savill and Albion Co.* v. *Timaru Harbour Board* (1890), 15 App. Cas. 429, P. C. Where, however, pilotage authorities elect, as in some cases, to pay the pilots a fixed wage and treat them in other respects in a manner closely analogous to servants, it is doubtful to what extent, if any, they are liable for the acts and defaults of a pilot; compare *The Bearn*, [1906] P. 48, C. A.

(*o*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 23 (1). The applicant must be a *bonâ fide* master or mate of a ship (*ibid.*).

(*p*) *Ibid.* For provisions as to certificate of competency, see p. 38, *ante.* Reference to a certificate of competency under the M. S. Act, 1894, Part II., includes reference to a certificate of competency granted by a foreign Government and approved by the Board of Trade (Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 25).

(*q*) The expression "substantially the same class" has not been defined. Ships which are under the management of the same person as manager,

SECT. 5. Powers and Duties of Pilotage Authorities.

in the form approved by the Board of Trade (*r*), and may not be in force for more than a year, but may be renewed if the holder has made not less than a specified number of visits to the port in respect of which the certificate is granted, or if he has passed a fresh examination (*s*).

Must be in approved form.

In force for one year but renewable.

Transfer of master or mate to another ship.

942. If a master or mate is transferred to another ship belonging to the same owner his certificate may be altered so as to cover the ship to which he is transferred, provided that the latter is of substantially the same class as the former. If a master or mate is transferred to another ship belonging to a different owner his certificate may be altered so as to relate to the ship to which he is transferred, provided that the latter is not of substantially greater draught or tonnage than the former (*t*).

Alien master or mate.

943. If an alien master or mate is master or mate of a ship which is of substantially the same class and trading regularly between the same ports as did a foreign ship which was exempt from compulsory pilotage on the 1st June, 1906, or which was at that date being piloted by a master or mate holding a pilotage certificate, he may apply to the Board of Trade, and if satisfied of the above circumstances the Board may authorise him to apply to the pilotage authority for a pilotage certificate. The same provisions as to the grant and renewal of a pilotage certificate will then apply as in the case of a British subject. The Admiralty may, however, on the ground of public safety, exclude by order the application of these provisions to any pilotage district, and thereupon the certificates already granted cease to have effect (*a*). Any alien master or mate who holds a pilotage certificate granted before the 1st June, 1906, is entitled to have the same renewed as if he were a British subject (*b*).

Revocation or suspension.

944. A pilotage authority may suspend or revoke a pilotage certificate for any offence under the Pilotage Act or breach of bye-laws, or for any neglect, incompetence or misconduct affecting the holder's capability as a pilot (*c*).

managing owner, demisee or time charterer for this purpose are ships belonging to the same owner (Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 23 (6); compare *The Bristol City*, [1902] P. 10).

(*r*) The name of the person to whom granted, the name or names of the ships, their draught and the district in respect of which it is granted, and the date on which it was granted must appear on the certificate (Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 23 (2)).

(*s*) *Ibid.*, ss. 17 (1) (m), 23 (3).

(*t*) *Ibid.*, s. 23 (5). Such fees are payable on examination, or on the grant, renewal or alteration of a pilotage certificate as may be fixed by bye-law (*ibid.*, s. 29).

(*a*) *Ibid.*, s. 24 (2). By an order dated the 25th March, 1913, the Admiralty vetoed the grant of pilotage certificates to aliens in—(i.) the London pilotage district; (ii.) the Harwich pilotage district; (iii.) so much of the Humber pilotage district as lies to the north of Grimsby (*London Gazette*, 28th March, 1913). For the limits of these districts, see Digby and Cole, Pilotage, pp. 70, 73, 74.

(*b*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 24 (1). The M. S. Act, 1906, s. 73, which is repealed, for the first time prohibited the grant of pilotage certificates to aliens in all districts, but did not affect the renewal of certificates granted before the 1st June, 1906.

(*c*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 26.

SECT. 5. Powers and Duties of Pilotage Authorities.

SUB-SECT. 4.—*Receipts and Expenditure.*

945. A pilotage authority may by bye-law provide for the deduction from any sums received by pilots of the sums necessary to meet the administrative expenses of the authority, and also of the contributions required toward any fund established for the benefit of pilots, their widows or children (*d*). All receipts of a pilotage authority in its capacity as such must be paid into a separate fund called the pilot fund or account (*e*); but when a pilotage authority is by statute entitled to receive money in the name of pilotage and apply it to some other purpose, a Pilotage Order may provide for the apportionment of the money so received between that purpose and the pilot fund (*f*). Provisions for expenses and contributions. Pilot fund.

After providing for the administrative expenses of the authority, the balance of the pilot fund must, unless the bye-laws otherwise provide, be applied for the benefit of the pilots.

SUB-SECT. 5.—*Pilotage Rates or Dues.*

946. The amount and basis of rates payable in respect of the services of a pilot, their collection (*g*) and distribution (*h*), are provided for by bye-laws (*i*). A pilot may not demand or receive, and a master may not offer or pay, rates either greater or less than those laid down by bye-law (*k*). A pilot taken beyond the point for which he was engaged, without his consent or through necessity, is entitled to maintenance and 10*s.* 6*d.* per day in addition to the pilotage dues (*l*). When a boat or ship with a licensed pilot on board leads another ship, in circumstances which make it impossible for the pilot to board the latter, the full pilotage dues are payable (*m*). Pilotage dues.

947. The owner or master of any ship for which the services of a qualified pilot are obtained is liable for the pilotage dues Who is liable for.

(*d*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 17 (1) (h). The account of this fund must be kept separate, and moneys received for the benefit of, or credited to, this fund must not be used for any other purpose (*ibid.*, s. 21 (3)). This fund may be established by the pilotage authority either alone or in conjunction with any other pilotage authority, and provision for its administration etc. is to be laid down by bye-law (*ibid.*, s. 17 (1) (j)).

(*e*) *Ibid.*, s. 21. The Trinity House may maintain a single pilot fund for all its districts (*ibid.*, s. 53). A pilotage authority can, under a bye-law, require the owner, whose master or mate holds a pilotage certificate, to contribute towards the pilot fund. This contribution is not to exceed such proportion of the pilotage dues which would have been payable if the master or mate had not held a pilotage certificate, as may be fixed by the Board of Trade (*ibid.*, s. 17 (1) (p)).

(*f*) *Ibid.*, s. 58.

(*g*) For special provisions as to the collection of pilotage dues in the Port of London, see *ibid.*, s. 55.

(*h*) If desired by the pilots, pilotage dues may be pooled (*ibid.*, s. 17 (1) (g)).

(*i*) *Ibid.*, s. 17 (1) (f).

(*k*) *Ibid.*, s. 50.

(*l*) The 10*s.* 6*d.* is recoverable in the same manner as pilotage dues (*ibid.*, s. 34); this alters the law as laid down in *Morteo* v. *Julian* (1879), 4 C. P. D. 216.

(*m*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 51.

SECT. 5. Powers and Duties of Pilotage Authorities.

so incurred. As regards pilotage inwards, such consignees or agents as have paid, or made themselves liable to pay, any other charge on account of the ship in the port of her arrival or discharge, and as regards outward pilotage such consignees or agents as have paid, or made themselves liable to pay, any other charge on account of the ship in the port of departure, are also liable (*n*). Pilotage dues may be recovered by proceedings under the Summary Jurisdiction Acts (*o*), provided that a demand in writing has first been delivered (*p*).

SUB-SECT. 6.—*Returns.*

Returns by pilotage authorities.

948. All pilotage authorities must deliver annually to the Board of Trade, (1) a statement of their accounts; (2) a statement showing the average gross and net earnings of the pilots; (3) the account of the pilots' benefit fund, with particulars of the investments, if any (*q*). All pilotage authorities must deliver triennially, or, if directed, at shorter intervals, returns giving such particulars as may be prescribed by the Board of Trade. These returns must be laid before Parliament (*r*).

SECT. 6.—*Pilots.*

SUB-SECT. 1.—*Rights and Obligations.*

Rights and obligations.

949. A pilot (*s*) licensed for a district is entitled to supersede any other pilot not so licensed (*t*), but a deep sea certificate gives a pilot no right to supersede any other person (*u*). When the master of a ship has accepted or is under the obligation of accepting the services of a pilot, he must give the latter facilities for getting on board (*a*), and must, if the pilot so desires, declare the draught, length and beam of the ship (*b*).

Salvage.

Where a pilot renders services which, owing to their nature or the condition of the ship, are more than ordinary pilotage services, he may be entitled to salvage (*c*).

(*n*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 49. The agents and consignees, if made liable, have a lien upon any money received by them on account of the ship or belonging to the owner (*ibid.*).

(*o*) M. S. Act, 1894, s. 681. As to summary procedure generally, see title MAGISTRATES, Vol. XIX., pp. 589 *et seq.*

(*p*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 49 (1).

(*q*) *Ibid.*, s. 22 (2). Any pilotage authority failing to deliver these statements or returns may be suspended by an Order in Council, and the Board of Trade may appoint some person to carry on the duties of the pilotage authority during the period of such suspension.

(*r*) *Ibid.*, s. 22 (1). The pilotage authority must allow any person appointed by the Board of Trade to inspect any books or documents relating to the statements or returns required (*ibid.*, s. 22 (3)).

(*s*) A pilot is any person not belonging to a ship who has the conduct thereof (M. S. Act, 1894, s. 742).

(*t*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 30 (1). The master must, however, pay the pilot so superseded a proportionate sum for his services (*ibid.*, s. 30 (2)).

(*u*) *Ibid.*, s. 7 (1) (i.).

(*a*) *Ibid.*, s. 44.

(*b*) *Ibid.*, s. 31.

(*c*) *The Santiago* (1900), 9 Asp. M. L. C. 147; *Akerblom* v. *Price* (1881), 7 Q. B. D. 129; and see p. 567, *ante*.

Where a pilot has given a bond his liability is limited to the amount of the bond, together with the amount payable to him for pilotage (*d*).

Limitation of liability.

A pilot is entitled to compensation under the provisions of the Workmen's Compensation Act, 1906 (*e*), but only when piloting a ship registered in the United Kingdom, or any other British ship the owner or manager of which resides or has his principal place of business in the United Kingdom (*f*).

Workmen's Compensation Act.

SUB-SECT. 2.—*Unqualified Person Acting as Pilot.*

950. In any pilotage district no person not licensed for the district may attempt to act as pilot of a ship after a licensed pilot has offered his services, nor may a master knowingly employ such person (*g*). The fact that any person other than the master, or a member of the crew, is on the bridge or in some other position from which the ship is navigated, is *primâ facie* evidence that that person is acting as pilot of the ship (*h*).

Unqualified person may not act as pilot.

951. Persons other than licensed pilots may, where the bye-laws so provide, be employed to move a ship within a harbour for the purpose of changing her moorings or of taking her into or out of dock (*i*).

Moving ship in harbour.

SECT. 7.—*Pilot Boats, Flags, and Signals.*

952. All boats and ships in the pilotage service of any district must be approved and licensed by the pilotage authority (*k*) of the district, and the pilotage authority has power to appoint and remove the masters of such boats (*l*). The master of a pilot boat must see that his boat possesses all the distinguishing characteristics of a

Regulations.

(*d*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 35 (1). The court may determine the amount of the pilot's liability and distribute the amount rateably among the claimants (*ibid.*, s. 35 (3)). This alters the law as laid down in *Deering & Sons* v. *Targett*, [1913] 1 K. B. 129. It is probable that a pilot can claim to limit his liability by way of defence or counterclaim, and without an admission of liability, in a manner analogous to that of a shipowner ; see p. 616, *post.*

(*e*) 6 Edw. 7, c. 58.

(*f*) This applies to a qualified as well as an unqualified pilot ; see note (*s*), p. 604, *ante ;* Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 7 ; and title MASTER AND SERVANT, Vol. XX., p. 158.

(*g*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 30 (3), (4). As to the duty of a master to display a pilot signal if he has an unlicensed person acting as pilot, see p. 606, *post.*

(*h*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 30 (5). The person need not necessarily be on board the ship piloted (*ibid.*).

(*i*) *Ibid.*, s. 32. A bye-law must be made in all cases where, at the date of the passing of the Act, there was a class of persons, other than licensed pilots, in practice employed to do this work (*ibid.*).

(*k*) A Pilotage Order may not diminish the powers of a pilotage authority with regard to pilot boats (*ibid.*, s. 40), and a pilotage authority which owns or hires pilot boats may keep a separate account in respect of such boats (*ibid.*, s. 21 (4)). Bye-laws may provide for the approval, licensing, and working of pilot boats and establishment of pilot boat companies (*ibid.*, s. 17 (1) (d)).

(*l*) *Ibid.*, s. 38.

SECT. 7. Pilot Boats, Flags, and Signals.

pilot boat, and is bound under a penalty to see that the same are in good repair and properly displayed (*m*).

Pilot flags.

953. It is the duty of a master of a ship to display a pilot flag (*n*) when he has on board a pilot licensed for the district or when he or his mate holds a pilotage certificate for that district (*o*).

Pilot signals.

954. It is the duty of a master of a ship navigating in circumstances in which pilotage is compulsory, or if he has on board a pilot not licensed for that district, whether pilotage is compulsory or not, to display a pilot signal (*p*). The signal must be kept flying until a licensed pilot comes on board (*q*).

SECT. 8.—*Offences.*

SUB-SECT. 1.—*Offences by Pilots.*

Offences by pilots.

955. A pilot commits an offence if he:—

(1) Keeps, or is interested in keeping, any public-house or place of public entertainment, or in selling any wine, spirituous liquors, tobacco or tea (*r*);

(2) is concerned in any corrupt practices relating to ships, their

(*m*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 39 (2). The characteristics are:—(i.) On her stern the name of her owner and of her port painted in white letters at least one inch broad and three inches long, and on each bow the number of her licence; (ii.) in all other parts a black colour painted or tarred, or such other colour or colours as the pilotage authority may direct; (iii) when afloat a large flag, called the pilot flag, the upper horizontal half white, and the lower horizontal half red, placed at the masthead, or on a sprit or staff, or in some equally conspicuous situation (*ibid*, s. 39 (1)). As regards lights to be carried by pilot vessels, see the Sea Regulations, 1897, art. 8; and pp. 392 *et seq.*, *ante*.

(*n*) For description of pilot flag, see note (*m*), *supra*.

(*o*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 41. It is an offence to display a pilot flag, or a flag so nearly resembling a pilot flag as to be likely to deceive, when no licensed pilot or master or mate holding a pilotage certificate is on board (*ibid.*, s. 42).

(*p*) Rules as to pilot signals are to be made by Order in Council (*ibid.*, s. 45). The following, displayed either separately or together, are the existing pilot signals which remain in force (*ibid.*, s. 60):—

In the daytime—

(i.) a Union Jack, hoisted at the fore, having round it a white border one-fifth of the breadth of the flag;

(ii.) the International Code Pilotage Signal, indicated by P. T.;

(iii.) the International Code Flag S., with or without the Code Pennant over it;

(iv.) the distant signal, consisting of a cone point upwards, having above it two balls or shapes resembling balls;

At night—

(i.) the pyrotechnic blue light displayed every fifteen minutes:

(ii.) a bright white light, flashed or shown at short or frequent intervals just above the bulwarks, for about a minute at a time.

It is an offence for any master to display, or permit any person under his authority to display, a pilot signal for any other purpose than that of summoning a pilot, or to display any other signal for a pilot (*ibid.*, s. 45 (3)). For power to use private signals duly registered, see M. S. Act, 1894, s. 733.

(*q*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 43.

(*r*) *Ibid.*, s. 48. It is immaterial whether the offence committed is within or outside of the district for which the pilot is licensed; it extends to anyone aiding or abetting the commission of the offence. Penalty, a fine not exceeding £100 in addition to liability for damages (*ibid.*).

tackle, furniture, cargoes, crews, or passengers, or to persons in distress at sea or by shipwreck, or to their moneys, goods, or chattels (*s*);

(3) lends his licence (*s*);

(4) acts as pilot while suspended, or when in a state of intoxication (*s*);

(5) employs, or causes to be employed, on board any ship of which he has charge, anything beyond what is necessary for the service of that ship with intent to enhance the expenses of pilotage for his own gain, or for the gain of any other person (*s*);

(6) refuses or wilfully delays, without reasonable cause, to take charge of any ship within the limits of his licence upon signal being made by the ship, or upon being required to do so by the master, owner, agent or consignee of the ship, or by any officer of his own pilotage authority, or by any chief officer of customs and excise; or refuses, when requested by the master, to conduct the ship in his charge into any port or place into which he is qualified to conduct her, except on the ground of danger to the ship (*s*);

(7) cuts or slips, or causes to be cut or slipped, unnecessarily any cable belonging to a ship (*s*);

(8) leaves a ship of which he has charge without the consent of the master before the service for which he was hired is performed (*s*);

(9) fails to produce his licence to his employer (*t*) or to the pilotage authority on request (*u*);

(10) demands or receives improper pilotage dues (*a*);

(11) fails to produce the pilotage provisions on request (*b*);

(12) commits a breach of the bye-laws (*c*);

(13) by wilful breach or neglect of duty or by reason of drunkenness endangers a ship, or the limbs, or lives, of any person on board (*d*).

SUB-SECT. 2.—*Offences by Masters.*

956. A master of a ship commits an offence if he:— Offences by masters.

(1) Fails to have his ship under proper pilotage (*e*);

(2) knowingly employs or continues to employ an unlicensed pilot after a licensed pilot has offered his services (*f*);

(*s*) See note (*r*), p. 606, *ante*.

(*t*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 36. Penalty, a fine not exceeding £10 (*ibid.*).

(*u*) *Ibid.*, s. 20. Penalty, a fine not exceeding £10 (*ibid.*); see *Henry* v. *Newcastle Trinity House* (1858), 8 E. & B. 723.

(*a*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 50. Penalty, a fine not exceeding £10 (*ibid.*).

(*b*) *Ibid.*, s. 33. Penalty, a fine not exceeding £5 (*ibid.*).

(*c*) *Ibid.*, s. 17 (1) (e). Penalty, a fine not exceeding £20 (*ibid.*). This applies also to apprentices (*ibid.*).

(*d*) *Ibid.*, s. 46. This offence is declared to be a misdemeanour, for punishment of which see M. S. Act, 1894, s. 680.

(*e*) Where pilotage is compulsory the ship must be under the pilotage of a licensed pilot or a master or mate holding a pilotage certificate. Penalty, a fine not exceeding double the amount of the pilotage dues (Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 11 (2)).

(*f*) *Ibid.*, s. 30 (4). Penalty, a fine not exceeding £50. In the case of outward bound ships the burden is upon the master of showing that he has taken all reasonable steps to obtain a licensed pilot (*ibid.*).

SECT. 8. Offences.

(3) fails to give the particulars of his ship on being requested by the pilot (*g*);

(4) fails in certain circumstances to display (*h*), or improperly displays, a pilot flag (*i*);

(5) fails in certain circumstances to display (*k*), or improperly displays, a pilot signal (*l*);

(6) without reasonable cause takes a pilot out of his district (*m*);

(7) fails to give the pilot facilities for getting on board (*n*);

(8) offers or pays improper pilotage dues (*o*);

(9) commits a breach of the bye-laws (*p*).

SUB-SECT. 3.—*Offences by Other Persons.*

Offences by other persons.

957. Any person commits an offence if he:—

(1) Fails to comply with the summons of a person holding a local inquiry, or impedes such person in the execution of his duty (*q*);

(2) by a fraudulent use of a licence, or by any other means, represents himself as a licensed pilot when not so in fact (*r*);

(3) obtains or endeavours to obtain charge of a ship by the wilful misrepresentation of circumstances upon which the safety of the ship may depend (*s*);

(4) pilots or attempts to pilot a ship, after a licensed pilot has offered his services (*t*).

SUB-SECT. 4.—*Further Penalties.*

Suspension or revocation of certificate.

958. In addition to the fines for various offences already mentioned, offences under the Pilotage Act, 1913 (*a*), are punishable, in the case of pilots and masters or mates holding pilotage certificates, by the suspension or revocation of the licence or certificate (*b*).

SECT. 9.—*Appeals.*

Appeals.

959. An appeal lies to the Board of Trade from the decision of the pilotage authority, where the pilotage authority has (*c*) refused to examine a candidate for a licence or a pilotage certificate, or has conducted such examination unfairly, or has

(*g*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 31. Penalty, a fine not exceeding £50 (*ibid.*).

(*h*) *Ibid.*, s. 41. Penalty, a fine not exceeding £50 (*ibid.*).

(*i*) *Ibid.*, s. 42. Penalty, a fine not exceeding £50 (*ibid.*).

(*k*) *Ibid.*, s. 43. Penalty, a fine not exceeding £20 (*ibid.*).

(*l*) *Ibid.*, s. 45. Penalty, a fine not exceeding £20 (*ibid.*).

(*m*) *Ibid.*, s. 34 (1). Penalty, a fine not exceeding £20 (*ibid.*).

(*n*) *Ibid.*, s. 44. Penalty, a fine not exceeding double the amount of the pilotage dues (*ibid.*).

(*o*) *Ibid.*, s. 50. Penalty, a fine not exceeding £10 (*ibid.*).

(*p*) Bye-laws applying to pilots may, with the necessary modifications, be made to apply to masters and mates holding pilotage certificates (*ibid.*, s. 17 (1) (o)).

(*q*) *Ibid.*, s. 5 (4). Penalty, a fine not exceeding £5, and in addition £1 for every day the offence continues (*ibid.*).

(*r*) *Ibid.*, s. 37. Penalty, a fine not exceeding £20 (*ibid.*).

(*s*) *Ibid.*, s. 47. Penalty, a fine not exceeding £100 in addition to any liability for damages (*ibid.*).

(*t*) *Ibid.*, s. 30 (3). Penalty, a fine not exceeding £50 (*ibid.*); see p. 605, *ante*.

(*a*) 2 & 3 Geo. 5, c. 31.

(*b*) *Ibid.*, s. 26.

(*c*) *Ibid.*, s. 27.

imposed illegal conditions on the granting of a licence or certificate; or has refused to renew a pilotage certificate, or revoked or suspended such certificate; or has improperly exercised or failed to perform any of its powers or duties under the Act.

The Board of Trade may make such order as it thinks fit, and if the pilotage authority fails to give effect to such order the Board of Trade may itself exercise the powers of a pilotage authority for this purpose.

A pilot may appeal from the decision of the pilotage authority to a judge of county courts, metropolitan police magistrate, or stipendiary magistrate, having jurisdiction within the port for which the pilot is licensed, where the pilotage authority has (*d*) suspended or revoked his licence or, having obtained possession of it, failed to return it; or has imposed a fine exceeding £2 (*e*).

The judge or magistrate may confirm or reverse the decision of the pilotage authority or may make such order as seems to him just. His decision is final unless he, or the High Court (*f*), gives special leave to appeal to the High Court on a question of law or of mixed law and fact (*g*).

SECT. 10.—*Compulsory Pilotage.*

SUB-SECT. 1.—*Obligation under Compulsory Pilotage.*

Compulsory pilotage.

960. Every ship which is navigating (*h*) within a compulsory

(*d*) On the hearing of the appeal the judge or magistrate must sit with an assessor of nautical and pilotage experience, and either party to the appeal may object to any person proposed to be summoned as an assessor on personal or professional grounds. In Scotland pilotage appeals are heard by the sheriff having jurisdiction at the port where the original decision is given, aided by an assessor qualified and selected as in England; and in Ireland a judge of county courts is construed to include a chairman of quarter sessions and a recorder, whilst the expressions "magistrate" and "stipendiary magistrate" are deemed to refer to magistrates appointed under the Constabulary (Ireland) Act, 1836 (6 & 7 Will. 4, c. 13) (Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 28 (1)—(3), (7), (8)).

(*e*) There is no appeal given under the Act where fines are imposed on masters or mates holding pilotage certificates; but see M. S. Act, 1894, ss. 680—682.

(*f*) In Scotland the Court of Session (Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 28 (7)). The decision of the High Court is final (*ibid.*, s. 28 (4)).

(*g*) *Ibid.*, s. 28 (4). Appeals in England are governed, as regards the county courts, by the County Court Rules, dated the 14th July, 1903; as regards magistrates, by a body of rules entitled "Rules dated the 14th March, 1890, made by the Secretary of State for the hearing by stipendiary magistrates and Metropolitan police magistrates of appeals" (*ibid.*, s. 28 (6)); in Scotland by an Act of Sederunt to regulate procedure under the M. S. (Pilotage) Act, 1889 (52 & 53 Vict. c. 68), dated the 13th March, 1890 (Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 28 (7)); and in Ireland by Rules and Forms dated the 2nd May, 1890 (*ibid.*, s. 28 (8) (c)). The existing rules remain applicable (*ibid.*, s. 60). As to extension of time for appeal, see *R.* v. *Lewis*, [1906] 2 K. B. 307.

(*h*) Navigating may include moving within a harbour (Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 32), but in all districts pilotage is not compulsory within any dock, lock, or closed work (*ibid.*).

SECT. 10. **Compulsory Pilotage.**

pilotage district, and every ship carrying passengers (*i*) navigating within a pilotage district whether compulsory or not, for the purpose of entering, leaving, or making use (*k*) of a port within that district must, unless she comes under the category of an excepted ship, be under the pilotage of a licensed pilot or of a *bonâ fide* master or mate of that ship holding a pilotage certificate for the district (*l*).

Compulsory pilotage districts.

961. "Compulsory pilotage districts" means those districts, or parts of districts, where a charge for pilotage is imposed whether a pilot is taken or not (*m*), or where the employment of a pilot is enforced by a penalty (*n*).

Subject to any alteration which may be made by a Pilotage Order, and unless and until such alteration is made, all those districts or parts of districts which were compulsory at the time of the passing of the Act remain compulsory, and all non-compulsory districts remain non-compulsory (*o*). All existing exemptions within compulsory districts are, however, abolished (*p*), except those taking effect under any enactment, order, charter, custom, bye-law, or regulation applying to any pilotage district in particular; these remain in force until provision is made by a Pilotage Order for superseding them (*q*).

SUB-SECT. 2.—*Excepted Ships.*

Excepted ships.

962. The following ships, or classes of ships, come within the expression "excepted ships," and are exempt in all pilotage districts from the obligation above stated:—(1) His Majesty's ships, yachts, fishing vessels (*r*); (2) ferry boats plying within the limits of a

(*i*) The word "passengers" in this context involves the principle of an agreement to carry with the privity of the owner and the payment of a fare. A vessel having on board a person who messes with the captain and assists in the work of the ship, but who does not pay for his passage, is not carrying a passenger (*The Hanna* (1866), L. R. 1 A. & E. 283); neither is a vessel which usually carries passengers not engaged on a passenger voyage, but having on board relatives of the captain without the knowledge of the owners (*The "Lion"* (1869), L. R. 2 P. C. 525). A vessel carrying distressed seamen is not thereby rendered a passenger vessel for pilotage purposes (*The Clymene*, [1897] P. 295, 300); and see p. 331, *ante*.

(*k*) Calling for the purpose only of landing or taking on board a pilot does not come within the expression "entering, leaving, or making use of a port" (Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 13).

(*l*) *Ibid.*, s. 11 (1); see p. 601, *ante*.

(*m*) *The Maria* (1839), 1 Wm. Rob. 95.

(*n*) *The Ruby* (1890), 15 P. D. 139.

(*o*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 10. Until a Pilotage Order is made for a particular district it will still be necessary, in order to ascertain whether pilotage is compulsory or not within that district, to refer to the local Acts, charters, Orders in Council etc. applying to that district. For a summary of these, see Marsden, Collisions at Sea, 6th ed., pp. 247—264. In some districts it is still by no means clear whether pilotage is in fact compulsory or not.

(*p*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 10.

(*q*) *Ibid.*, s. 59.

(*r*) Fishing vessels are not defined, but compare the definition of fishing boats in the M. S. Act, 1894, s. 370; see title FISHERIES, Vol. XIV., p. 628.

harbour authority; (3) ships under 50 tons gross register; (4) ships trading coastwise (*s*), home-trade ships (*t*), and ships whose ordinary course of navigation does not extend beyond the harbour limits, when not carrying passengers, and if provision for their exemption has been made by bye-law (*a*); (5) tugs, dredgers, sludge vessels and barges, belonging to, or hired by a dock, harbour, river, or local authority, and employed under the statutory powers of that authority (*b*); (6) ships moving within a harbour for the purpose of changing moorings, or being taken into or out of dock, if provision for their exemption has been made by bye-law (*c*).

SUB-SECT. 3.—*Shipowner's Liability.*

Shipowner's liability.

963. After the 1st January, 1918, or such earlier date as may be fixed by Order in Council, the liability of the owner or master of the ship for damage caused by her, or by any fault in her navigation, is to be the same in a district where pilotage is compulsory as it now is in a district where pilotage is not compulsory; in other words, the fact of the ship being under compulsory pilotage will not relieve the owner or master of any liability for loss or damage occasioned by her wrongful navigation (*d*).

(*s*) A ship engaged on a voyage between two ports in the United Kingdom is not deemed to be trading coastwise if she habitually trades to or from a port outside the British Islands (Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 11 (5); compare *The Agricola*, 1843), 2 Wm. Rob. 10; *The Winestead*, [1895] P. 170; *The Glanystwyth*, [1899] P. 118).

(*t*) For definition of "home-trade ships," see M. S. Act, 1894, s. 742; but a ship engaged on a voyage between ports within the home-trade limits is not deemed to be a home-trade ship if she habitually trades to or from a port outside those limits (Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 11 (5)).

(*a*) The bye-law may limit the exemption to vessels under a certain gross tonnage; but if it exempts from compulsory pilotage vessels which, at the 7th March, 1913, were in practice subject to compulsory pilotage, it requires confirmation by Parliament (*ibid.*, s. 11 (4)).

(*b*) A bye-law may, however, provide that these vessels shall be subject to compulsory pilotage, if in practice so subject at the 7th March, 1913 (*ibid.*, s. 12).

(*c*) *Ibid.*, s. 32. As to unqualified persons moving ships, and circumstances in which a bye-law must be made, see p. 605, *ante*.

(*d*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 15. On the date on which this provision comes into force the M. S. Act, 1894, s. 633, is repealed, as also in effect will be that part of the Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 74, which deals with damage done while the vessel is under compulsory pilotage. As to the liability of a master or owner in districts which are made compulsory by Pilotage Order and which previously were not compulsory, see p. 598, *ante*. For the existing law as to the liability of the owner and master under compulsory pilotage, see p. 531, *ante*; Marsden, Collisions at Sea, 6th ed., p. 216; as to the present relations between master and pilot under compulsory pilotage, see *The Elysia*, [1912] P. 152; *The Tactician*, [1907] P. 244, C. A.; *The Ape* (1914), 30 T. L. R. 286.

Part XVI.—Limitation of Liability of Owners and Others.

SECT. 1. Persons in whose Favour the Limitations Apply.

SECT. 1.—*Persons in whose Favour the Limitations Apply.*

Persons to whom principle applies.

964. The liability of shipowners (*a*), charterers by demise (*b*), builders and other parties interested in the building of a ship in British dominions (*c*), owners of docks and canals, and harbour and conservancy authorities (*d*), to pay damages (*e*) is in certain circumstances limited by statute (*f*). The right to limitation of liability extends both to foreign and British owners (*g*), and to equitable as well as registered owners (*h*), but the ship in respect of which a limitation of liability is sought must, if British, be

(*a*) M. S. Act, 1894, s. 503 (1). For definition of "ship," see *The Mudlark*, [1911] P. 116, in which a sea-going hopper barge without means of propulsion was held to be a "ship" in respect of which liability might be limited; see also p. 14, *ante*. As to the total immunity from liability conferred by statute in certain cases, see M. S. Act, 1894, s. 502.

(*b*) M. S. Act, 1906, s. 71. This provision accords with the decision in *Jackson* (*Sir John*), *Ltd.* v. *S.S. Blanche* (*Owners*), [1908] A. C. 126.

(*c*) M. S. Acts, 1898, s. 1; 1906, ss. 70, 85.

(*d*) M. S. Act, 1900, s. 2. "Harbour authority" and "conservancy authority" are, for the purpose of this provision, as defined in M. S. Act, 1894, s. 742.

(*e*) The statutes do not relieve the persons limiting their liability from any obligation other than an obligation to pay damages, and do not when the statutory amount has been paid put them in the position of innocent parties (*The Ettrick* (1881), 6 P. D. 127, C. A. (expenses of wreck-raising)). Nor are such persons exempted from a liability to pay costs (*The Empusa* (1879), 5 P. D. 6), or to pay interest on the amount of their liability from the time of the collision until the time of payment into court (*The Amalia* (1864), 34 L. J. (P. M. & A.) 21; *Straker* v. *Hartland* (1864), 2 Hem. & M. 570; *The Northumbria* (1869), L. R. 3 A. & E. 6; *Smith* v. *Kirby* (1875), 1 Q. B. D. 131; *The Crathie*, [1897] P. 178; see also *African Steam Ship Co.* v. *Swanzy and Kennedy* (1856), 2 K. & J. 660). As between part owners both losses and costs may be brought into account (M. S. Act, 1894, s. 505). Shipowners may contract themselves out of the benefit of the limitation Acts (*Clarke* v. *Dunraven* (*Earl*), *The* "*Satanita*," [1897] A. C. 59).

(*f*) The statute by which limitation was first permitted was stat. (1733) 7 Geo. 2, c. 15. Subsequent statutes dealing with the subject were stat. (1786) 26 Geo. 3, c. 86; stat. (1813) 53 Geo. 3, c. 159; and the M. S. Acts, 1854 and 1862. The statutes at present in force are the M. S. Acts, 1894, 1898, 1900, 1906, and these extend to the whole of His Majesty's dominions (M. S. Act, 1894, s. 509). The principle of limitation has been described as an abridgment, for political reasons, of full indemnity, the natural right of justice (*per* Dr. LUSHINGTON in *The Amalia* (1863), Brown. & Lush. 151), the political object in view being the encouragement of shipping by the protection of the shipowner against the wrongdoing of the master (*The Northumbria* (1869), L. R. 3 A. & E. 6). As to how far limitation Acts are retrospective in character, see *The Langdale* (1907), 76 L. J. (ADM.) 154; as to pilots, see Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 35; and pp. 604, 605, *ante*.

(*g*) M. S. Act, 1894, s. 503. It appears that a ship will be deemed to be foreign if registered abroad, even though she is in fact the property of British owners (*The Brinio* (1891), 90 L. T. Jo. 249).

(*h*) *The Spirit of the Ocean* (1865), Brown. & Lush. 336.

registered, unless it is either exempt from registration or is British built and has never passed into foreign ownership (*i*). A shipowner is not debarred from limiting his liability by the fact that he is carrying under contract (*k*).

SECT. 1. **Persons in whose Favour the Limitations Apply.**

SECT. 2.—*Losses in Respect of which the Limitations Apply.*

Losses to which principle applies.

965. The losses in respect of which the liability of the owner or charterer is limited are, firstly, loss of life or personal injury caused to any person, and damage or loss caused to any goods, merchandise or other things whatsoever on board their own ship (*l*); secondly, loss of life or personal injury caused to persons carried on another vessel (*m*), or loss or damage caused to another vessel or any goods, merchandise or other things whatsoever on board another vessel, by the improper navigation of their own ship (*n*); and, thirdly, loss or damage caused to property or rights of any kind, whether on land or water, fixed or movable, by the improper navigation of their own ship (*o*).

The losses in respect of which the liability of dock and canal owners and harbour and conservancy authorities is limited are any loss or damage caused to any goods, merchandise or other things whatsoever on board any vessel or vessels (*p*).

To entitle any of these persons or bodies to limited liability the losses must have occurred without their actual fault or privity (*q*).

(*i*) This is the combined effect of M. S. Acts, 1894, ss. 1, 2, 72, 508; 1898, s. 1; 1906, ss. 70, 85. Unregistered ships could formerly not limit (*The Andalusian* (1878), 3 P. D. 182). As to what ships are exempt from registration, see p. 16, *ante*.

(*k*) *The Normandy* (1870), L. R. 3 A. & E. 152; *London and South Western Rail. Co.* v. *James* (1872), 8 Ch. App. 241; compare *Doolan* v. *Midland Rail. Co.* (1877), 2 App. Cas. 792.

(*l*) M. S. Act, 1894, s. 503 (1). These words cover passengers' luggage (*The Stella*, [1900] P. 161). The loss must take place "on board the ship," and there can therefore be no limitation in respect of loss of goods after they have been transhipped (*The Bernina* (1886), 12 P. D. 36). Proof that a person was a passenger may be given by production of a "passenger list" (M. S. Act, 1894, s. 507; see pp. 344, 345, *ante*).

(*m*) For definition of "vessel," see M. S. Act, 1894, s. 742; and p. 14, *ante*.

(*n*) M. S. Act, 1894, s. 503 (1). It is not necessary that the loss should be caused by the master or by a member of the crew, providing the loss is caused, while the vessel is being navigated, by the negligence of some person for whom the owner is responsible (*The Warkworth* (1884), 9 P. D. 145, C. A.).

(*o*) M. S. Act, 1900, s. 2.

(*p*) *Ibid.*

(*q*) An owner is not entitled to limit his liability in respect of loss caused by his own negligence when in charge of his own ship (see M. S. Act, 1894, s. 508: *Wilson* v. *Dickson* (1818), 2 B. & Ald. 2; *The Volant* (1842), 1 Wm. Rob. 383), but he will not be held guilty of "fault or privity" merely because he was on board (*The Obey* (1866), L. R. 1 A. & E. 102). The fault or privity of an owner does not preclude his co-owners from limiting the liability (*The Spirit of the Ocean* (1865), Brown. & Lush. 336; *The Obey, supra*; *The Cricket, The Endeavour* (1882), 5 Asp. M. L. C. 53). Owners will not be entitled to limit where they have sent a ship to sea in an unseaworthy condition, but a ship will not be deemed unseaworthy merely

SECT. 3. **Statutory Limits of Liability.**

SECT. 3.—*Statutory Limits of Liability.*

Statutory limits of liability.

966. Shipowners and charterers entitled to limit their liability cannot be made liable in damages beyond the following amounts, namely, £15 per ton, of their ship's tonnage where there is loss of life or personal injury, whether accompanied by other losses or not; and £8 per ton in respect of loss or damage to vessels, goods, merchandise or other things, or to property or rights of any kind, whether accompanied by loss of life or personal injury or not (*r*). The court sees that a shipowner is not made liable to pay any sum in excess of these amounts out of any moneys over which the court has control (*s*).

Dock and canal owners and harbour and conservancy authorities.

967. Dock and canal owners and harbour and conservancy authorities entitled to limited liability cannot be made liable in respect of losses with regard to which their liability is limited for more than £8 per ton of the tonnage of the largest registered British ship which, at the time of such loss or damage occurring, is, or within the period of five years previous thereto has been, within the area over which they perform any duty or exercise any power (*t*).

because loss has been caused by the misuse of proper gear by the crew (*The Diamond*, [1906] P. 282). An owner is not precluded from limiting by reason of the fault or privity of his agent. Nor must the paid agent of a company be taken to be an owner merely because he is registered as managing owner (*The Yarmouth*, [1909] P. 293); as to the intention of the words "fault or privity," see also *The Warkworth* (1883), 9 P. D. 20, 21. Loss caused by fault or privity may be insured against by the person entitled but for such fault or privity to limit his liability (M. S. Act, 1894, s. 506).

(*r*) *Ibid.*, s. 503 (1); M. S. Act, 1900, s. 1. As to the distribution of the fund where the life claims exceed £7 per ton, see title ADMIRALTY, Vol. I., p. 111. In such cases the life claims must be assessed as though the liability was unlimited (*Glaholm* v. *Barker* (1866), L. R. 2 Eq. 598), and rank *pari passu* with the claims for goods in respect of the balance which is not covered by the £7 per ton against the £8 per ton (*The Victoria* (1888), 13 P. D. 125).

(*s*) *Leycester* v. *Logan* (1857), 3 K. & J. 446 (one claimant not allowed to recover in full against the proceeds of the sale of a ship about to be made by the Admiralty Court although judgment had been recovered against him); *The Kauss* (1904), 20 T. L. R. 326. In *Jenkins* v. *Great Central Rail. Co.* (1912), *Shipping Gazette*, 13th January, C. A., a cargo owner had succeeded in respect of loss of cargo consequent on collision against the shipowner in the court of first instance. The whole amount due under the judgment was paid into court as a condition of stay pending appeal. Notice of appeal was given, but subsequently the shipowner, having after the judgment obtained a limitation decree and paid into court the full amount for which he was liable under the M. S. Acts, asked leave to withdraw his appeal, claimed to have the money he had paid in returned to him, and sought an order that the cargo owner should satisfy his claim from the limitation fund. The Court of Appeal held that the shipowner was entitled to the payment out and order he sought.

(*t*) M. S. Act, 1900, s. 2. A ship is not deemed to have been within the area over which a harbour or a conservancy authority performs any duty or exercises any powers, by reason only that it has been built or fitted out within such area, or that it has taken shelter within, or passed through, such area on a voyage between two places both situate outside that area, or that it has loaded or unloaded mails or passengers within that area (*ibid.*).

Trinity House pilot.

968. A Trinity House pilot who has executed a bond cannot be made liable for neglect or want of skill beyond the penalty of the bond and the amount payable to him on account of pilotage in respect of the voyage in which he was engaged when he became liable (*a*).

Distinct losses.

969. The amounts limited are payable in respect of losses occurring on each distinct occasion (*b*).

Tonnage.

970. For the purposes of limitation of liability the tonnage of a steamship is her registered tonnage with the addition of any engine-room space deducted for the purpose of ascertaining that tonnage, and that of a sailing ship is her registered tonnage; any space occupied by seamen or apprentices and appropriated to their use which is certified in accordance with the regulations must not be included in such tonnage (*c*).

Where a foreign ship has been or can be measured according to British law, her tonnage ascertained by that measurement is deemed to be her tonnage for limitation purposes (*d*).

Where a foreign ship has not been and cannot be measured according to British law the court may direct either the surveyor-general of ships in the United Kingdom, or the chief measuring officer of any British possession abroad, to give a certificate stating what in his opinion would have been the tonnage of the ship if measured according to British law, and the tonnage so stated

(*a*) M. S. Act, 1894, s. 620. The party who sued first was formerly entitled to priority, but under the Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 35, the court may distribute the amount rateably; see p. 605, *ante*.

(*b*) M. S. Acts, 1894, s. 503 (3); 1900, s. 3. The limitation under the M. S. Act, 1900, applies whether liability arises at common law or under any general or private Act, and notwithstanding anything contained in such Act (*ibid.*, s. 3). In considering whether two losses occur on the same or on distinct occasions the test to be applied is whether both are the result of the same act of want of seamanship (*The Creadon* (1886), 5 Asp. M. L. C. 585; *The Schwan, The Albano*, [1892] P. 419, C. A.; *The Rajah* (1872), L. R. 3 A. & E. 539).

(*c*) M. S. Acts, 1894, s. 503 (2); 1906, s. 69; 1907, s. 1. By these Acts the doubt which formerly existed as to the deduction of navigation spaces for limitation purposes has now been removed, and such spaces may clearly be excluded; see *The Umbilo*, [1891] P. 118; *The Pilgrim*, [1895] P. 117. As to the deductions to be made in the case of ships with double bottoms, see *The Zanzibar*, [1892] P. 233. Unless the register is shown to be incorrect (see *The Recepta* (1889), 14 P. D. 131; *The Franconia* (1878), 3 P. D. 164, C. A.), the tonnage of the vessel is considered to be the tonnage appearing in the register at the time of the collision; see *The John McIntyre* (1881), 6 P. D. 200; *The Dione* (1885), 5 Asp. M. L. C. 347. As to measurement and certificates of tonnage, see p. 19, *ante*.

(*d*) M. S. Act, 1894, s. 503 (2) (b). The spaces shown by the certificates of registry of countries adopting the British system of measuring (see M. S. Act, 1894, s. 84) are now deemed to be certified for the purposes of limitation (see M. S. Act, 1906, s. 55), and the difficulty with regard to the certification of deductions in the case of foreign ships is now removed (see *The Franconia, supra*: *The Cathay* (1900), 9 Asp. M. L. C. 100; *The Cordilleras*, [1904] P. 90; *S.S. "Olga" (Owners)* v. *S.S. "Anglia" (Owners)* (1905), 42 Sc. L. R. 439).

SECT. 3. **Statutory Limits of Liability.**

in the certificate is deemed to be her tonnage for limitation purposes (*e*).

SECT. 4.—*Procedure.*

Procedure.

971. Limitation proceedings are begun by application to the proper court of the person or body entitled to limit liability (*f*). Liability must have been alleged to have been incurred by such person or body (*g*), but it is unnecessary that such person or body should before commencing limitation proceedings (*h*) admit liability. It seems, however, that liability must be admitted before a decree can be obtained (*i*).

The court so applied to may determine the amount of the owner's liability, and, if there is more than one claimant, may distribute that amount rateably among the several claimants (*k*). The court may stay proceedings in any other court, and usually does so (*l*), unless it considers the case one which ought to go before a jury (*m*).

The court may proceed in such manner and subject to such regulations as it thinks just as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to the payment of costs (*n*).

(*e*) M. S. Act, 1894, s. 503 (2) (c).

(*f*) *Ibid.*, s. 504; M. S. Act, 1900, s. 2 (3). As to the jurisdiction of the Admiralty Division generally, see title ADMIRALTY, Vol. I., p. 73; and as to procedure in limitation cases, *ibid.*, pp. 108 *et seq.*

(*g*) M. S. Acts, 1894, s. 504; 1900, s. 2 (3).

(*h*) *The Amalia* (1863), Brown. & Lush. 151; *The Sisters* (1875), 2 Asp. M. L. C. 589. In both these cases there was a question of releasing a ship under arrest; Williams and Bruce, Admiralty Practice, 3rd ed., p. 380, n.; see also *The Karo* (1887), 13 P. D. 24.

(*i*) *Hill* v. *Andus* (1855), 1 K. & J. 263. In *The Clutha* (1876), 45 L. J. (P.) 108, and *Wahlberg* v. *Young* (1876), 45 L. J. (Q. B.) 783, although a limitation decree was sought before liability was admitted, the decree was not made until an admission of liability had in fact been made.

(*k*) As to the methods of distribution adopted by the court, see title ADMIRALTY, Vol. I., p. 110.

(*l*) *Leycester* v. *Logan* (1857), 3 K. & J. 446. The proceedings must be directed to the recovery of losses in respect of which liability may be limited (*London and South Western Rail. Co.* v. *James* (1872), 8 Ch. App. 241).

(*m*) As in the case of actions under the Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93); see *Roche* v. *London and South Western Rail. Co.*, [1899] 2 Q. B. 502, C. A.; *The Nereid* (1889), 14 P. D. 78. The court has, however, stayed such actions; see *London and South Western Rail. Co.* v. *James*, *supra*; see also, as to the staying of actions by the court, *The Clutha*, *supra*; *The Alne Holme* (first action) (1882), 4 Asp. M. L. C. 593; *Milburn* v. *London and South Western Rail. Co.* (1870), L. R. 6 Exch. 4; *The Expert* (1877), 3 Asp. M. L. C. 381.

(*n*) Thus the court decides whether a party is debarred from claiming on the fund by reason of an order for discontinuance (*The "Kronprinz" (Owners of Cargo)* v. *The "Kronprinz" (Owners)*, *The "Ardandhu"* (1887), 12 App. Cas. 256). A cargo owner is not prevented from proving the value of the ship in a limitation action by the findings in a collision action to which he was no party (*Van Eijck (C. A.) and Zoon* v. *Somerville*, [1906] A. C. 489). The persons limiting their liability must bear the costs of necessary issues arising in regard to the distribution of the fund (*The Empusa* (1879), 5 P. D. 6; *African Steam Ship Co.* v. *Swanzy and Kennedy*

Collisions.

972. Where each of two ships is to blame for a collision the owner of either may limit his liability in respect of any balance which he may have to pay (*o*).

Claims settled out of court.

973. A shipowner limiting his liability is entitled to have claims settled out of court taken into consideration in the distribution of the fund (*p*).

Part XVII.—Liens on Ship, Freight, and Cargo.

SECT. 1.—*Nature and Extent of Maritime Liens.*

Nature and extent.

974. A maritime lien is a claim or privilege upon a maritime *res* (*a*) in respect of service done to or injury caused by it (*b*). Such lien does not include or require possession of the *res*, for it is a claim or privilege on the *res* to be carried into effect by legal process (*c*). A maritime lien travels with the *res* into whosesoever possession it may come. It is inchoate from the moment the claim or privilege attaches, and when called into effect by the legal process of a proceeding *in rem* relates back to the period when it first attached (*d*).

Extent of judgment *in rem*.

975. When a judgment *in rem* is pronounced in favour of a maritime lien, it binds all the world to the extent that it enables the holder of the maritime lien to follow the *res* into whosesoever possession it may come, irrespective of the personal liability of such person (*e*). It is not necessary that the lien should be a maritime lien by the law of England. It is sufficient if it is pronounced to be a maritime lien by the judgment *in rem* of a foreign court of competent jurisdiction (*f*).

Need not be a maritime lien by law of England.

(1856), 2 K. & J. 660; *The Rijnstroom* (1899), 8 Asp. M. L. C. 538). The period may be shorter than that allowed for bringing loss of life claims under the Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93), even although there may have been loss of life (*The Alma*, [1913] P. 55).

(*o*) *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.* (1882), 7 App. Cas. 795; see also *The Hector* (1883), 8 P. D. 218, C. A.; and see pp. 522, 523, *ante*.

(*p*) *Rankine* v. *Raschen* (1877), 4 R. (Ct. of Sess.) 725; *The Foscolino* (1885), 5 Asp. M. L. C. 420. For form of agreement to settle out of court and to distribute funds among persons entitled, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 86.

(*a*) *Currie* v. *M'Knight*, [1897] A. C. 97; and see title ADMIRALTY, Vol. I., p. 61. The admiralty law as to maritime liens is the same in England and Scotland. There can be no maritime lien upon a thing which is not a ship or her apparel or cargo (*Wells* v. *Gas Float Whitton No. 2* (*Owners*), [1897] A. C. 337), or when the *res* is a King's ship or is owned by a foreign state (*The Constitution* (1879), 4 P. D. 39; *The Parlement Belge* (1880), 5 P. D. 197, C. A.).

(*b*) *The Ripon City*, [1897] P. 226.

(*c*) *Harmer* v. *Bell*, *The Bold Buccleugh* (1851), 7 Moo. P. C. C. 267.

(*d*) *Ibid.*, at p. 284; *Hamilton* v. *Baker*, *The* "*Sara*" (1889), 14 App. Cas. 209, *per* Lord HALSBURY, L.C., at p. 216.

(*e*) As to enforcement of liens, see pp. 625 *et seq.*, *post*.

(*f*) *Minna Craig Steamship Co.* v. *Chartered Mercantile Bank of India*,

SECT. 1.

Nature and Extent of Maritime Liens.

Liens recognised by English law.

976. The maritime liens recognised by English law are those in respect of bottomry and *respondentia* bonds (*g*), salvage, seamen's wages (*h*), wages, disbursements and liabilities of the master, damage (*i*), life salvage (*j*), fees and expenses of a receiver of wreck (*k*), damage sustained by the owner or occupier of lands used to facilitate the rendering of assistance to a wreck (*l*), and costs of a local authority incurred in the burial of carcases washed or thrown over from a vessel (*m*).

When lien arises.

977. The maritime lien for damage done by a ship arises when damage is done by the ship (*n*) to another ship or property (*o*), whether on the high seas or in the body of a county (*p*), through some wrongful act of navigation of the ship from want of skill or negligence of the persons by whom she is navigated, being at the time of the damage (*q*) her owners or the servants of her owners, or having the possession and control of her by their authority (*r*). Thus charterers who have the control, or any persons who are allowed to have possession, of a ship for the purpose of using or employing her in the ordinary manner are deemed to have authority to subject her to maritime liens, and so to make her liable for their negligence (*s*);

London and China, [1897] 1 Q. B. 460, C. A. By German law, non-delivery of goods specified in a bill of lading entitles the holder thereof to a maritime lien on the ship.

(*g*) See p. 70, *ante*.

(*h*) As to whether a pilot can be regarded as a seaman for this purpose, see title ADMIRALTY, Vol. I., p. 69; and compare Abbott on Merchant Shipping, 14th ed., p. 1012. A ship's husband is not a seaman, and has no lien for his wages even when earned on the ship (*The Ruby* (No. 2), [1898] P. 59).

(*i*) There is no such lien for towage or necessaries (*Westrup* v. *Great Yarmouth Steam Carrying Co.* (1889), 43 Ch. D. 241; *Northcote* v. *The Heinrich Björn* (*Owners*), *The Heinrich Björn* (1886), 11 App. Cas. 270).

(*j*) M. S. Act, 1894, s. 544; *The Fusilier* (1865), Brown. & Lush. 341, P. C.; *Cargo ex Schiller* (1877), 2 P. D. 145, C. A.; and see p. 561, *ante*.

(*k*) M. S. Act, 1894, s. 567.

(*l*) *Ibid.*, s. 513 (2).

(*m*) Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), s. 46; *The Suevic*, [1908] P. 292 ("carcases" includes frozen carcases being part of a ship's cargo).

(*n*) The damage must be done by the ship, so, when the crew cut the moorings of another ship whereby she was damaged, their owner was not responsible because the damage was not done mediately or immediately by the ship (*Currie* v. *M'Knight*, [1897] A. C. 97, approving *Harmer* v. *Bell*, *The Bold Buccleugh* (1851), 7 Moo. P. C. C. 267). The lien cannot be enforced against the property of a foreign sovereign state destined to its public use (*The Jassy*, [1906] P. 270).

(*o*) *The Merle* (1874), 2 Asp. M. L. C. 402 (damage to pier) *Mersey Docks and Harbour Board* v. *Turner*, *The "Zeta,"* [1893] A. C. 468 (pier head); *River Wear Commissioners* v. *Adamson* (1877), 2 App. Cas. 743 (ship not liable when damage caused by *vis major* after crew obliged to abandon her); and see title ADMIRALTY, Vol. I., p. 72.

(*p*) *The Veritas* (1901), 9 Asp. M. L. C. 237.

(*q*) *The Parlement Belge* (1880), 5 P. D. 197, 218, C. A.; *S.S. "Utopia"* (*Owners*) v. *S.S. "Primula"* (*Owners and Master*), *The "Utopia,"* [1893] A. C. 492, P. C.

(*r*) *The Ripon City*, [1897] P. 226, 245; and see pp. 527, 547, *ante*.

(*s*) *The Ripon City*, *supra*, at p. 244; *The Tasmania* (1888), 13 P. D.

but the presumption is not absolute, and may be rebutted by showing that the person navigating the ship did not derive any authority from the owners, or that the injured party is precluded by the terms of a contract from recovering against them (*t*).

When the person in charge or possession of the ship has no such authority, express or implied, no lien arises; thus there is no lien for wilful damage by the master, or for his wilful acts (*a*), or for an act of a person in possession of the ship done in asserting a right claimed by him not as a servant or on behalf of the owner (*b*).

To what property lien attaches.

978. The moment the damage is done by the ship the lien attaches to her hull, tackle, apparel, furniture, and freight (*c*). It does not originate in possession and it follows the ship into whosesoever possession it may pass (*d*), and continues even after the ship is wrecked, and may be enforced against the wreckage (*e*).

Salvage.

979. The maritime lien for salvage is created by the rendering of salvage services to a maritime *res* or saving of life from a ship (*f*). The lien attaches to the ship (*g*), freight, and cargo severally, but not jointly, and each is liable to contribute towards the salvage in proportion to its value, but cannot, except in cases of express agreement, be made liable for the salvage due from the other (*h*).

110, 118; *The Ticonderoga* (1857), Sw. 215 (damage done by ship when in possession and under full control of charterers); *The Ruby Queen* (1861), Lush. 266; *The Lemington* (1874), 2 Asp. M. L. C. 475 (damage done by yacht in hands of yacht agents for sale).

(*t*) *The Tasmania* (1888), 13 P. D. 110, 118; see p. 528, *ante*.

(*a*) *The Druid* (1842), 1 Wm. Rob. 391; *The Ida* (1860), Lush. 6.

(*b*) *Yeo* v. *Tatem, The "Orient"* (1871), L. R. 3 P. C. 696 (agent for sale claiming a right over foreshore); compare *Morgan* v. *Castlegate Steamship Co., The "Castlegate,"* [1893] A. C. 38, 52; *The "Halley"* (1868), L. R. 2 P. C. 193; *The Orient* (1869), 3 Mar. L. C. 321; *The Lemington* (1874), 2 Asp. M. L. C. 475.

(*c*) *The Mary Ann* (1865), L. R. 1 A. & E. 8, 11; *The Roecliff* (1869), L. R. 2 A. & E. 363; *The Alexander* (1812), 1 Dods. 278 (sails and rigging); *Dundee* (1823), 1 Hag. Adm. 109 (fishing gear); *The Victor* (1860), Lush. 72; *The Leo* (1862), Lush. 444 (freight); title ADMIRALTY, Vol. I., p. 61.

(*d*) *Dean* v. *Richards, The "Europa"* (1863), 2 Moo. P. C. C. (N. S.) 1; *The Mellona* (1848), 3 Wm. Rob. 16.

(*e*) *Neptune* (1824), 1 Hag. Adm. 227; *Harmer* v. *Bell, The Bold Buccleugh* (1851), 7 Moo. P. C. C. 267; *The Annie* (1886), 12 P. D. 50.

(*f*) See title ADMIRALTY, Vol. I., p. 74; *The Fusilier* (1865), Brown. & Lush. 341, P. C.; *Cargo ex Schiller* (1877), 2 P. D. 145, C. A.; M. S. Act, 1894, s. 544. The maritime *res* in case of salvage must be a ship or part of a ship or her apparel or cargo (*Wells* v. *Gas Float Whitton No. 2 (Owners)*, [1897] A. C. 337), but does not include ships or property of the King or of a foreign state, even though carried in a private vessel or private property on board a foreign warship which for public purposes is taking care of it (*The Constitution* (1897), 4 P. D. 39; *The Parlement Belge* (1880), 5 P. D. 197, C. A.; *Marquis of Huntly* (1835), 3 Hag. Adm. 246; *The Bertie* (1886), 6 Asp. M. L. C. 26; *The Nile* (1875), L. R. 4 A. & E. 449), or wearing apparel of the passengers, master and crew, and effects for their daily use (*The Willem III.* (1871), L. R. 3 A. & E. 487, 490).

(*g*) The lien cannot be enforced if the ship belongs to the Crown (*Young* v. *S.S. "Scotia,"* [1903] A. C. 501, P. C.); and see pp. 560, 561, *ante*.

(*h*) *The Westminster* (1841), 1 Wm. Rob. 229; *The Pyrénnée* (1863), Brown. & Lush. 189; *The Mary Pleasants* (1857), Sw. 224; *The Raisby* (1885), 10 P. D. 114; *The Prinz Heinrich* (1888), 6 Asp. M. L. C. 273; *The Cumbrian* (1887), 6 Asp. M. L. C. 151.

SECT. 1. **Nature and Extent of Maritime Liens.**

Wages.

980. The maritime lien for the wages of the master and seamen (*i*) attaches to the ship and freight and every part thereof (*k*), provided the wages have been earned on board the ship (*l*). It does not affect the right to the lien that the master and crew were engaged by some person who had no right to engage them, so long as they have earned the wages on the ship (*m*). This lien is not dependent on the earning of freight (*n*), but if it does not attach to the ship it cannot attach to the freight, for a lien on freight is consequential to the lien on the ship (*o*).

Disbursements and liabilities.

981. Disbursements and liabilities properly made or incurred by a master on account of a ship give him a maritime lien on the ship, which may be enforced in the same way as his lien for wages (*p*), but the only disbursements and liabilities which can create this lien are those made by the master by virtue of his general authority and in the ordinary course of his employment, and for which he can pledge his owners' credit (*q*).

Bottomry and *respondentia*.

982. As soon as a bottomry or *respondentia* bond (*r*) is executed a maritime lien attaches to the property hypothecated, and continues to attach until the total destruction of the property (*s*).

(*i*) For definition of "master" and "seamen," see M. S. Act, 1894, s. 742; and p. 14, *ante*. "Wages" includes subsistence money, *viaticum*, compensation for wrongful dismissal, money allowance instead of food, a bonus to master to stop by ship and bring her home (*The Madonna D'Idra* (1811), 1 Dods. 37, 40; *The Sydney Cove* (1815), 2 Dods. 11, 13; *Phillips* v. *Highland Rail. Co., The "Ferret"* (1883), 8 App. Cas. 329, P. C.; *The Tergeste* (1902), 9 Asp. M. L. C. 356; *The Elmville* (No. 2), [1904] P. 422).

(*k*) *Neptune* (1824), 1 Hag. Adm. 227, 238.

(*l*) See title ADMIRALTY, Vol. I., p. 69; *The Sydney Cove, supra; Margaret* (1855), 3 Hag. Adm. 238; *The Reliance* (1843), 2 Wm. Rob. 119, 122; *Morgan* v. *Castlegate Steamship Co., The "Castlegate,"* [1893] A. C. 38, 52.

(*m*) *The Edwin* (1864), Brown. & Lush. 281 (master appointed by person fraudulently in possession); *Phillips* v. *Highland Rail. Co., The "Ferret," supra* (seamen earning wages under person attempting to steal ship).

(*n*) M. S. Act, 1894, s. 157.

(*o*) *Morgan* v. *Castlegate Steamship Co., The "Castlegate," supra; The Orienta*, [1895] P. 49, C. A.

(*p*) See title ADMIRALTY, Vol. I., p. 69; M. S. Act, 1894, s. 167; *Hamilton* v. *Baker, The "Sara"* (1889), 14 App. Cas. 209; *Morgan* v. *Castlegate Steamship Co., The "Castlegate," supra*. The costs of a master in unsuccessfully defending an action on a dishonoured bill drawn by him on his owners for coals supplied are not liabilities properly incurred unless the defence was reasonably necessary in the interest of the ship (*The Elmville* (No. 2), *supra*).

(*q*) *The Ripon City*, [1897] P. 226. It is not necessary that the master should have been appointed by the real owners; it is sufficient if he was appointed by persons whom the owners have allowed to have possession and control of the ship (*Morgan* v. *Castlegate Steamship Co., The "Castlegate," supra; The Orienta*, [1895] P. 49, C. A.; *The Turgot* (1886), 11 P. D. 21; *The Cairo, Watson and Parker* v. *Gregory* (1908), 11 Asp. M. L. C. 161; and see p. 64, *ante*, as to power of master to bind ship and cargo.

(*r*) See title ADMIRALTY, Vol. I., p. 65; pp. 241 *et seq.*, *ante*.

(*s*) *Thomson* v. *Royal Exchange Assurance Co.* (1813), 1 M. & S. 30; *Stephens* v. *Broomfield, The "Great Pacific"* (1869), L. R. 2 P. C. 516; *Cargo ex Sultan* (1859), Sw. 504, 510.

SECT. 2.—*Statutory Rights in Rem.*

SECT 2. Statutory Rights in Rem.

983. A statutory lien attaches when a ship is arrested in an admiralty action *in rem* (*t*), or in a cause of towage (*a*), mortgage (*b*), ownership (*c*), possession (*d*), building, equipping, or repairing any ship, if the ship or proceeds are under arrest of the court at the time the cause is instituted (*e*); for necessaries supplied to any foreign ship, or to any ship elsewhere than in the port to which she belongs, unless the owner is domiciled in England or Wales (*f*); and for damage to cargo imported into England or Wales, unless the owner is domiciled in England or Wales (*g*). Statutory lien.

A statutory lien is of no avail against any subsisting charge on the ship, nor against a *bonâ fide* purchaser for value (*h*).

SECT. 3.—*Possessory Liens.*

984. In the case of shipping a possessory lien is the right of a person in whose possession a ship or her appurtenances is or are to retain possession thereof until payment or discharge of some debt or obligation due to that person in respect thereof. Such a right belongs to one who repairs, alters, or otherwise bestows labour or skill upon a ship if he is in possession (*i*). There is no power to realise the security, even though expenses must be incurred in keeping it (*k*). Possessory lien.

SECT. 4.—*Ranking of Liens.*

985. Maritime liens arising *ex contractu* or *quasi ex contractu* (*l*), Priority of liens.

(*t*) *The Cella* (1888), 13 P. D. 82, C. A.; title ADMIRALTY, Vol. I., p. 68.

(*a*) Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), s. 6; *Northcote* v. *The Henrich Björn* (*Owners*) (1886), 6 Asp. M. L. C. 1, H. L.; *Westrup* v. *Great Yarmouth Steam Carrying Co.* (1889), 6 Asp. M. L. C. 443.

(*b*) Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), s. 3; Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 11; see p. 23, *ante*.

(*c*) Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), s. 4; Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 8.

(*d*) Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), s. 4.

(*e*) Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 4.

(*f*) Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), s. 6; Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 5. The fact that the necessaries man has given credit in an account furnished to his principals does not injure his right (*Foong Tai & Co.* v. *Buchheister & Co.*, [1908] A. C. 458, P. C.).

(*g*) Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 6; *Dapueto* v. *Wyllie, The "Pieve Superiore"* (1874), L. R. 5 P. C. 482; *The Dannebrog* (1874), L. R. 4 A. & E. 386.

(*h*) *Dapeuto* v. *Wyllie, The "Pieve Superiore," supra; The Aneroid* (1877), 2 P. D. 189.

(*i*) *Franklin* v. *Hosier* (1821), 4 B. & Ald. 341; *Williams* v. *Allsup* (1861), 10 C. B. (N. S.) 417. As to what may amount to possession, see *The Scio* (1867), L. R. 1 A. & E. 353; *Re Westlake, Ex parte Willoughby* (1881), 16 Ch. D. 604. It is not necessary in the case of repairs done under contract that they should be completed before the right to retain possession accrues (*The Tergeste*, [1903] P. 26). By usage of trade in the Thames a shipwright has no lien except by express agreement or when he only deals for ready money (*Raitt* v. *Mitchell* (1815), 4 Camp. 146; *Watkinson* v. *Bernadiston* (1726), 2 P. Wms. 367).

(*k*) *Somes* v. *British Empire Shipping Co.* (1860), 8 H. L. Cas. 338; *Thames Iron Works Co.* v. *Patent Derrick Co.* (1860), 1 John. & H. 93.

(*l*) *The Gazelle* (1844), 3 Notes of Cases, 75, 79.

SECT. 4. Ranking of Liens.

such as wages, bottomry and salvage, are equal and co-ordinate, but are payable in the inverse order of their attachment on the *res*, whilst liens *ex delicto*, such as damage, are payable in the order of their attachment (*m*), and have generally priority over liens *ex contractu* (*n*).

The lien for damage has priority over wages whether earned before or after the collision (*o*); to a prior bottomry bond, but not to a subsequent bottomry bond when the bond is given by a stranger who has advanced money for repairs to the extent of the increased value of the vessel (*p*); to prior salvage (*q*), but not to subsequent salvage, because such services have preserved the property for the claimants in respect of damage (*r*).

Several actions arising from one cause.

986. When there are several damage actions arising out of the same collision the maritime liens thereby created are satisfied in the order in which the judgments are obtained. A plaintiff who obtains judgment can enforce his lien to the exclusion of another who institutes his action after the judgment is delivered (*s*), but he is only entitled to his damages rateably with another who institutes his action before the judgment is pronounced (*t*).

Salvage.

987. The lien for salvage ranks before all other liens which attached before the service was rendered, because the salvage service has saved the property for the benefit of the persons interested (*a*). Thus it has priority over the lien for wages earned before the service (*b*), or for damage done before the service (*c*), but is postponed to subsequent liens (*d*). Where there are competing salvage claims the rule is that life salvage when payable by the owners of

(*m*) *The Hope* (1873), 1 Asp. M. L. C. 563; *The Rhadamanthe* (1813), 1 Dods. 201 (bonds given at different dates but upon one advertisement paid *pro ratâ*); *The Exeter* (1799), 1 Ch. Rob. 173. As to priority between several loans on bottomry, see p. 246, *ante*.

(*n*) *The Benares* (1850), 7 Notes of Cases, Supplement, l., liv.; *The Chieftain* (1863), Brown. & Lush. 104; *The Veritas*, [1901] P. 304.

(*o*) *The Duna* (1861), 1 Mar. L. C. 159; *The Linda Flor* (1857), Sw. 309; *The Elin* (1883), 8 P. D. 39, 129, C. A.; *The Chimæra* (1852), cited 8 P. D. 131. This rule applies even to the crews of foreign ships claiming for wages earned subsequently to the collision. It is not based on the rule as to priority of liens *ex delicto*, but on the admiralty equitable doctrine that it is unjust to the owners of the injured ship to allow the fund to be diminished by the payment of wages when the crew have a remedy *in personam*, which the owners of the injured ship may not have. There seems to be no authority that the rule will be enforced in the case of a bankrupt owner; see *The Linda Flor*, *supra*, *per* Dr. LUSHINGTON, at p. 310.

(*p*) *The Aline* (1839), 1 Wm. Rob. 111, 118; *Harmer* v. *Bell*, *The Bold Buccleugh* (1850), 7 Moo. P. C. C. 267, 285.

(*q*) *The Veritas*, *supra*.

(*r*) *Cargo ex Galam* (1863), Brown. & Lush. 167, 181, P. C.; *A.-G.* v. *Norstedt* (1816), 3 Price, 97; *The Sea Spray* (1907), 10 Asp. M. L. C. 462 (expenses of wreck-raising authority).

(*s*) *Bernard* v. *Hyne*, *The Saracen* (1847), 6 Moo. P. C. C. 56.

(*t*) *The Clara* (1855), Sw. 1; but compare *The Africano*, [1894] P. 141.

(*a*) *Cargo ex Galam*, *supra*, at p. 181; *A.-G.* v. *Norstedt*, *supra*; *The Veritas*, *supra*; see also p. 580, *ante*.

(*b*) *The Sabina* (1842), 7 Jur. 182.

(*c*) *The Georg* (1894), 7 Asp. M. L. C. 476; *The Elin*, *supra*.

(*d*) *The Selina* (1842), 2 Notes of Cases, 18; *The Veritas*, *supra*.

SECT. 4. Ranking of Liens.

the vessel has priority over all other claims for salvage, and the claims for salvage of property take priority in the inverse order of attachment (*e*).

Bottomry.

988. The liens for bottomry take precedence in the inverse order of their dates of execution (*f*), and a bottomry bond takes precedence over a master's lien for wages and disbursements earned before the date of the bond (*g*), claims for necessaries (*h*), a mortgage made during the voyage upon which the bond was executed (*i*), prior salvage (*k*), and to a certain extent over prior damage (*l*). It is postponed to the master's lien for wages and disbursements when incurred subsequent to the date of the bond (*m*), to seamen's wages, subsistence money, and *viaticum* (*n*), whenever incurred, to subsequent damage (*o*), to light and dock dues at the port of destination (*p*), and to subsequent salvage (*q*).

Master's lien for wages and disbursements.

989. The master's lien for wages and disbursements has priority over a bottomry bond given before the wages were earned, unless the master is personally liable on the bond (*r*), to salvage rendered before the wages were earned (*s*), to a shipwright's possessory lien to the extent that the master's lien originated before the shipwright took possession (*t*), and to a mortgage, unless the master has guaranteed payment thereof (*a*). But the master's lien is postponed to the seamen's lien for wages (*b*), to a bottomry bond given after the wages earned (*c*), to subsequent salvage (*d*), to

(*e*) M. S. Act, 1894, s. 544; *The Veritas*, [1901] P. 304.

(*f*) *The Rhadamanthe* (1813), 1 Dods. 201; *Eliza* (1833), 3 Hag. Adm. 87; *The Sydney Cove* (1815), 2 Dods. 11; *Betsey* (1813), 1 Dods. 289.

(*g*) *The Hope* (1873), 1 Asp. M. L. C. 563.

(*h*) *The William F. Safford* (1860), Lush. 69. Even though the claim has been pronounced for before the bond was put in suit.

(*i*) *The Royal Arch* (1857), Sw. 269; *The Helgoland* (1859), Sw. 491.

(*k*) *The Selina* (1842), 2 Notes of Cases, 18.

(*l*) See p. 622, *ante*.

(*m*) *The Hope*, *supra*, at p. 567.

(*n*) *The Union* (1860), Lush. 128; *The Madonna D'Idra* (1811), 1 Dods. 37, 40; *Hersey* (1837), 3 Hag. Adm. 404; *The Dowthorpe* (1843), 2 Wm. Rob. 73.

(*o*) *The Aline* (1839), 1 Wm. Rob. 111.

(*p*) *The St. Lawrence* (1880), 5 P. D. 250.

(*q*) *The William F. Safford*, *supra*.

(*r*) *The Hope*, *supra*, at p. 567; *The Salacia* (1862), Lush. 545. But not when he is sole owner (*The William* (1858), Sw. 346; *The Daring* (1868), L. R. 2 A. & E. 260).

(*s*) *The Selina*, *supra*.

(*t*) *The Gustaf* (1862), Lush. 506; *The Immacolata Concezione* (1883), 9 P. D. 37; *The Tergeste*, [1903] P. 26.

(*a*) *The Bangor Castle* (1896), 8 Asp. M. L. C. 156; *The Feronia* (1868), L. R. 2 A. & E. 65; *The Red Rose* (1868), L. R. 2 A. & E. 80; *The Tagus*, [1903] P. 44. The master of a foreign ship has priority in this country for all his wages and disbursements, though by the *lex loci* his rights were limited to the debts incurred on the last voyage; he is also entitled in respect of wages as a seaman whilst acting as super-cargo, and for disbursements made to crew on account of wages.

(*b*) *The Salacia*, *supra*; because they have a right of action against the master.

(*c*) *The Hope*, *supra*.

(*d*) *The Selina*, *supra*.

SECT. 4. Ranking of Liens.

damage (*e*), and to the claim of a material man, and a solicitor's lien for costs when the master is part owner and ordered the repairs or gave the instructions (*f*).

Seamen's lien for wages.

990. The seamen's lien for wages takes priority over the master's lien for wages and disbursements (*g*), to a bottomry bond whenever given (*h*), to the claim of a mortgagee, to towage and light dues (*i*), and to a shipwright's possessory lien to the extent of the wages earned up to the time the vessel is put into the hands of the shipwright (*j*). The seamen's lien is postponed to a damage lien (*k*), to salvage rendered after the wages earned (*l*), to a shipwright's lien from the time he had possession (*m*), and to dock dues (*n*).

Necessaries.

991. The statutory lien for necessaries takes priority over a bottomry bond when the necessaries consist in the payment of dock dues at the port of discharge, and to a master's lien for wages and disbursements when supplied by the order of a master who is part owner of the ship (*o*), but it is postponed to a mortgage and to the solicitor's costs in defending an action brought against the ship before the necessaries were supplied (*p*). Where there are several claims for necessaries they rank equally and are paid *pro ratâ*, provided the holder of the lien is not guilty of laches in prosecuting his claim, because when a ship is sold the court holds the property not only for the first plaintiff, but for all creditors of the same class who assert their claims before an unconditional decree is pronounced (*q*).

Possessory lien.

992. Possessory liens take priority over all claims arising after the ship is taken into possession, but are postponed to those liens which were created before that time, as the holder of the lien is presumed to have taken the ship into his possession with the

(*e*) *The Linda Flor* (1857), Sw. 309 ; *The Panthea* (1871), 1 Asp. M. L. C. 133 ; *The Elin* (1883), 8 P. D. 39, 129, C. A.

(*f*) *The Jenny Lind* (1872), L. R. 3 A. & E. 529 ; *The Heinrich* (1872), L. R. 3 A. & E. 505, 510 ; *The Queen* (No. 2) (1869), 19 L. T. 706; *The Louisa* (1848), 3 Wm. Rob. 99.

(*g*) *The Salacia* (1862), Lush. 545.

(*h*) *The Union* (1860), Lush. 128 ; *The Madonna D'Idra* (1811), 1 Dods. 37, 40 ; *The William F. Safford* (1860), Lush. 69.

(*i*) *Prince George* (1837), 3 Hag. Adm. 376 ; *The Andalina* (1886), 12 P. D. 1.

(*j*) *The Tergeste*, [1903] P. 26 ; *The Immacolata Concezione* (1883), 9 P. D. 37 ; *The Gustaf* (1862), Lush. 506.

(*k*) *The Linda Flor, supra ; The Elin, supra.*

(*l*) *The Sabina* (1842), 7 Jur. 182.

(*m*) See *The Linda Flor, supra ; The Elin, supra.*

(*n*) *The Emilie Millon*, [1905] 2 K. B. 817, C. A. (a dock company which is authorised to detain a ship until the rates are paid can do so notwithstanding that there are maritime liens on the ship before she entered the dock).

(*o*) *The St. Lawrence* (1880), 5 P. D. 250 ; *The Jenny Lind, supra.* As to merger of claim for necessaries in a bottomry bond, see *The Elpis* (1872), L. R. 4 A. & E. 1.

(*p*) *The Heinrich, supra ; The Soblomsten* (1866), L. R. 1 A. & E. 293.

(*q*) *The Africano*, [1894] P. 141.

obligations then on it (*r*); but where the holder of the lien has by his services increased the value of the property the court will give him priority over prior liens to the extent of the increased value of the ship (*s*).

Solicitor's lien for costs.

993. The solicitor's lien (*t*) for costs takes priority over necessaries supplied after the inception of the lien (*a*), and to the master's claim for wages when he is part owner and has instructed the solicitor (*b*). It is postponed to the expense of sending home a shipwrecked foreign crew incurred by a foreign consul (*c*).

SECT. 5.—*Enforcement of Liens.*

SUB-SECT. 1.—*Maritime Liens.*

How enforced.

994. Maritime liens are enforced by a proceeding *in rem* (*d*), followed by the arrest, and if necessary by the sale, of the ship (*e*). To enforce such a lien the Admiralty Court will seize the ship and forcibly dispossess those who claim to detain her or her apparel. If she is in the possession of the holder of a possessory lien, still the court will seize her and will sell her, but out of the proceeds the various claimants will be satisfied according to priority, the holder of the possessory lien retaining such rights of priority as he had while in possession (*f*).

Not transferable.

995. As a general rule maritime liens other than the lien for bottomry are not transferable (*g*), but the Admiralty Court has in some cases allowed persons who have, with the sanction of the court (*h*), paid off claims against a ship to have the same advantages as to priorities as the person had whose claim they have satisfied (*i*).

(*r*) *The Gustaf* (1862), Lush. 506 (salvage); *The Immacolata Concezione* (1883), 9 P. D. 37 (wages); *The Tergeste*, [1903] P. 26 (wages).

(*s*) *The Aline* (1839), 1 Wm. Rob. 111, 118; *Harmer* v. *Bell, The Bold Buccleugh* (1851), 7 Moo. P. C. C. 267.

(*t*) This lien is given by the Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28; see title SOLICITORS, p. 824, *post*. As to duties of the Admiralty Court in making charging orders under this Act, see *The Birnam Wood*, [1907] P. 1, C. A.

(*a*) *The Soblomsten* (1866), L. R. 1 A. & E. 293.

(*b*) *The Heinrich* (1872), L. R. 3 A. & E. 505.

(*c*) *The Livietta* (1883), 8 P. D. 209, 213. Such expenses rank equal to wages (*The "Constancia"* (1866), 15 W. R. 183).

(*d*) See title ADMIRALTY, Vol. I., p. 61.

(*e*) *Harmer* v. *Bell, The Bold Buccleugh, supra*. A master who becomes personally liable for necessaries may proceed *in rem* (*The Marco Polo* (1871), 1 Asp. M. L. C. 54).

(*f*) *The Gustaf, supra; The Harmonie* (1841), 1 Wm. Rob. 178; *The Immacolata Concezione, supra* (sailmakers who gave up the sails which they held under a lien for repairs protected); *Orelia* (1833), 3 Hag. Adm. 75, 83; *Hersey* (1837), 3 Hag. Adm. 404, 407; *The Westmoreland* (1845), 4 Notes of Cases, 173, 174. Once the court has its hands on the ship or proceeds, it will not part therewith until justice has been done to all parties (*The Kalamazoo* (1851), 15 Jur. 885).

(*g*) *The Rebecca* (1804), 5 Ch. Rob. 102, 104; *The Catherine* (1847), 3 Wm. Rob. 1; *Young* v. *Kitchin* (1878), 3 Ex. D. 127.

(*h*) In *The Cornelia Henrietta* (1866), L. R. 1 A. & E. 51, Dr. LUSHINGTON laid down the rule that such payments must not be made without the sanction of the court, and it was followed in *The St. Lawrence* (1880), 5 P. D. 250; see title ADMIRALTY, Vol. I., p. 67.

(*i*) *Kammerhevie Rosenkrants* (1822), 1 Hag. Adm. 62 (bottomry bond-

SECT. 5. **Enforcement of Liens.**

SUB-SECT. 2.—*Statutory Rights in Rem.*

How enforced.

996. Statutory liens which owe their inception to a proceeding *in rem* and arrest of the ship are enforced by sale of the ship, subject to the same conditions as apply to the satisfaction of maritime liens (*j*).

SUB-SECT. 3.—*Possessory Liens.*

How satisfied.

997. The holder of a possessory lien cannot enforce it by sale, but can only continue to hold the property until his claims are paid, even though to do so entails expense (*k*); but should he be dispossessed by the Admiralty Court, then out of the proceeds of the ship he will be paid his claim according to the rules as to priorities (*l*).

SECT. 6.—*Extinction of Liens.*

Extinction of liens.

998. Liens arising from collision between two vessels or in respect of salvage services are lost, unless proceedings are commenced within two years from the date when such liens attached; but any court having jurisdiction to deal with such proceedings may extend the time to such extent and on such conditions as it thinks fit, and will, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant vessel within the jurisdiction of the court or within the territorial waters of the country to which the plaintiff's ship belongs, or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity (*m*). Maritime liens other than those for collisions or salvage are not limited to any time for enforcement, but travel with the ship into whosesoever

holder paying wages of foreign ship to save detention); compare *The William F. Safford* (1860), Lush. 69; *The Fair Haven* (1866), L. R. 1 A. & E. 67; *The Bridgwater* (1877), 3 Asp. M. L. C. 506; *The Lyons* (1887), 6 Asp. M. L. C. 199. A necessaries man who paid wages without consent of the court had his claim postponed to maritime lien and mortgages (*The Janet Wilson* (1857), 6 W. R. 329 (wages paid by shipowner); *The Louisa* (1848), 3 Wm. Rob. 99). Persons who advance money to salvors have no lien on the award. Wages and salvage cannot be assigned before accrual except in case of ships employed in salvage service or by an agreement pronounced equitable by the court; see M. S. Act, 1894, ss. 156, 163; *The Wilhelm Tell*, [1892] P. 337; *The Saltburn* (1894), 7 Asp. M. L. C. 474.

(*j*) *The Cella* (1888), 13 P. D. 82; *The Skipwith* (1864), 10 Jur. (N. S.) 445. The powers of the Admiralty Court Acts, 1840 (3 & 4 Vict. c. 65) and 1861 (24 Vict. c. 10), will not be exercised to enforce a claim for necessaries when these are merely items in a general mercantile account between shipowner and agent (*The Comtesse de Frègeville* (1861), Lush. 329; *El Salto* (1908), 25 T. L. R. 99). As to sale, see title ADMIRALTY, Vol. I., pp. 92, 123.

(*k*) *Mulliner* v. *Florence* (1878), 3 Q. B. D. 484, C. A.; *Somes* v. *British Empire Shipping Co.* (1860), 8 H. L. Cas. 338.

(*l*) *Orelia* (1833), 3 Hag. Adm. 75, 83; *Hersey* (1837), 3 Hag. Adm. 404, 407; *The Westmoreland* (1845), 4 Notes of Cases, 173, 174; *The Tergeste* (1902), 9 Asp. M. L. C. 356.

(*m*) Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 8; *The Cambric* (1912), 29 T. L. R. 69; see p. 526, *ante*.

possession it may come (*n*), but may be lost through lack of reasonable diligence in enforcing them (*o*).

SECT. 6. Extinction of Liens.

A maritime or statutory lien is extinguished by payment, by giving bail in an action instituted to enforce the lien where bail can be demanded (*p*), and by the sale of the ship by a court of competent authority (*q*).

Maritime lien.

Possessory liens are extinguished by payment, by yielding up possession, or by arrest of the ship by a court of competent authority (*r*).

Possessory lien.

Part XVIII.—Lighthouses.

SECT. 1.—*Lighthouse Authorities.*

999. The general superintendence and management of all lighthouses (*s*), buoys and beacons (*t*), throughout England and Wales and the Channel Islands and the adjacent seas and islands and at Gibraltar (with certain special restrictions as regards the islands of Guernsey and Jersey (*a*)), are vested in the Corporation of the Trinity House (*b*). In Scotland and the adjacent seas and islands

Trinity House.

Commissioners of Northern Lighthouses.

(*n*) *Harmer* v. *Bell, The Bold Buccleugh* (1851), 7 Moo. P. C. C. 267; *The Charles Amelia* (1868), L. R. 2 A. & E. 330; *The Kong Magnus*, [1891] P. 223.

(*o*) In case of the lien for damage reasonable diligence means the doing of that which, having regard to all the circumstances, including considerations of expense and difficulty, could be reasonably required (*The Europa* (1863), Brown. & Lush. 89, 93, P. C.; *The Saracen* (1846), 2 Wm. Rob. 451, 453; *The Europa, supra* (collision in 1850; ship arrested in 1863); *The Kong Magnus, supra* (collision in 1878; ship arrested in 1889, though she had been forty-seven times to British ports)). In a case of disbursements incurred in April, 1880, for which the master instituted his suit in November, 1882, it was held that there had been no want of reasonable diligence on his part (*The Fairport* (1882), 8 P. D. 48). In case of bottomry this lien must be pursued with active diligence and enforced within a reasonable time (*The Rebecca* (1804), 5 Ch. Rob. 102; *The Jacob* (1802), 4 Ch. Rob. 245; *The Royal Arch* (1857), Sw. 269).

(*p*) *The Christiansborg* (1885), 10 P. D. 141, C. A; *The Reinbeck* (1889), 6 Asp. M. L. C. 366, C. A. (where defendants in a foreign court voluntarily put in bail, it was held that the plaintiff, though he had omitted to demand bail in the foreign action, might still resort to British courts). As to costs of bail demanded in an excessive amount, see *The Princesse Marie José* (1913), 29 T. L. R. 678.

(*q*) As to effect of a sale of a ship by a competent tribunal, see p. 625, *ante*.

(*r*) *The Scio* (1867), L. R. 1 A. & E. 353; *Re Westlake, Ex parte Willoughby* (1881), 16 Ch. D. 604; and p. 621, *ante*.

(*s*) "Lighthouse" includes, in addition to the ordinary meaning of the word, any floating and other light exhibited for the guidance of ships, and also any sirens and any other description of fog signals, and also any addition to a lighthouse of any improved light, or any siren, or any description of fog signal (M. S. Act, 1894, s. 742); any such additional light, siren or signal may be treated as a separate lighthouse (*ibid.*, s. 642).

(*t*) "Buoys and beacons" include all other marks and signs of the sea (*ibid.*, s. 742).

(*a*) As to the consents required in the Channel Islands, see *ibid.*, s. 669.

(*b*) *Ibid.*, s. 634 (1) (a). "The Trinity House" means the master, wardens and assistants of the guild, fraternity, or brotherhood of the most glorious and undivided Trinity and of St. Clement in the parish of Deptford Strond, in the county of Kent (*ibid.*, s. 742). The corporation is generally referred to as the Trinity House.

SECT. 1. **Lighthouse Authorities.**

and in the Isle of Man the corresponding general authority is vested in the Commissioners of Northern Lighthouses (*c*), and in Ireland and the adjacent seas and islands in the Commissioners of Irish Lights (*d*).

Commissioners of Irish Lights.

Local lighthouse authorities.

In addition to these general authorities there are persons and bodies enjoying certain rights and powers as "local lighthouse authorities" (*e*).

Liability for negligence.

1000. Lighthouse authorities are not constituted servants of the Crown so as to exempt them from liability to an action for negligence in the performance of their duties (*f*).

Exemptions.

1001. The premises, property and funds, as well as the instruments and writings of the general authorities, are exempt from all rates, taxes and duties, and all vessels belonging to or used by the general authorities are exempt from rates, dues, or tolls for the use of piers, docks, ports or harbours (*g*). None of these exemptions, however, apply to the lighthouses or other property of, or under the control or management of, local lighthouse authorities (*h*).

SECT. 2.—*Construction of Lighthouses.*

Powers of general lighthouse authorities.

1002. The general authorities have power (*i*) to erect or place, add to, alter or remove any lighthouse, with all requisite works, roads or appurtenances, or to vary the character of any lighthouse or the mode of exhibiting lights therein; or to erect, place, or alter or remove any buoy or beacon. They may also purchase necessary

(*c*) M. S. Act, 1894, s. 634 (1) (b). The persons holding the following offices are *ex-officio* Commissioners and form a body corporate: the Lord Advocate and the Solicitor-General for Scotland, the lords provosts of Edinburgh, Glasgow and Aberdeen, the provosts of Inverness and Campbeltown, the eldest bailies of Edinburgh and Glasgow, and the sheriffs of certain counties. In addition, the Commissioners may elect the provost or chief magistrate of any royal or parliamentary burgh, on, or near, any part of the coasts of Scotland, and the sheriff of any county abutting on those coasts, to be a member of their body (*ibid.*, s. 668).

(*d*) *Ibid.*, s. 634 (1) (c). "The Commissioners of Irish Lights" are the body incorporated by that name by the Dublin Port Act, 1867 (30 & 31 Vict. c. lxxxi.) (M. S. Act, 1894, s. 742).

(*e*) See M. S. Act, 1894, ss. 652—657. These rights and powers are preserved by *ibid.*, s. 634 (1).

(*f*) *Romney Marsh* (*Lords Bailiff-Jurats*) v. *Trinity House Corporation* (1872), L. R. 7 Exch. 247 (corporation liable for negligence of their pilot cutter); *Mersey Docks Trustees* v. *Gibbs* (1866), L. R. 1 H. L. 93; *Gilbert* v. *Trinity House Corporation* (1886), 17 Q. B. D. 795 (corporation liable for person licensed by them neglecting to remove an injured beacon). As to the general exemption of public officers, see title PUBLIC AUTHORITIES AND PUBLIC OFFICERS, Vol. XXIII., pp. 312 *et seq.*, and as to their statutory protection, see *ibid.*, pp. 338 *et seq.*

(*g*) M. S. Act, 1894, ss. 731, 732.

(*h*) *Mersey Docks and Harbour Board* v. *Llaneilian Overseers* (1884), 14 Q. B. D. 770, C. A.; and compare *Mersey Docks* v. *Cameron, Jones* v. *Mersey Docks* (1865), 11 H. L. Cas. 443.

(*i*) M. S. Act, 1894, s. 638. As to the prevention of false lights, see *ibid.*, s. 667; and compare title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 560.

land (*k*), or sell any land belonging to them (*l*). The exercise of the powers of the Commissioners of Northern Lighthouses and of Irish Lights is, however, restricted by provisions necessitating the submission of a scheme and a report thereon by the Trinity House to the Board of Trade (*m*).

SECT. 2. Construction of Lighthouses.

The Trinity House has also, subject to the sanction of the Board of Trade, power to direct both bodies of Commissioners as to the erection, continuance, or alteration of lighthouse works, buoys or beacons, or as to the manner in which lights should be exhibited (*n*) within the areas controlled by the respective bodies of Commissioners.

Powers of Trinity House.

1003. Local lighthouse authorities (an expression including for this purpose all persons authorised by special Act of Parliament to construct harbours, piers and docks) have no power to erect lighthouses or beacons or to lay down buoys within the areas of their authority, or to effect any alterations in the existing lighthouses, beacons, or buoys within their authority except with the sanction in writing of the general lighthouse authority for the district (*o*), and are bound to comply with the directions of the general authority for the district in all the above-mentioned matters (*p*).

Powers of local lighthouse authorities.

SECT. 3.—*Light Dues.*

1004. Light dues are payable in respect of all ships (*q*), excepting ships belonging to His Majesty (*r*), ships belonging to foreign Governments, sailing ships (not being pleasure yachts) of less than one hundred tons, and all ships (not being pleasure yachts) of less than twenty tons; ships (*s*) (other than tugs or pleasure yachts) when navigated wholly and *bonâ fide* in ballast, on which no freight is earned and without any passenger; ships putting in for bunker

What ships liable for light dues.

(*k*) M. S. Act, 1894, s. 639 (1); see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., p. 175.

(*l*) M. S. Act, 1894, s. 639 (2).

(*m*) *Ibid.*, s. 640 (1).

(*n*) *Ibid.*, s. 641. The Commissioners concerned must be given an opportunity for making representations to the Board (*ibid.*, s. 641 (3)).

(*o*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 78.

(*p*) *Ibid.*, ss. 77, 78; see further, p. 645, *post*.

(*q*) M. S. Act, 1894, s. 643.

(*r*) *Ibid.* As to the meaning and possible extension of this term, see *Trinity House* (*Master, Wardens and Assistants*) v. *Clark* (1815), 4 M. & S. 288 (transport on charter demised to Crown exempt from dues); but compare *The Nile* (1875), L. R. 4 A. & E. 449 (transport under charter where no transfer of ownership allowed to prove salvage); *Hamilton* v. *Stow* (1822), 5 B. & Ald. 649 (packet hired by Postmaster-General although earning freight exempt from dues); *Smithett* v. *Blythe* (1830), 1 B. & Ad. 509 (packet belonging to Crown exempt from dues); and compare *The Cybele* (1878), 3 P. D. 8, C. A. (salvage); *The Bertie* (1886), 6 Asp. M. L. C. 26 (salvage), following *The Nile*, *supra*, and *Symons* v. *Baker*, [1905] 2 K. B. 723 (pilotage dues), and M. S. Act, 1906, s. 80.

(*s*) The word used in the M. S. Act, 1898, Sched. II., is "vessel," but it is submitted that no wider meaning attaches than that possessed by the term "ship," since by the principal Act (see note (*q*), *supra*) only ships are made liable to light dues.

SECT. 3. Light Dues.

coals, stores or provisions for their own use on board; ships (*t*) for the time being employed in sea fishing or in sea fishing service, exclusive of ships (*t*) used for catching fish otherwise than for profit; ships putting in from stress of weather, or for the purpose of repairing, or because of damage, provided they do not discharge or load cargo other than cargo discharged with a view to such repairs, and afterwards reshipped; yachts and pleasure boats of under five tons registered shipping tonnage (*u*). Ships making voyages entirely performed in waters in respect of which no lighthouse, buoy, or beacon is maintained by a general lighthouse authority at the expense of the General Lighthouse Fund are exempt in respect of that voyage, and yachts which are laid up during the whole of any year ending the 31st March are exempt in respect of that particular year (*v*).

Temporary exemptions.

Duties of general lighthouse authorities.

1005. The general lighthouse authorities must furnish copies of tables of light dues, and of the regulations in force respecting them, to the Commissioners of Customs in London, and to all the chief officers of customs where light dues are collected by virtue of their respective authorities; and these tables and regulations must be posted up by the Commissioners and customs officers in their respective custom-houses (*a*).

How dues are calculated.

The amounts are calculated (*b*) upon the tonnage of the ship and regulated either by the character of the voyage made or by means of periodical payments (*c*), and for this purpose a ship's tonnage is her register tonnage (*d*) with the addition of any space occupied by deck cargo (*e*), and in the case of an unregistered vessel is reckoned in accordance with the Thames measurement adopted by Lloyd's Register (*f*).

How recovered.

1006. Light dues may be recovered in England as a civil debt, in manner provided by the Summary Jurisdiction Acts (*g*), of the owner

(*t*) See note (*s*), p. 629, *ante*.

(*u*) M. S. Act, 1898, Sched. II.

(*v*) Order in Council dated the 24th July, 1901 (Stat. R. & O. Rev., Vol. VIII., Merchant Shipping, p. 303).

(*a*) M. S. Act, 1894, s. 647. An appointment by any one of the general lighthouse authorities to collect light dues on behalf of that authority at any specified port carries with it the power to collect similar dues on behalf of the other general lighthouse authorities payable at that port (*ibid.*, s. 648). A receipt for light dues must be given by the person appointed to collect them to every person paying them (*ibid.*, s. 651), and a ship may be detained at any port where light dues are payable until such receipt is produced to the proper customs officer. The amount payable as light dues to the general lighthouse authorities is determined according to the M. S. Act, 1898, Sched. II.

(*b*) *Ibid.*, s. 5 (2); and compare the Order in Council dated the 24th July, 1901.

(*c*) M. S. Act, 1898, s. 5 (1); as to yachts, see p. 660, *post*.

(*d*) M. S. Act, 1894, ss. 77, 78, 79, 80, 81 and 84, and Sched. II.

(*e*) *Ibid.*, s. 85.

(*f*) M. S. Act, 1898, Sched. II., r. 8 (a). The Thames rule referred to is :—From the length (foreside of stem to afterside of stern-post on deck) deduct the breadth, multiply this result by the breadth, and that product by half the breadth, and divide by ninety-four.

(*g*) See title MAGISTRATES, Vol. XIX., pp. 589 *et seq*.

or master (*h*) of the ship or of any consignee or agent thereof who may have paid or made himself liable to pay any other charge on account of the ship in the port of her arrival or discharge (*i*). Such consignee or agent, who has been thus made liable for the payment of light dues, may retain out of moneys received on account of the ship or owner the amount paid as light dues and reasonable expenses incurred in the payment (*j*). Where, however, a ship has been sold by order of the court to satisfy judgments against her, a seaman's claim for wages will have priority over an agent's claim for light dues in the distribution of the proceeds (*k*).

Distraint.

In addition to the remedy by summary prosecution the light-house authority or authorised collector of light dues appointed thereby may, in the case of failure by the owner or master to pay light dues on demand, enter the ship and distrain anything belonging to or on board the ship and detain that distress until the light dues are paid (*l*), and if there be no payment within three days after distress, the authority or collector may, during the continuance of non-payment, cause an appraisement and sale to be made of the distress, and retain so much of the proceeds as may be necessary to pay the light dues and to repay reasonable expenses incurred (*m*); and, by a magistrate's order, may extend the distress and sale to the ship itself (*n*).

Local light dues.

Local light dues may be recovered by local lighthouse authorities in the same ways and by the same procedure as above detailed (*o*).

Colonial light dues.

1007. Colonial light dues (*p*) are collected in the United Kingdom as far as possible, in the same manner as light dues levied under the Merchant Shipping Acts (*q*).

In each British possession they are collected by persons appointed by the governor for that purpose, and the means and manner of their collection, where not otherwise specially directed by the legislature of the possession, are the same as those for the British Isles (*r*). The funds thus collected are paid over to the Pay-master-General in accordance with directions issued by the Board of Trade (*s*), and are carried to the General Lighthouse Fund (*t*).

(*h*) M. S. Act, 1894, ss. 649 (1) (a), 680, 681.
(*i*) *Ibid.*, ss. 649 (1) (b), 680.
(*j*) *Ibid.*, s. 649 (2).
(*k*) *The Andalina* (1886), 12 P. D. 1.
(*l*) M. S. Act, 1894, s. 650 (1).
(*m*) *Ibid.*, s. 650 (2).
(*n*) *Ibid.*, s. 693; but compare *The Westmoreland* (1845), 2 Wm. Rob. 394 (magistrate cannot levy distress upon vessel already under arrest of the Court of Admiralty at the suit of seamen for their wages: it is submitted that the same would apply to a suit for light dues).
(*o*) That is to say, light dues, specially fixed by Order in Council in respect of local lights by virtue of the M. S. Act, 1894, s. 655.
(*p*) The colonial legislatures may signify their assent to the collection of light dues by Act or Ordinance duly passed or by address to the Crown; and, where such assent has been obtained, the amount to be paid in respect of any lighthouse, buoy, or beacon placed on or near the coasts of a British possession may be fixed by Order in Council (*ibid.*, s. 670).
(*q*) *Ibid.*, s. 671.
(*r*) *Ibid.*, s. 671 (2).
(*s*) *Ibid.*, s. 672.
(*t*) M. S. Act, 1898, s. 2. Accounts of all colonial light dues received

SECT. 4. Inspection and Control of Local Light-houses.

SECT. 4.—*Inspection and Control of Local Lighthouses.*

Inspection and control.

1008. The general lighthouse authorities must inspect all the lighthouses, buoys and beacons within their respective areas (*u*), and communicate the results of their inspections to each local lighthouse authority, and make reports of these results to the Board of Trade (*a*); the local authorities and their officers must furnish all such returns, explanations or information concerning the lighthouses, buoys and beacons under their management as the general authority requires (*b*).

Powers of general lighthouse authority.

1009. A general lighthouse authority may, with the sanction of the Board of Trade, and after giving due notice, issue directions to a local lighthouse authority within the area as to laying down buoys, or as to the removal or discontinuance or variation in character of any lighthouse, buoy, or beacon, or as to the mode of exhibiting lights therein (*c*), and no alteration in lighthouses, buoys, or beacons excepting buoys and beacons for temporary purposes can be made by a local lighthouse authority without the sanction of the general authority (*d*); if a local authority, having power to comply with such a direction, fails to do so, the general authority may apply for an Order in Council, transferring to itself any powers possessed by the local authority with respect to the object in question, including the power of levying dues (*e*). A general lighthouse authority may also, with the consent of the Board of Trade, accept the surrender by a local authority of any lighthouse, buoy or beacon held by the local authority, or purchase any such object from the local authority, where, as the case may be, the local authority thinks fit to surrender or sell the object (*f*).

SECT. 5.—*Expenses: General Lighthouse Fund.*

Expenses.

1010. The Mercantile Marine Fund was abolished on the 1st April, 1899, and the Exchequer now receives all sums theretofore paid to the fund (*g*), with the exception of all light dues, or other sums received by, or accruing to, any of the general light-

under the provisions of the M. S. Act, 1894, and of sums expended upon the objects in respect of which such dues are received, must be kept as directed by the Board of Trade, audited as enjoined by Order in Council, and annually laid before Parliament (*ibid.*, s. 675). By Order in Council of the 13th May, 1875 (Stat. R. & O. Rev., Vol. VIII., Merchant Shipping, p. 302), these accounts are to be audited by the Comptroller and Auditor-General *vice* the Board of Trade; compare M. S. Act, 1894, s. 745 (1) (a). As to the General Lighthouse Fund, see p. 633, *post.*

(*u*) M. S. Act, 1894, s. 652 (1).
(*a*) *Ibid.*, s. 652 (4). The reports must be laid before Parliament (*ibid.*).
(*b*) *Ibid*, s. 652 (2), (3).
(*c*) *Ibid.*, s. 653 (1).
(*d*) *Ibid.*, s. 653 (2).
(*e*) *Ibid.*, s. 653.
(*f*) *Ibid.*, s. 654. Special provision is made for the payment of the purchase-money in such cases out of what is now known as the General Lighthouse Fund (M. S. Act, 1898, s. 1).
(*g*) M. S. Act, 1898, s. 1 (1) (a).

house authorities under the provisions above noticed (*h*), and must provide money for all expenses charged on and payable out of the Mercantile Marine Fund, excepting expenses incurred by general lighthouse authorities in the works and services of lighthouses, buoys and beacons, or in the execution of works for the purpose of permanently reducing the expense of those works and services or in the removal of wreck (*i*).

General Lighthouse Fund.

1011. Light dues, and other sums accruing to the general lighthouse authorities, constitute a fund known as the General Lighthouse Fund, which bears the expenses thus excepted from direct parliamentary provision, and to this fund colonial light dues and correlative burdens, such as the construction and maintenance of colonial lights, are transferred (*k*).

Establishment.

1012. The establishments of the several general lighthouse authorities, in so far as they pertain to the services of lighthouses, buoys and beacons, are fixed by Order in Council (*l*), as well as the annual sums to be paid out of the General Lighthouse Fund (*m*) in respect of these establishments (*l*); if it appears that any part of the establishments of the general lighthouse authorities is maintained for any other purpose than their duties as such authorities, an Order in Council may be made fixing the portion of establishment expenses which is to be borne by the General Lighthouse Fund (*n*). No increase of any such establishment may be made without the consent of the Board of Trade (*o*); and for administrative purposes the General Lighthouse Fund is entirely under the control of the Board of Trade (*p*). With the sanction of the Board a general lighthouse authority may grant superannuation allowances or compensation, on the same scale as that in force respecting persons in the public civil service, to persons whose salaries are paid out of the General Lighthouse Fund, on their discharge or retirement (*q*).

Extraordinary expenses.

1013. For extraordinary expenses connected with lighthouses, buoys or beacons, such as construction, repair etc., the Treasury may, upon the application of the Board of Trade, advance sums which become a charge upon the General Lighthouse Fund (*r*), or

(*h*) M. S. Act, 1898, s. 1 (1) (a). The dues are those payable under the M. S. Act, 1894, ss. 634—675; see *ibid.*, s. 676 (i); M. S. Act, 1898, s. 1 (1) (a).

(*i*) M. S. Act, 1898, s. 1 (1) (b).

(*k*) *Ibid.*, s. 2 (3); and see *ibid.*, s. 7, Sched. III., for definitions of expressions "colonial lights" and "Basses Lights Fund" used in the Act.

(*l*) M. S. Act, 1894, s. 659 (1), and the following Orders in Council: 16th February, 1903 (office establishment); 20th May, 1903 (engineering establishment); 16th March, 1892 (Commissioners of Northern Lighthouses); 20th March, 1905 (Commissioners of Irish Lights); and compare M. S. Act, 1894, s. 745.

(*m*) Compare *ibid.*, s. 659 (1); M. S. Act, 1898, s. 1 (1) (c).

(*n*) M. S. Act, 1894, s. 659 (2); and compare M. S. Act, 1898, s. 1 (1) (c).

(*o*) M. S. Act, 1894, s. 659 (3).

(*p*) *Ibid.*, ss. 660, 664; and compare M. S. Act, 1898, s. 1 (1) (c).

(*q*) M. S. Act, 1894, s. 665; and compare M. S. Act, 1898, s. 1 (1) (c).

(*r*) M. S. Act, 1894, s. 661; and compare M. S. Act, 1898, ss. 1 (1) (c), and *ibid.*, s. 2 (colonial lights).

SECT. 5. Expenses: General Lighthouse Fund.

the Board of Trade may mortgage the General Lighthouse Fund, and payments payable thereto, in such manner as the Board thinks fit (*s*); and the Public Works Loan Commissioners may advance money upon mortgage of the fund, and payments payable thereto, without further security (*t*); and the existence of such a charge or mortgage will not prevent any lawful reduction of dues or payments payable to the fund, if the reduction is assented to by the Treasury or the Public Works Loan Commissioners, as the case may be (*u*).

Part XIX.—Harbours, Docks, and Piers.

SECT. 1.—*Definitions.*

"Harbour."

1014. Throughout this Part the term "harbour" means a harbour, dock or pier, and the works connected therewith, the construction or improvement of which is authorised by an Act of Parliament with which is incorporated the Harbours, Docks and Piers Clauses Act, 1847 (*a*).

"Harbour authority."

The term "harbour authority" means the persons who by such special Act are authorised to construct the harbour, dock or pier, or otherwise carry into effect the purposes of such Act (*a*).

"Harbour master."

The term "harbour master" means, with reference respectively to any such harbour, dock or pier, the master appointed by virtue of such Act, and includes his assistants (*a*).

SECT. 2.—*Collection and Recovery of Rates.*

SUB-SECT. 1.—*Liability.*

Harbour rate.

1015. Unless otherwise provided by statute, the harbour authority cannot take any rate for the use of the harbour until it is completed and fit for the reception of vessels, and a certificate to that effect has been given by the authority specified by the statute creating the

(*s*) See note (*r*), p. 633, *ante*.

(*t*) M. S. Act, 1894, ss. 662, 663; and compare M. S. Act, 1898, s. 1 (1) (c), *ibid.*, s. 2 (colonial lights), and Public Works Loans Act, 1897 (60 & 61 Vict. c. 51), s. 11.

(*u*) M. S. Act, 1894, ss. 661, 663; and compare M. S. Act, 1898, s. 1 (1) (c).

(*a*) 10 & 11 Vict. c. 27, s. 2. Harbours, docks, and piers are frequently constructed, maintained, and managed under provisional orders confirmed by Parliament made under the powers of the General Pier and Harbour Act, 1861 (24 & 25 Vict. c. 45), and the General Pier and Harbour Act, 1861, Amendment Act, 1862 (25 & 26 Vict. c. 19). In provisional orders made after 1862 the provisions of the Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), are included, unless specially exempted (General Pier and Harbour Act, 1861, Amendment Act, 1862 (25 & 26 Vict. c. 19), s. 19). As to the construction of the provisions so included, see *Hedges* v. *London and St. Katharine Docks Co.* (1885), 16 Q. B. D. 597; as to the right of the Crown to "resume" a port or harbour, or limit its boundaries, see title CONSTITUTIONAL LAW, Vol. VI., pp. 459 *et seq.*; as to construction, maintenance, and conservancy of harbours, and as to dockyard ports which are not included in the above definition, see title WATERS AND WATERCOURSES. The Port of London is governed by the Port of London Act, 1908 (8 Edw. 7, c. 68); see titles METROPOLIS, Vol. XX., pp. 410 *et seq.*; WATERS AND WATERCOURSES.

harbour authority (*b*), and a table of the rates has been duly published (*c*).

On payment of the rates the harbour is free to anybody to ship and unship goods and to embark and land passengers (*d*).

Tonnage rate.

1016. The tonnage rate payable on British ships for the use of the harbour is ascertained from the certified tonnage in the register of such ships, and the tonnage of all other ships is ascertained according to the rules in force for measuring British ships (*e*). If the harbour authority has power to levy rates upon a tonnage ascertained by a different system of measurement to that of the Merchant Shipping Act, 1894, it may, with the consent of the Board of Trade, levy those rates upon the registered tonnage of ships as determined under that Act (*f*).

How ascertained.

The tonnage rate on goods is ascertained, in the case of goods to be unshipped, from the account which the master has to deliver to the collector of rates of the kinds, weights, and description of all goods intended to be unshipped; and in the case of goods to be shipped, from the similar account which the shipper has to give (*g*). If the collector of rates is not satisfied with such accounts he may have the goods weighed (*h*).

Rate list.

A list of the rates for the time being payable to the authority must be exhibited on boards in front of the principal office of business of the authority, and on some conspicuous part of the quays of the harbour, dock or pier, and no rate is payable during

(*b*) Under the Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), ss. 25, 26, that authority is the chairman of quarter sessions; compare *Queenborough Corporation* v. *Smeed, Dean & Co., Ltd.* (1904), 20 T. L. R. 279.

(*c*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 47.

(*d*) *Ibid.*, s. 33. This provision does not entitle persons to have their own tug in the docks for the purpose of moving their vessels to different parts of the docks as required (*Great Central Rail. Co.* v. *North-Eastern Steam Fishing Co.* (1906), 22 T. L. R. 520). If a vessel is prevented from entering the harbour owing to the negligent act of another vessel whereby the dock gates have to be closed for several days, she has no remedy against the harbour authority or the owners of the negligent vessel (*Anglo-Algerian Steamship Co., Ltd.* v. *Houlder Line, Ltd.*, [1908] 1 K. B. 659). In the case of harbours constructed under the provisions of the General Pier and Harbour Act, 1861 (24 & 25 Vict. c. 45), the passengers must have an unobstructed ingress, passage and egress into, along, through and out of the harbour (General Pier and Harbour Act, 1861, Amendment Act, 1862 (25 & 26 Vict. c. 19), s. 13).

(*e*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 27; see p. 19, *ante*. It seems from the M. S. Act, 1894, s. 84, that in the case of ships of certain foreign countries the tonnage appearing in their registers or other national papers must be accepted by the harbour authority as *primâ facie* evidence of their tonnage. Such countries are: Austria-Hungary, Belgium, Denmark, France, Germany, Greece, Hayti, Italy, Japan, the Netherlands, Norway, Russia and Finland, Spain, Sweden, and the United States; see Stat. R. & O. Rev., Vol. VIII., Merchant Shipping, pp. 1 *et seq.*; Stat. R. & O., 1904, pp. 551 *et seq.*; 1906, p. 396; *The Franconia* (1878), 3 P. D. 164, C. A. A foreign register is not conclusive evidence of tonnage; and see note (*d*), p. 19, *ante*.

(*f*) M. S. Act, 1894, s. 87.

(*g*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), ss. 37, 39.

(*h*) *Ibid.*, s. 40; see p. 639, *post*.

SECT. 2. Collection and Recovery of Rates.

any time when this list is not so exhibited, nor unless specified in such list (*i*).

Exemptions.

1017. The following vessels, goods, and persons are exempt from the rates or duties and from the regulation and control of the authority: (1) vessels belonging to or employed in the service of His Majesty or any member of the Royal Family, or in the service of the Customs, Excise, or Trinity House, or the Commissioners of Northern Lights, when not conveying goods for hire (*k*); (2) packet boats or Post Office packet boats as defined under the Acts relating to the Post Office (*l*); (3) vessels being under seizure of the officers of revenue; (4) officers or persons employed in the service of the Admiralty, Ordnance, Customs, Excise or Post Office and their baggage; (5) Post Office bags of letters carried in any vessel (*m*); (6) goods under seizure of the officers of revenue and Naval Victualling Ordnance Stores or other stores or goods for the service of or being the property of His Majesty (*n*); (7) troops landed upon, delivered or disembarked from any quay and their baggage (*o*); (8) vessels belonging to or used by any general lighthouse authority or the Board of Trade, even when carrying goods for hire (*p*). But the above exemptions must be read with the Shipping Dues Exemption Act, 1867 (*q*), which abolishes the exemption then existing on account of (1) a ship being registered or belonging to any particular place or trading between any particular places; (2) a ship or goods being the property of or consigned by or to any particular person; (3) any goods being destined to be sold in a particular place; (4) a

(*i*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 47. In the event of the list being destroyed or obliterated, the rates are payable during such time only as is reasonably necessary for the restoration or reparation of the list (*ibid.*). The following expressions in local Acts have been judicially considered: "trading inwards," "trading outwards," and "arriving in ballast" in a schedule of rates (*Mersey Docks and Harbour Board* v. *Henderson Brothers* (1888), 13 App. Cas. 595; *De Garteig* v. *Mersey Docks and Harbour Board* (1877), 37 L. T. 411); "carried out of the port," "shipped for exportation" (*Muller* v. *Baldwin* (1874), L. R. 9 Q. B. 457; *Stockton and Darlington Rail. Co.* v. *Barrett* (1844), 11 Cl. & Fin. 590, H. L.); "grain brought into the harbour for sale" (*Cotton* v. *Vogan & Co.*, [1896] A. C. 457); "imported into" (*Wilson* v. *Robertson* (1855), 4 E. & B. 923); "goods landed" (*Harvey* v. *Lyme Regis Corporation* (1869), L. R. 4 Exch. 260); "metals" (*Casher* v. *Holmes* (1831), 2 B. & Ad. 592); "by package or weight" (*Jones* v. *Phillips* (1851), 7 Exch. 85); "timber shipped or unshipped" (*Clyde Navigation Trustees* v. *Laird* (1883), 8 App. Cas. 658); "goods imported from parts beyond the seas" (*Mersey Docks and Harbour Board* v. *Twigge and Butters* (1898), 3 Com. Cas. 176); "goods imported for transhipment only" (*Anglo-American Oil Co., Ltd.* v. *Port of London Authority*, [1914] 1 K. B. 14; *British Oil and Cake Mills, Ltd.* v. *Port of London Authority*, [1914] 1 K. B. 5.

(*k*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 28.

(*l*) *Ibid.*; compare *Trinity House* (*Masters, etc.*) v. *Clark* (1815), 4 M. & S. 288 (hired transports).

(*m*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 28.

(*n*) *Ibid.*; compare *Weymouth Corporation* v. *Nugent* (1865), 6 B. & S. 22 (stone for Government works).

(*o*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 28.

(*p*) M. S. Act, 1894, s. 732.

(*q*) 30 & 31 Vict. c. 15, s. 4.

ship or goods being sent to or from or anchoring or mooring at or being laden or unladen at any particular place in a port or in the neighbourhood of the port, except where such ship derives from the expenditure of the class of dues in question no benefit, or less benefit than ships at another place in the same port; (5) goods being the product of or being destined for use at any particular manufactory, place, or district or any particular class of manufacture, provided the exemption was not granted as compensation for injury caused to the grantor by works authorised by an Act of Parliament. The Shipping Dues Exemption Act, 1867 (*r*), does not apply to ships and goods which belong to or are in the service of His Majesty or any corporation having the superintendence and management of lighthouses. Vessels which, after paying the rates and leaving the harbour, are obliged to put back from stress of weather or other sufficient cause are not thereby subject to the payment of further rates (*s*).

Foreign ships.

1018. Foreign ships and goods are only liable to the same tonnage rates and duties as British ships and goods (*t*).

Composition for rates.

1019. An authority may agree with any owner or master of a vessel engaged in transporting passengers, or with any other persons using the harbour for business or pleasure, for the payment of a fixed sum, payable in advance, as a composition by the year or other shorter period for the rates payable by or in respect of passengers and their baggage, or by such other persons, but preference in this respect must not be given to any particular person (*a*).

SUB-SECT. 2.—*Duties of Master of a Vessel.*

Duties of master of a vessel.

1020. When within the limits of the harbour the master of a vessel must, on demand, produce to the collector of rates his vessel's certificate of registry (*b*). Within twenty-four hours of his arrival he must, if his vessel is liable to pay rates, report her arrival to the harbour master (*c*), and if the vessel has any goods to be unshipped in the harbour, he must within twelve hours of arrival deliver to the collector of rates the name of the consignee or other person to whom the goods are to be delivered. If the whole of the

(*r*) 30 & 31 Vict. c. 15, s. 11.

(*s*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 29.

(*t*) All differential dues were abolished by the Harbours and Passing Tolls, etc. Act, 1861 (24 & 25 Vict. c. 47), s. 10; Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 140 (as to foreign ships engaged in the coasting trade). Differential dues include all dues, rates or taxes levied on foreign ships, or on goods carried in foreign ships, which are not levied under like circumstances on British ships or goods carried on British ships, or any excess of dues, rates or taxes levied on foreign ships or goods carried in foreign ships over dues or taxes levied under like circumstances on British ships or goods carried in British ships (Harbours and Passing Tolls, etc. Act, 1861 (24 & 25 Vict. c. 47), s. 2).

(*a*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 32; see also Shipping Dues Exemption Act, 1867 (30 & 31 Vict. c. 15), ss. 3, 4.

(*b*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 36.

(*c*) *Ibid.*, s. 35.

SECT. 2. Collection and Recovery of Rates.

cargo is to be unshipped, he must deliver to the collector a copy of the bill of lading or manifest of the cargo, or if part only is to be unshipped, then the best account in writing in his power of the kinds, weights, and quantities of such goods, and if required by the collector he must give him twelve hours' notice of the time at which the cargo or goods are intended to be unshipped (*d*).

SUB-SECT. 3.—*Duties of Owner of Goods.*

Duties of owner of goods.

1021. Before any person may ship goods on a vessel in the harbour, he must give to the collector of rates a true account, signed by him, of the kinds, quantities, and weights of such goods (*e*). The rates due in respect of the goods must also be paid before shipment (*f*).

SUB-SECT. 4.—*Enforcement.*

How enforced.

1022. No particular time is assigned for the payment of the tonnage rates on vessels, but if the master, whose duty it is to pay the rates (*g*), neglects or refuses to do so, the collector of rates may board the vessel and demand the rates, and on non-payment may arrest the vessel and her tackle, apparel and furniture, or any part thereof, and detain the same until the rates are paid. If they are not paid within seven days of such arrest, the collector may have the goods appraised and sold, and out of the proceeds satisfy the unpaid rates and the expenses incurred, rendering the overplus, if any, to the master on demand (*h*).

When rates on goods payable.

1023. The rates on goods to be unshipped in the harbour must be paid before their removal from the premises of the harbour authority, and before the expiration of two months next after they were unshipped. Rates on goods to be shipped must be paid before shipment (*i*).

Distraint.

In the event of the non-payment of the rates for goods, the collector has power to distrain and arrest the goods, and if they have been removed from the limits of the harbour he may arrest any other goods belonging to the person liable for the rates that he may find within the limits of the harbour or the premises of the harbour authority. The collector may sell goods distrained for non-payment of rates, and must out of the proceeds pay the

(*d*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 37. If the master fails to deliver any of the above particulars or the notice, if required, or gives any false particulars or notice, he is liable to a penalty not exceeding £10 (*ibid.*, s. 38).

(*e*) If he ships the goods without giving this account, or gives a false account thereof, he is liable to a penalty not exceeding £10 (*ibid.*, s. 39).

(*f*) An owner who evades payment of rates is liable to pay three times the amount thereof (*ibid.*, ss. 42, 43). The term "owner" includes consignor, consignee, shipper, or agent for sale or custody of goods, as well as the owner thereof (*ibid.*, s. 3); but it does not include a vendor of coals who delivers them on board a vessel (*Ribble Navigation Co.* v. *Hargreaves* (1856), 17 C. B. 385).

(*g*) If the master evades payment he is liable to pay three times the amount of the rates (Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), ss. 43, 46).

(*h*) *Ibid.*, s. 44.

(*i*) *Ibid.*, s. 42. As to the responsibility of the master for rates on goods, see also *London Corporation* v. *Hunt* (1681), 3 Lev. 37, Ex. Ch.; *Vinkestone* v. *Ebden* (1698), 1 Salk. 248.

rates to the harbour authority, and any duties payable to the Crown in respect of such goods (*j*). Instead of seizing the goods the harbour authority may recover the rates by action in any court having competent jurisdiction (*k*). Besides the power of arrest given to the collector of rates, the collector or proper officer of customs for the district may, with the consent of the Commissioners of Customs, withhold the vessel's clearance until the master produces the certificate of the collector of rates that the rates due on the vessel, and on any goods exported or imported on her, have been paid, or that sufficient security has been given for their payment and of any expenses arising from their non-payment (*l*).

Withholding vessel's clearance.

SUB-SECT. 5.—*Disputes.*

1024. If any difference arise between the collector of rates and the master of any vessel or the owner of any goods concerning the weight or quantity of any goods in respect of which rates are payable, the collector may cause the goods to be weighed or measured, and if necessary may detain the vessel for this purpose (*m*). If the weight or quantity is greater than is shown in the manifest, bill of lading or account delivered to the collector, the expenses incurred must be paid to the harbour authority, and may be recovered in the same way as rates are recovered, but if the weight and quantity be less than is shown in those documents, the harbour authority must pay the expenses incurred by such weighing and measuring and by the detention of the vessel for that purpose (*n*). When a dispute arises as to the amount of the rates due, or the charges occasioned by any distress or arrestment, the person making the distress or arrest may detain the goods until the amount of the rates and charges are ascertained by a justice of the peace, who is empowered to do this and to award costs, which, if not paid on demand, may be levied by a distress warrant issued by that justice (*o*).

Disputes.

SECT. 3.—*Management of Vessels in Harbours.*

SUB-SECT. 1.—*Requirements for Vessels Entering and Remaining in Harbour.*

1025. Before entering the harbour the master must cause his vessel to be dismantled as directed by the harbour master (*p*), and

Duties of master.

(*j*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 45. Comparing this provision with *ibid.*, s. 44, it seems that the collector may not deduct the expenses of sale from the proceeds.

(*k*) *Ibid.*, s. 45.

(*l*) *Ibid.*, s. 48.

(*m*) *Ibid.*, s. 40. The Port of London Authority has the sole right of weighing and measuring goods shipped or unshipped in the Surrey Commercial Dock, but has not the sole right of providing weighing machines (*Port of London Authority* v. *Cairn Line of Steamers, Ltd.*, [1913] 1 K. B. 497).

(*n*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 41.

(*o*) *Ibid.*, s. 46. Where by its private Act a harbour authority is authorised to detain a ship until the rates are paid, it can do so notwithstanding that there are maritime liens on the ship before she enters the dock (*The Emilie Millon*, [1905] 2 K. B. 817, C. A.).

(*p*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 59; penalty not exceeding £10 (*ibid.*); see *The Excelsior* (1868), L. R. 2 A. & E. 268 (master held liable for neglecting to do this).

SECT. 3. Management of Vessels in Harbours.

must cause her sails to be lowered or furled (*q*). When entering the harbour, and whilst within it, the master must obey all the bye-laws of the harbour authority (*r*), and must regulate his vessel according to the directions given by the harbour master in conformity with any Act of Parliament (*s*). When within the harbour and when required by the harbour master, the vessel must have substantial ropes affixed to her moorings (*t*). Vessels may only lie or be moored in the harbour with the permission of the harbour master (*a*), for it is the harbour master's duty to appoint the place and method of mooring of vessels (*b*).

Accidents.

If in the course of obeying the lawful directions of the harbour master an accident is caused, the master and owner of the vessel are not liable unless there was negligence on the part of those on board the vessel (*c*); and a master is not justified in disobeying the orders of a harbour master, except in the last resort when the danger of following such orders is obvious (*d*).

SUB-SECT. 2.—*Powers of Harbour Master.*

Powers of harbour master.

1026. Subject to any bye-laws made by the harbour authority to regulate the powers of the harbour master (*e*), he may give directions for regulating the time at which, and the manner in

(*q*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 60 (penalty not exceeding £10).

(*r*) *Ibid.*, s. 83; penalty not exceeding £5 (*ibid.*, s. 84). For form of bye-laws of harbour authority as to speed in harbour, see Encyclopædia of Forms and Precedents, Vol. VI., p. 326.

(*s*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 53; penalty not exceeding £20 (*ibid.*). The master must obey, even though obedience to such orders, if the ship alone were considered, would be injudicious; see *The Excelsior* (1868), L. R. 2 A. & E. 268; *Taylor* v. *Burger* (1898), 8 Asp. M. L. C. 364, H. L.

(*t*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 61; penalty not exceeding £10 (*ibid.*).

(*a*) *Ibid.*, s. 63; penalty not exceeding £5, and 20*s.* for every hour that the vessel remains after a reasonable time for her removal (*ibid.*). *Ibid.*, s. 63, overrides and extinguishes all local and private rights of mooring (*Gardner* v. *Whitford* (1858), 4 C. B. (N. S.) 665).

(*b*) *East London Harbour Board* v. *Caledonia Landing, Shipping and Salvage Co., Ltd., East London Harbour Board* v. *Colonial Fisheries Co., Ltd.*, [1908] A. C. 271, P. C. A coal hulk permanently moored is not engaged in navigation, and a right to moor permanently in a harbour cannot be claimed as a right of navigation (*Denaby and Cadeby Main Collieries, Ltd.* v. *Anson*, [1911] 1 K. B. 171, C. A. (where the control of the Admiralty over dockyard ports was discussed)).

(*c*) *The Bilbao* (1860), Lush. 149; *The Cynthia* (1876), 2 P. D. 52; *The Belgic* (1875), 2 P. D. 57, n.

(*d*) *Reney* v. *Kirkcudbright Magistrates*, [1892] A. C. 264; *The Excelsior*, *supra*.

(*e*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 83. With respect to all acts authorised or required to be done by the "harbour master," that term includes his assistants (*ibid.*, s. 2). For powers of a harbour master under Explosives Acts, see title EXPLOSIVES, Vol. XIV., p. 384; and for his powers under the Petroleum Acts, see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 571, 572. Within the jurisdiction of a harbour authority that authority alone has power to grant licences under the Petroleum Acts (Petroleum Act, 1871 (34 & 35 Vict. c. 105), s. 8 (8)).

which, a vessel shall enter, lie in, and go out of the harbour and its prescribed limits; its position and mooring, and any unmooring and removing whilst there, and the position in which it shall take in or discharge cargo, passengers, or ballast (*f*); the quantity of ballast a vessel shall have on board of her (*g*); the manner in which a vessel entering the harbour shall be dismantled (*h*); the removing of unserviceable vessels and other obstructions to the harbour, and keeping the harbour clear (*i*).

He may give permission to a vessel to lie in the entrance to the harbour, or in the prescribed limits. If a vessel anchors without such permission and fails to move when ordered, the harbour master may remove her (*k*). If the master of a vessel fails to obey the verbal directions of the harbour master, the latter may serve a notice of his directions on the master of the vessel, who, if he then fails to regulate his vessel accordingly, becomes liable to a penalty not exceeding £20 (*l*).

Disobedience of harbour master's directions.

If the harbour master's directions as to mooring, unmooring, placing, or removing a vessel are not obeyed, the harbour master may cause the vessel to be moored, unmoored, placed, or removed as he thinks fit; and for that purpose may cast off, unloose, or cut her moorings; but if there is no person on board the vessel to protect her, he must put a sufficient number of men on board for that purpose, and any expenses incurred by so doing must be paid to the harbour authority by the master of the vessel (*m*).

Repairing or cleansing harbour.

1027. Whenever it is necessary for repairing, scouring, or cleansing the harbour, the harbour master must give notice in writing to the master of any vessel which is required to be removed therefrom; and if the master refuses to move his vessel or cannot be found, the harbour master may remove her at the expense of her owner or master, but before he exercises this power he must give three days' notice of such repair and necessity of removal to the collector and comptroller of customs for the district, and cause a like notice

(*f*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), ss. 52, 53. As to mooring, the harbour master may, by notice, require substantial hawsers etc. to be used (*ibid.*, s. 61). He has a discretion as to where a vessel is to be moored, which he must exercise for the welfare of all the vessels which enter the harbour (*The Excelsior* (1868), L. R. 2 A. & E. 268).

(*g*) Including the dead-weight in the hold while delivering cargo (Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 52).

(*h*) *Ibid.*, ss. 52, 59.

(*i*) *Ibid.*, s. 52.

(*k*) *Ibid.*, s. 63. The harbour master must use due care that the place where the vessel is to lie is a safe one (*The Rhosina* (1885), 10 P. D. 24, 131, C. A.; *The Apollo* (*Owners*) v. *Port Talbot Co.*, [1891] A. C. 499). Whenever the harbour master, or his assistants, remove a vessel, he must see that she is properly removed (*East London Harbour Board* v. *Caledonia Landing, Shipping and Salvage Co., Ltd., East London Harbour Board* v. *Colonial Fisheries, Co., Ltd.*, [1908] A. C. 271, P. C.). As to the liability of a harbour master for negligence, see pp. 647, 648, *post;* title NEGLIGENCE, Vol. XXI., p. 365.

(*l*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 72), s. 53.

(*m*) *Ibid.*, ss. 58, 62. It is the duty of the master of a vessel to keep a sufficient crew on board to protect her against ordinary perils (*The Excelsior, supra*).

SECT. 3. Management of Vessels in Harbours.

to be affixed on some conspicuous part of the custom-house and the office of the harbour authority (*n*).

Goods left on quay.

1028. If goods be left on the quays, or approaches thereto, for a longer time than is allowed by the bye-laws of the harbour authority, the harbour master may remove them to the premises of the harbour authority; and if the expenses of such removal are not paid within seven days, he may sell the goods, and out of the proceeds pay such expenses, rendering the overplus, if any, to the owner on demand (*a*).

Removal of obstructions.

1029. The harbour master may remove any wreck or other obstruction to the harbour or its approaches, and also any timber which impedes the navigation. The expense of removing these obstructions to navigation must be paid by the owner, and the harbour master may detain such obstructions, and, on non-payment of the expenses, may sell them, and out of the proceeds pay such expenses, rendering the overplus, if any, to the owner (*b*). The harbour master may cause any vessel which is laid by or neglected as unfit for sea service to be removed from the harbour, and the expense of so doing may be recovered by summary complaint before a justice of the peace, who, in default of payment, may issue a distress warrant against the vessel and her apparel (*c*).

Wrongful exercise of powers.

1030. If the harbour master without reasonable cause, or in an unreasonable or unfair manner, exercises any of the powers and authorities vested in him, he is liable to a penalty (*d*); and if he acts negligently he may render the harbour authority liable for any damage resulting thereby (*e*).

SUB-SECT. 3.—*Discharge of Cargo.*

Discharge of cargo.

1031. Vessels discharging cargo must do so as soon as con-

(*n*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), ss. 64, 65.

(*a*) *Ibid.*, s. 68.

(*b*) *Ibid.*, s. 56. The executors of the owner of a sunk vessel were held not liable for the expenses of removal in the case of *Wilson* v. *Carter* (1863), 7 L. T. 676. In *Arrow Shipping Co.* v. *Tyne Improvement Commissioners, The Crystal*, [1894] A. C. 508, it was decided that the Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 56 created a debt in respect of which an action may be maintained against the person who is the owner not at the time when the obstruction occurs, but at the time when the expense of removal is incurred. As to the effect of corresponding provisions in other Acts, see *Howard Smith* v. *Wilson*, [1896] A. C. 579, P. C.; *Jones* v. *Mersey Docks and Harbour Board* (1913), 18 Com. Cas. 163; *The Wallsend*, [1907] P. 302. A harbour authority has also similar powers under the M. S. Act, 1894, ss. 530, 534; see p. 554, *ante*.

(*c*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 57. When the special Act of the harbour authority authorises the expenses to be recovered in a court of summary jurisdiction, the High Court has no jurisdiction (*Barraclough* v. *Brown*, [1897] A. C. 615). As to the power of a harbour authority to charge for use of wreck-raising apparatus, see *The Harrington* (1888), 13 P. D. 48; *Steam Sand Pump Dredger* (*Owners*) v. *S.S.* "*Greta Holme*" (*Owners*), *The* "*Greta Holme*," [1897] A. C. 596; *Mersey Docks and Harbour Board* v. *S.S. Marpessa* (*Owners*), [1907] A. C. 241.

(*d*) Not exceeding £5 (Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 54).

(*e*) *Reney* v. *Kirkcudbright Magistrates*, [1892] A. C. 264; *The Rhosina* (1885), 10 P. D. 24, 131, C. A.; *The Bearn*, [1906] P. 48, C. A.

veniently may be after entering the harbour, and after discharging must be removed to the part of the harbour set apart for light vessels (*f*). Wharfingers and lessees of the harbour authority must not give undue preference or show partiality in loading or unloading cargo at the wharves of the harbour authority (*g*). Except with the consent of the harbour authority, cargo must not remain on the wharves or in the approaches thereto for a longer time than is allowed by the bye-laws of the harbour authority (*h*).

Combustible cargo.

If any tar, pitch, resin, spirituous liquor, turpentine, oil, or other combustible thing is on the quays or works connected with the harbour or on the deck of a vessel in the harbour, the owner or person in charge of them must remove it to a place of safety within two hours after notice from the harbour master (*i*), and if it is to remain on the quays or works of the harbour or on the deck of the vessel during the night (*k*), must see that they are guarded by a sufficient number of persons during the night, otherwise the harbour authority may do so at his expense.

Meters and weighers.

1032. When the harbour authority has power to appoint and has appointed meters and weighers, they only may be employed to measure and weigh cargo (*l*).

SECT. 4.—*Provisions for Safety of Harbour.*

SUB-SECT. 1.—*Protection of Works from Fire etc.*

Combustible matter.

1033. No one may boil or heat pitch, tar, resin, turpentine, oil, or other combustible matter except at such places and in such manner as the harbour authority shall especially appoint for the purpose (*m*).

Fires and lights.

The harbour authority may make bye-laws for regulating the use of fires and lights within the harbour (*n*), but no one may have a fire, lighted candle or lamp in any vessel without the permission of the harbour authority (*o*).

Guns and gunpowder.

All guns must be unloaded when within the harbour. Unless

(*f*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 66.

(*g*) *Ibid.*, s. 67. For special "customs of ports" relating to discharge of cargoes, see title CUSTOM AND USAGES, Vol. X., pp. 290 *et seq.*

(*h*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 46), s. 68.

(*i*) *Ibid.*, s. 69; penalty 40*s.* an hour after the two hours (*ibid.*).

(*k*) *Ibid.*, s. 70; see, further, the text, *infra*.

(*l*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 82; but they have no exclusive right to provide weighing machines (*Port of London Authority* v. *Cairn Line of Steamers, Ltd.*, [1913] 1 K. B. 497. The harbour authority may exempt persons from the obligation to employ such meters (*Whiting* v. *Carpenter* (1871), 24 L. T. 576). Where under a charterparty goods are to be taken from alongside at charterer's expense, and such goods have to be measured, the shipowner is liable for the expense if the metage takes place on board, and the charterer if it is performed ashore (*Woodham* v. *Peterson* (1871), 25 L. T. 26). The harbour authority has power by bye-laws to regulate the duties and conduct of weighers and meters employed by them (Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 83).

(*m*) *Ibid.*, s. 71 (1); see, further, the text, *supra*.

(*n*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 83.

(*o*) *Ibid.*, s. 71 (2), (3).

SECT. 4. Provisions for Safety of Harbour.

the harbour authority otherwise permits, gunpowder must not be brought into or be allowed to remain in the harbour (*p*).

Throwing earth etc. into the harbour.

1034. Ballast, earth, ashes, stones, and other things may not be thrown or put into the harbour, except for the lawful purpose of recovering land lost or severed by the overflowing or washing of a navigable river, or for protecting land from further loss by the action of such river (*q*).

SUB-SECT. 2.—*Liability of Owner and Wrongdoer for Damage.*

Liability of owner for damage.

1035. The owner of a vessel or float of timber is answerable for any damage done thereby, or by any person employed about the same, to the harbour or the quays or works connected therewith, but the liability so imposed does not apply if the vessel is in charge of a compulsory pilot (*a*). The master or person in charge of a vessel or float of timber is also liable to make good any such damage when caused by his wilful act or negligence (*a*).

Recovery of damage.

The remedy of the harbour authority for damage done by a vessel or float of timber to its property is to detain it until security is given for the damage sustained (*b*). When the amount claimed as damages does not exceed £50, it may be recovered before two justices, who have power to distrain and, if necessary, to sell the property causing the damage, in order to satisfy the amount of the damages and costs awarded by them to be paid (*c*).

Recovery of damage by owner from third party.

When the owner of a vessel or float of timber has had to satisfy damage caused by the wilful act or neglect of the person in charge, and when the owner of a vessel or goods in any other case has been compelled to pay any penalty or costs by reason of the act or omission of any other person, such owner may recover from the delinquent the amount he has had to pay, and any costs of proceedings to enforce the recovery of such amount (*d*).

(*p*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 71 (4), (5).

(*q*) *Ibid.*, s. 73.

(*a*) *Ibid.*, s. 74; see also p. 611, *ante*. The owners of the vessel are not liable if the damage is caused by the vessel at a time when the master and crew had been compelled to escape and had no control whatever over it (*River Wear Commissioners* v. *Adamson* (1877), 2 App. Cas. 743), nor are they liable to another vessel which is prevented from entering the harbour through the negligence of the vessel in damaging the dock gates (*Anglo-Algerian Steamship Co., Ltd.* v. *Houlder Line, Ltd.*, [1908] 1 K. B. 659), nor, in the absence of negligence, for damages arising from circumstances which together amount to *force majeure* (*The Boucau*, [1909] P. 163). *Quære* whether the owner is liable in the case of inevitable accident; see *Dennis* v. *Tovell* (1872), L. R. 8 Q. B. 10; *River Wear Commissioners* v. *Adamson*, *supra*, at p. 770.

(*b*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 74. The authority has also a maritime lien and may proceed *in rem* in the Admiralty Court to recover the damage (*The Merle* (1874), 2 Asp. M. L. C. 402; *Romney Marsh* (*Lords Bailiff-Jurats*) v. *Trinity House Corporation* (1872), L. R. 7 Exch. 247, Ex. Ch.).

(*c*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 75.

(*d*) *Ibid.*, s. 76. When the amount of the damage or penalty does not exceed £50 it may be recovered before the justices (*ibid.*).

SECT. 5.—*Buoys, Lights, Beacons etc.*

SECT. 5. Buoys, Lights, Beacons etc.

1036. It is the duty of the harbour authority to lay down buoys for the guidance of vessels, in such situations within the limits of the harbour and of such character as the Trinity House from time to time directs (*e*).

Buoys.

With the sanction in writing of the Trinity House, light-houses, beacons, and sea marks may be erected, and when so erected these may not be altered without the like sanction, and every such light, beacon, and sea mark must be of such power and description, and must be from time to time discontinued or altered, as the Trinity House directs (*f*).

Lights, beacons, and sea marks.

1037. Unless exempted by the special Act of Parliament, the harbour authority must provide and maintain a lifeboat and such rocket apparatus as the Board of Trade approves, with all necessary tackle, and a competent crew and proper persons for the effectual working thereof, for the assistance and succour of vessels in distress, and station the same at such place as the Board of Trade approves (*g*). The authority must also provide and maintain a self-registering tide gauge and barometer, and keep a daily record of the working and results thereof, and a daily account of the wind and weather. The account of the daily working of the tide gauge and barometer, and the daily state of the wind and weather, must be sent each month to the Board of Trade (*h*).

Lifeboat and rocket apparatus.

Tide gauge and barometer.

Weather report.

SECT. 6.—*Power to Make Bye-laws.*

1038. The harbour authority may make bye-laws (*i*) (1) for regulating the use of the harbour, the exercise of the powers vested in the harbour master, the admission of vessels into or near the harbour and their removal therefrom, and their good order and government whilst within the harbour, the shipping and unshipping, landing, warehousing, stowing, depositing and removing of all goods within the limits of the harbour and the premises of the harbour authority, with the consent of the Commissioner of Customs, the hours during

Matters for which bye-laws may be made.

(*e*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 77.

(*f*) *Ibid.*, s. 78; see p. 629, *ante*. For form of bye-laws as to signals for harbours, see Encyclopædia of Forms and Precedents, Vol. VI., p. 627.

(*g*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 16; Harbours Transfer Act, 1862 (25 & 26 Vict. c. 69), s. 5. The penalty is not exceeding £2 for every twenty-four hours during which the lifeboat or rocket apparatus are not provided, maintained or stationed as required etc. (Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 17).

(*h*) *Ibid.*, s. 18; Harbours Transfer Act, 1862 (25 & 26 Vict. c. 69), s. 5. The penalty is not exceeding £2 for every twenty-four hours during which the tide gauge and barometer are not provided or maintained, or account of wind and weather kept, and not exceeding £10 for failing to send monthly account to Board of Trade (Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 19).

(*i*) Bye-laws made under the Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), must not be repugnant to the laws in force in the locality, and must be reduced into writing and sealed with the common seal of the harbour authority if incorporated, and if not, by the signatures of the persons composing the authority or of any two of them (Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 83).

SECT. 6. Power to Make Bye-laws.

which the gates or entrances or outlets of the harbour shall be open, the duties and conduct of all persons other than officers of customs employed in the harbour and the premises of the harbour authority; the use of fires and lights within the harbour or premises belonging thereto or within any vessel in the harbour; the use of cranes, weighing machines, weights and measures belonging to the harbour authority and the duties and conduct of all weighers and meters employed by them; and of the porters and carriers employed on the premises of the harbour authority; (2) for preventing damage or injury to vessels or goods within the harbour or on the premises of the harbour authority; and (3) for fixing the rates to be paid to porters and carriers for carrying any goods, articles, or things from or to the premises of the authority (*k*).

Emigration.

A harbour authority having control of any docks or basins at any port from which emigrant ships are despatched may, with the approval of a Secretary of State, make bye-laws for specifying the docks, basins, or other places at which persons arriving by sea at the port for the purpose of emigration or actually emigrating therefrom shall be landed and embarked; for regulating the mode of their landing and embarkation; for the storing and safe custody of their luggage; for licensing porters to carry their luggage or otherwise attend upon them; and for admitting persons to and excluding persons from access to the docks and basins (*l*).

Confirmation.

1039. The bye-laws, except such as relate solely to the harbour authority or its officers and servants, have no force until confirmed by the proper authority (*m*). They cannot be confirmed until one month's notice has been given in a local newspaper and a copy of the proposed bye-laws has been kept at the principal office of the harbour authority for public inspection (*n*).

Copies.

A copy of the bye-laws must be placed on boards and put up in some conspicuous part of the office of the harbour authority, and on

(*k*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 83. These powers do not include powers to prohibit persons dealing in marine stores (*Chamberlain* v. *Conway* (1888), 53 J. P. 214), or acting as "lumpers" on board vessels without the permission of the harbour authority (*Dick* v. *Badart* (1883), 10 Q. B. D. 387). When by the custom of the port the authority discharges the cargo, the charterer is not liable for demurrage caused by delay on the part of the authority (*Weir & Co.* v. *Richardson* (1897), 3 Com. Cas. 20; *The Kingsland*, [1911] P. 17). As to powers of harbour authority to make bye-laws as to explosives, see title EXPLOSIVES, Vol. XIV., p. 384; and as to petroleum, see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., p. 572.

(*l*) These bye-laws must be published in the *London Gazette*, and an offender against the bye-laws may be detained until he can be brought before a justice of the peace, who may try the case in a summary manner (M. S. Act, 1894, s. 362).

(*m*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 85. Except where the special Act prescribes a different mode of confirmation, they must be confirmed by a judge of the High Court, or by the justices in quarter sessions. Regulations made as to the berthing of ships etc., and not confirmed as bye-laws, bind nobody, except so far as they agree to be bound by them (*London Association of Shipowners and Brokers* v. *London and India Docks Joint Committee*, [1892] 3 Ch. 242, C. A.

(*n*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), ss. 86, 87.

SECT. 6. Power to Make Bye-laws.

some conspicuous part of the harbour, and a copy must be supplied to anyone free of charge (*o*).

When duly made, confirmed, and published (*p*), they are binding on all parties and are sufficient to justify all persons acting under them (*q*), and may be enforced by fines (*r*).

Binding nature.

The bye-laws may be repealed or altered at any time (*s*), and their existence and due making is proved in all cases of prosecution by producing a written or printed copy authenticated by the signature of the person whose duty it is to confirm the bye-law, or, when confirmation is not required, by the common seal of the harbour authority if incorporated, or, if not incorporated, under the hands of the members of the authority.

Proof.

SECT. 7.—*Liabilities of Harbour Authorities.*

Liabilities of harbour authorities.

1040. A harbour authority which takes tolls for the use of a harbour is under the obligation to use reasonable care to see that the harbour is in a fit condition for a vessel to resort thereto, and cannot delegate its duty in this respect to persons not its servants, so as to absolve itself from the consequences of the negligence of such persons (*t*).

Depth of water.

When the harbour authority holds out that there is a certain depth of water at a part of the harbour over which vessels may be obliged to pass, *e.g.*, a dock sill, it must use reasonable care to provide that the approaches to that part are sufficient, under normal conditions, to enable a vessel to pass over it (*u*).

Acts of servants.

1041. A harbour authority is also liable for any damage that may arise from the acts and directions of its servants when acting within the scope of their duty, for when a vessel is within the jurisdiction of a harbour authority by law empowered to give orders, such orders must be obeyed unless it is obvious that in following

(*o*) Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 88.

(*p*) Publication is proved by evidence that the board containing a copy of the bye-laws is standing on some conspicuous part of the harbour (*ibid.*, s. 90).

(*q*) *Ibid.*, s. 89.

(*r*) Not exceeding £5 for each breach of a bye-law (*ibid.*, s. 84).

(*s*) *Ibid.*, s. 83.

(*t*) *Mersey Docks Trustees* v. *Gibbs* (1866), L. R. 1 H. L. 93; *Parnaby* v. *Lancaster Canal Co.* (1839), 11 Ad. & El. 223, Ex. Ch. The same principles apply to an executive government which owns docks for the use of which dues are payable (*R.* v. *Williams* (1884), 9 App. Cas. 418, P. C.; *The Bearn*, [1906] P. 48, C. A.). It is no defence that the bad state of the harbour could not be detected, when the harbour authority has neglected their duty by delegating the duty of sounding the harbour to local pilots not the servants of that authority; see *The Moorcock* (1889), 14 P. D. 64, C. A. (wharfinger inviting vessel to use an unsafe berth); *The Burlington* (1895), 8 Asp. M. L. C. 38, C. A. (berthing vessel at unsafe berth in the channel of the harbour). The harbour and its machinery must be reasonably safe for persons doing business on board vessels in the harbour (*Smith* v. *London and St. Katharine Docks Co.* (1868), L. R. 3 C. P. 326). See also title NEGLIGENCE, Vol. XXI., p. 365.

(*u*) *Bede Steamship Co.* v. *River Wear Commissioners*, [1907] 1 K. B. 310, C. A. (allowing silt to accumulate at entrance to a dock, over the sill of which they advertised a certain de th of water).

SECT. 7. Liabilities of Harbour Authorities.

them there is danger, in which case they may be disregarded (*a*). Such authority, however, is not liable for the acts of its servant when not acting as its servant but in another capacity, even though such servant be licensed by the authority so to act (*b*), or where the authority's servant acts on misrepresentations made to the authority by the shipowner's servants (*c*).

Liability for neglect.

Whenever a harbour authority undertakes for reward to perform services to a vessel coming to its harbour, it is liable for any breach of agreement to perform such services (*d*) or for any neglect on its part to exercise reasonable care and skill in the performance of such services (*e*), and when it undertakes a duty, although imposed on it by statute, towards a vessel in its jurisdiction, it is liable for the consequences of any neglect of that duty (*f*).

Limitation of action.

1042. Whenever the harbour authority or its servants do any act in pursuance of any Act of Parliament or of any public duty or authority, or omits or neglects their duties, and it is desired to take action against it, the action must be commenced within six months after the act, neglect, or default complained of; and if the harbour authority obtains a judgment in its favour it is entitled to costs to be taxed as between solicitor and client (*g*).

Limitation of liability.

1043. Where damage is done without the actual fault or privity of the harbour authority, it may limit its liability to an amount not exceeding £8 for each ton of the tonnage of the largest registered British ship which within the previous five years has been within the harbour (*h*).

(*a*) *The Cynthia* (1876), 2 P. D. 52; *The Bilbao* (1860), Lush. 149; *The Belgic* (1875), 2 P. D. 57, n.; *The Rhosina* (1885), 10 P. D. 131, C. A. (harbour master ordering anchor to be dropped upon which vessel grounded); *Reney* v. *Kirkcudbright Magistrates*, [1892] A. C. 264 (ordering vessel to a place where she grounded and suffered damage); "*Apollo*" (*Owners*) v. *Port Talbot Co.*, *The* "*Apollo*," [1891] A. C. 499 (informing master that he might safely ground his vessel in a dock entrance and permitting him to use it for that purpose); *East London Harbour Board* v. *Caledonia Landing, Shipping and Salvage Co., Ltd.*, *East London Harbour Board* v. *Colonial Fisheries Co., Ltd.* [1908] A. C. 271, P. C. (removing vessel and negligently remooring her); *The Bien*, [1911] P. 40 (mooring vessel on an oyster bed); see also title MASTER AND SERVANT, Vol. XX., p. 262.

(*b*) *Shaw, Savill and Albion Co.* v. *Timaru Harbour Board* (1890), 15 App. Cas. 429, P. C. (not liable for deputy harbour master licensed as a pilot by harbour authority when acting as a duly qualified pilot).

(*c*) *Lloyd* v. *Iron* (1865), 4 F. & F. 1011. It is the duty of the master of a vessel to bring to the notice of the dock master any peculiarity as to the draught and build of his vessel.

(*d*) *South Wales and Liverpool Steamship Co.* v. *Nevill's Dock and Rail. Co.*, *Nevill's Dock and Rail. Co.* v. *Maatschappij S.S. Bestevaer Rotterdam* (1913), 18 Com. Cas. 124.

(*e*) *Preston Corporation* v. *Biornstad*, *The* "*Ratata*," [1898] A. C. 513 (lightening and towing a vessel to their docks).

(*f*) *S.S.* "*Utopia*" (*Owners*) v. *S.S.* "*Primula*" (*Owners and Master*), *The* "*Utopia*," [1893] A. C. 492, P. C.; *The Douglas* (1882), 7 P. D. 151, C. A. (undertaking to light and buoy a sunken wreck).

(*g*) Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1; *The Ydun*, [1899] P. 236, C. A. (the corporation of Preston as harbour authority); *The Johannesburg*, [1907] P. 65 (the Tyne Improvement Commissioners as owners of a staith erected under statutory powers); see also title PUBLIC AUTHORITIES AND PUBLIC OFFICERS, Vol. XXIII., pp. 299 *et seq.*

(*h*) M. S. (Liability of Shipowners and Others) Act, 1900, s. 2; and see p. 614, *ante*.

Part XX.—Marine Authorities.

SECT. 1.—*The Board of Trade and Other Authorities.*

SECT. 1. The Board of Trade and Other Authorities.

Board of Trade.

1044. The general authority for the superintendence of all matters relating to merchant shipping and seamen is the Board of Trade (*a*). This department is also authorised to carry into execution the provisions of the Merchant Shipping Acts and all other Acts in force relating to merchant shipping and seamen, except where otherwise provided by those Acts, and except in so far as those Acts relate to revenue (*b*). In addition to the general authorisation the control of certain matters is specifically vested by statute in the Board. Thus the superintendence and extension of local marine boards (*c*), and the establishment and control of mercantile marine offices (*d*), is placed directly in the hands of the Board; the superintendence of all matters relating to wreck, including the appointment of receivers of wreck, subject to the approval of the Treasury, is likewise with the Board (*e*); and the ultimate authority in the two important matters of pilotage (*f*) and lighthouse (*g*) control is also vested in the Board.

Certificates and inquiries.

1045. The Board of Trade may suspend or cancel the certificate of any master, mate, or engineer, if it is shown that he has been convicted of any offence (*h*). The Board may also, if, either on the report of a local marine board or otherwise, it has reason to believe that any master, mate, or certificated engineer is from incompetency or misconduct unfit to discharge his duties, or that in case of collision he has failed to stand by or to give the necessary information (*i*), order an inquiry to be held (*k*). The Board may entrust this inquiry either to a person appointed for the purpose or to a local marine board (*l*) or to a court of summary jurisdiction (*m*).

Enforcement of authority.

1046. The Board of Trade may enforce its authority by taking any legal proceedings under the Merchant Shipping Acts in the name of any of its officers (*n*), and the officers of the Board

(*a*) M. S. Act, 1894, s. 713; see title CONSTITUTIONAL LAW, Vol. VII., p. 102.
(*b*) M. S. Act, 1894, s. 713.
(*c*) M. S. Act, 1894, ss. 244, 245; see pp. 652 *et seq.*, *post*.
(*d*) M. S. Act, 1894, s. 246; see pp. 655 *et seq.*, *post*.
(*e*) M. S. Act, 1894, s. 566; see p. 549, *ante*.
(*f*) M. S. Act, 1894, ss. 575, 585, 600, 603; now repealed and re-enacted by the Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31); and see pp. 596 *et seq.*, *ante*.
(*g*) M. S. Act, 1894, ss. 635, 636, 640, 660; and see pp. 629 *et seq.*, *ante*.
(*h*) M. S. Act, 1894, s. 469. The offence must probably be one punishable by fine or imprisonment; see *Board of Trade* v. *Leith Local Marine Board* (1896), 24 R. (Ct. of Sess.) 177.
(*i*) M. S. Act, 1894, s. 422.
(*k*) *Ibid.*, s. 471 (1).
(*l*) *Ibid.*, s. 471 (2). For disciplinary powers of local marine boards, see p. 653, *post*.
(*m*) M. S. Act, 1894, s. 471 (2).
(*n*) *Ibid.*, s. 717.

SECT. 1.
The Board of Trade and Other Authorities.

have the same powers as the other marine authorities for enforcing compliance with their demands (*o*).

Surveyors and Inspectors.

1047. The Board of Trade may, in addition to officers appointed for particular purposes under specific statutory provisions, appoint two classes of officers, surveyors (*p*) and inspectors (*q*), in the following manner:—The Board may at such ports as it thinks fit appoint any person, either generally or for a special purpose or special occasion, to be a surveyor of ships for the purposes of the Merchant Shipping Acts, and to act either as a ship (*r*) surveyor or an engineer surveyor, or as both (*s*). It may also appoint a surveyor-general of ships for the United Kingdom and such other principal officers in connexion with the survey of ships as it thinks fit (*t*), and it has unlimited powers as to the appointment (*u*), removal, remuneration, and regulation of the duties of its surveyors (*v*).

Appointment of surveyors.

Appointment of inspectors.

The Board may at any time appoint inspectors to report upon the nature and causes of any accident or damage caused to or by a ship; or whether the provisions of the Merchant Shipping Acts or any regulations thereunder have been complied with, or whether the hull and machinery of any steamship are sufficient and in good condition (*w*). For the purpose of carrying these powers into effect the Board has power to detain British ships provisionally for the purpose of being surveyed (*a*) and to appoint detaining officers, to whom its powers of provisional detention may be delegated (*b*) in addition to all the ordinary powers of a Board of Trade inspector. These ordinary powers are (*c*):—

Powers of inspectors.

(1) To go on board any ship and to inspect the same or any part of the machinery, boats, equipment, or any articles to which the provisions of the Merchant Shipping Acts apply, provided that he does not inflict upon such ship any unnecessary detention or delay;

(2) To enter and inspect any premises which it appears to him to be requisite to enter for the purpose of the report which he is directed to make;

(*o*) M. S. Act, 1894, s. 723 (1).
(*p*) *Ibid.*, s. 724.
(*q*) *Ibid.*, s. 728.
(*r*) *Ibid.*, s. 724 (1).
(*s*) *Ibid.*; and compare M. S. Act, 1906, s. 75 (1).
(*t*) M. S. Act, 1894, s. 724 (2); for the duty of the surveyor-general in measuring ships, see *ibid.*, s. 503 (2) (c).
(*u*) *Ibid.*, s. 724 (2); M. S. Act, 1906, s. 75 (4).
(*v*) M. S. Act, 1894, s. 724 (3), (5); and compare *ibid.*, ss. 713 (general control), 271 (survey of passenger ships), 289 (surveyors of emigrant ships). "Instructions" are issued by the Board from time to time under these powers; and the proper tribunal of appeal from the action of a surveyor under these instructions is the court of survey for the port or district; compare *ibid.*, s. 275; *Denny and Brothers* v. *Board of Trade* (1880), 17 Sc. L. R. 694; and p. 662, *post.*
(*w*) M. S. Act, 1894, s. 728.
(*a*) *Ibid.*, s. 459 (1) (a).
(*b*) *Ibid.*, s. 459 (2).
(*c*) *Ibid.*, s. 729 (1).

(3) By summons under his hand to require the attendance of all persons he thinks fit to call and examine for the purposes of his report, and to require answers to such inquiries as he thinks fit to make (*d*);

(4) To require and enforce the production of all books, papers, or documents necessary for his report;

(5) To administer oaths to persons called before him, or instead to require every person examined by him to make and subscribe a declaration of truth of the statements made in his examination (*d*).

Penalties.

1048. The penalty for refusing to attend as a witness, after having been required in due form to do so by a Board of Trade inspector or any person having the powers of such an inspector, and after receiving tender of any expenses therefor properly due, or refusing or neglecting to answer, give a return, produce a document in possession, or make or subscribe a declaration so duly required, is a fine not exceeding £10 (*e*); and wilful obstruction of an inspector or of any person having the powers of an inspector in the performance of his duty not only subjects the delinquent to a liability to a fine of the like amount, but also to personal seizure and detention by the inspecting officer, or anyone whom he can call to his aid, until such time as the offender can be conveniently brought before a competent tribunal (*f*).

Authorities under control of Board of Trade.

1049. Other marine authorities not directly under the Board of Trade, but subject to the general authority of the Board, are the consular officers and officers of customs abroad (*g*) and the various registration authorities for ships in the United Kingdom, British possessions, and elsewhere (*h*). In any place outside His Majesty's dominions, where His Majesty has jurisdiction, and where there is no British consular officer, anything which by the Merchant Shipping Acts is authorised to be done by, to, or before a British consular officer may be done in that place before any such officer as His Majesty in Council may direct (*i*).

(*d*) *R.* v. *Collingridge* (1864), 34 L. J. (Q. B.) 9. The expense of witnesses so summoned is to be borne by the public (M. S. Act, 1894, s. 729 (2)), and it is a proper course for the court, before granting summonses, to inquire who the witnesses are and the nature of their evidence, and to prevent witnesses being vexatiously summoned. The expenses are allowed on the same scale as those allowed to a witness attending on subpœna before a court of record, or, in Scotland, attending on citation the Court of Justiciary (*ibid.*). In case of dispute as to amount, reference should be made, by means of a signed request by the inspector, to the Admiralty Registrar in England (*ibid.*; R. S. C. (Merchant Shipping), 1894, r. 1), to one of the masters or registrars of the High Court in Ireland, or to the King's and Lord Treasurer's Remembrancer in Scotland, to ascertain and certify the proper amount of such expenses (M. S. Act, 1894, s. 729 (2)). False swearing under such summons is indictable as perjury (*R.* v. *Tomlinson* (1866), L. R. 1 C. C. R. 49).

(*e*) M. S. Act, 1894, s. 729 (3).

(*f*) *Ibid.*, s. 730.

(*g*) *Ibid.*, s. 714.

(*h*) *Ibid.*, ss. 63, 251; and see pp. 657 *et seq.*, *post.*

(*i*) M. S. Act, 1894, s. 737; and see Order in Council dated the 26th November, 1897 (Stat. R. & O. Rev., Vol. VIII., Merchant Shipping,

SECT. 1.
The Board of Trade and Other Authorities.

Reports to Board of Trade.

Powers to enforce mercantile laws.

1050. All consular officers (*k*) and officers of customs abroad, in common with local marine boards (*l*) and superintendents (*m*) of mercantile marine offices (*n*), must furnish to the Board of Trade such returns or reports on any matter relating to British merchant shipping or seamen as the Board may require (*o*). In order to enforce compliance with any laws for the time being in force relating to merchant seamen or navigation, any officer of the Board of Trade, any commissioned officer of any of His Majesty's ships on full pay, any British consular officer (*k*), the Registrar-General of Shipping and Seamen (*p*) or his assistant, any chief officer of customs in any place in His Majesty's dominions, or any superintendent (*q*), may (1) require the owner, master, or any of the crew of any British ship to produce any official log-books or other documents relating to the crew or any member thereof in their possession or control; (2) require any such master to produce a list of all persons on board his ship, and take copies of the official log-books or other documents; (3) muster the crew of any such ship; and (4) summon the master to appear and give any explanation concerning the ship or her crew or the official log-books or documents produced or required (*r*). Anyone refusing to comply without reasonable cause with such orders or requirements duly made by such officers, or impeding a muster so properly called, or knowingly misleading or deceiving any such officer in regard to the matters above mentioned, is liable to a fine not exceeding £20 (*s*).

SECT. 2.—*Local Marine Boards.*

Local marine boards.

1051. The Board of Trade has power to establish local marine boards wherever it appears necessary, and has general authority over such boards and the duty of superintendence of their working.

p. 311) (Deputy Commissioner or Resident appointed to act in Gilbert and Ellice and in Solomon Islands); Order in Council dated the 20th May, 1903 (Stat. R. & O. Rev., Vol. VIII., Merchant Shipping, p. 312) (acting Resident Deputy Commissioner appointed in the New Hebrides); Order in Council dated the 11th August, 1902 (Stat. R. & O. Rev., Vol. V., Foreign Jurisdiction, p. 77) (such officer of the Protectorate as the Commissioner may appoint in Uganda); Order in Council dated the 12th March, 1903 (Stat. R. & O. Rev., Vol. V., Foreign Jurisdiction, p. 188) (such officer of the Protectorate as the Consul-General may appoint in Somaliland).

(*k*) The expression "consular officer" includes consul-general, consul, vice-consul, consular agent, and any person for the time authorised to discharge the duties of consul-general, consul, or vice-consul (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 12 (20)).

(*l*) See the text, *infra*.

(*m*) The expression "superintendent," so far as respects a British possession, includes any shipping master or other officer discharging in that possession the duties of a superintendent (M. S. Act, 1894, s. 742; and M. S. Act, 1906, s. 49 (1) (b) (i.)).

(*n*) See pp. 655 *et seq.*, *post*.

(*o*) M. S. Act, 1894, s. 714.

(*p*) *Ibid.*, s. 251 (2); and see p. 657, *post*.

(*q*) "Chief officer of customs" includes the collector, superintendent, principal coast officer, or other chief officer of customs at each port (M. S. Act, 1894, s. 742).

(*r*) M. S. Act, 1894, s. 723 (1). As to mustering a crew, compare *ibid.*, s. 459, and amendment thereof in M. S. Act, 1897, s. 1 (1) (power to muster crew in case of undermanning given to "detaining officer").

(*s*) M. S. Act, 1894, s. 723 (2).

SECT. 2. Local Marine Boards.

These boards exist for the purpose of carrying into effect such of the provisions of the Merchant Shipping Acts as relate to their powers and duties (*t*), the chief of which are :—

Powers and duties.

(1) To appoint examiners and conduct examinations of persons desirous of obtaining certificates of competency as masters or mates, under the rules (*a*) laid down by the Board of Trade (*b*) ;

(2) To appoint and control medical inspectors of seamen (*c*), and where and when so required by the Board of Trade, to appoint medical inspectors of ships to inspect the medicines, medical stores, and anti-scorbutics with which a ship is required by the Merchant Shipping Acts to be provided (*d*) ;

(3) To hold inquiry into the conduct of certificated officers at the instance of the Board of Trade, and in the manner provided by the Merchant Shipping Acts, and to report thereon to the Board of Trade (*e*) ;

(4) To nominate a list of persons of nautical or engineering experience, from amongst whom competent assessors may be drawn to assist the respective local courts of survey (*f*).

Constitution of local marine boards.

1052. Local marine boards are composed of three elements :—

(1) *Ex-officio* members, the mayor or provost of the town to which the port belongs and the stipendiary magistrate, or, where there are more than one, such of the mayors, provosts, and stipendiary magistrates as the Board of Trade appoints (*g*).

(2) A selected element, comprising four members appointed by the Board of Trade from among persons residing or carrying on business at the port or within a radius of seven miles (*h*).

(3) An elective element, composed of six members elected by the registered owners of foreign-going ships and home trade passenger ships registered at the port (*i*).

(*t*) M. S. Acts, 1894, ss. 244 (1), 713; 1906, s. 74 (2). Local marine boards exist at Bristol, Cardiff, Hull, Liverpool, London, Newcastle, North Shields, Plymouth, South Shields and Sunderland in England ; at Aberdeen, Dundee, Glasgow, Greenock and Leith in Scotland ; and at Belfast, Cork and Dublin in Ireland.

(*a*) These rules may be obtained from the King's Printer in pamphlet form.

(*b*) M. S. Act, 1894 s. 94 ; and see p. 38, *ante*.

(*c*) M. S. Act, 1894, s. 204 (2).

(*d*) *Ibid.*, s. 202 (1).

(*e*) *Ibid.*, s. 471 ; and see pp. 590 *et seq.*, *ante*.

(*f*) M. S. Act, 1894, s. 487 (3); and see title COURTS, Vol. IX., pp. 107 *et seq.*

(*g*) M. S. Act, 1894, Sched. VII. (1) (a).

(*h*) *Ibid.*, Sched. VII. (1) (b).

(*i*) *Ibid.*, Sched. VII. (1) (c). Elections are held on the 25th January every third year commencing from 1896, and the newly-elected board supersedes the existing board one month after the elections (*ibid.*, Sched. VII. (2)). Casual vacancies between the elections must be filled up within a month of the vacancy occurring, and the newly-elected member remains a member until the next triennial election (*ibid.*, Sched. VII. (4)). The conduct of the elections is in the hands of the mayor or provost (*ibid.*, Sched. VII. (5)), and any question in dispute as to an election is to be referred to the Board of Trade (*ibid.*, Sched. VII. (6)). The electors consist of a body comprising every registered owner of not less than 250 tons of shipping in the foreign-going and home trade passenger ships registered at the port, each of whom is entitled to one vote for each member for every

SECT. 2. Local Marine Boards.

Conduct of proceedings.

1053. A local marine board may regulate the mode in which its meetings are to be held and its business is to be conducted, including the fixing of a quorum, not being less than three (*k*); and minutes of its proceedings must be kept in the manner, if any, prescribed by the Board of Trade (*l*).

Proceedings not prejudiced by constitutional irregularity.

No acts or proceedings of a local marine board are vitiated or prejudiced by reason of any irregularity in the election of any of the members, or of any error in the list of voters, or of any irregularity in revising the list, or by reason of any person not duly qualified acting on the board, or of any vacancy thereon (*a*).

Control of Board of Trade.

1054. The Board of Trade exercises control over local marine boards in respect to the following points:—all minutes, books and documents used or kept by any local board, or by any servant of the local board, are open to the inspection of the Board of Trade and its officers, and the local board must further make all such returns and reports as the Board of Trade requires (*b*). In the case of failure on the part of a local board to meet, or to continue to perform its duties, the Board of Trade may either take over the duties of the local board until the next triennial election of the local board, or may direct that a new and special appointment and election shall take place immediately (*c*). Further, wherever it appears to the Board of Trade that any appointments

250 tons owned by him, save that his votes for any one member may not exceed ten (M. S. Act, 1894, Sched. VII. (7)). Provision is made for the due interpretation of the rule of qualification (*ibid.*, Sched. VII. (8)), and the chief officer of customs in the port has the duty of preparing annually in December a list of the electors, together with the number of votes to which each is entitled, and of printing and posting the list for a period of two weeks after Christmas (*ibid.*, Sched. VII. (9)). A court, nominated by the mayor or provost of the port, composed of two justices (*ibid.*, Sched. VII. (10)) must be held at the custom-house or at some convenient place near by between the 8th and 15th of January in every third year after 1896 to revise the list of electors (*ibid.*, Sched. VII. (11)) and to decide finally upon all claims and objections properly preferred (*ibid.*, Sched. VII. (13), (14)). Objections may only be made by persons named in the list, and upon satisfactory proof of claim or objection the court has power to insert or erase the name of the person whose claim is in issue (*ibid.*, Sched. VII. (13)). The revisors must sign the list when duly revised (*ibid.*, Sched. VII. (15)), and the list then becomes the register of voters for the port for the three years next succeeding the revision (*ibid.*, Sched. VII. (16)). Every voter applying for a copy of the register to the mayor or provost, as the case may be, is entitled thereto (*ibid.*, Sched. VII. (17)), and the Board of Trade must allow and pay all expenses properly incurred in the election and duly certified by the revisors (*ibid.*, Sched. VII. (19)). Elected members of the local board must be drawn from the electoral body, and any member ceasing after election to retain the quantity of tonnage which constitutes a voting qualification thereupon ceases to be a member (*ibid.*, Sched. VII. (21)). The same rules apply to shipowning corporations, who may appoint an individual to vote on their behalf, and to act as a member, if duly elected, by right of the qualification thereby conferred (*ibid.*, Sched. VII. (22)).

(*k*) *Ibid.*, s. 244 (3).
(*l*) *Ibid.*
(*a*) *Ibid.*, s. 244 (5).
(*b*) *Ibid.*, s. 245 (1).
(*c*) *Ibid.*, s. 245 (2).

to or arrangements made by the local board are inadequate to the wants of the port, or otherwise unsatisfactory, the Board may alter or rectify the same so as to harmonise with the intention of the Merchant Shipping Acts or to meet existing needs (*d*).

SECT. 3.—*Mercantile Marine Offices.*

Mercantile marine office where local marine board.

1055. At every port in the United Kingdom where there is a local marine board, and at such other ports as the Board of Trade may determine, a mercantile marine office must be established and maintained (*e*). At the ports where a local marine board exists the requisite buildings and property to constitute a mercantile marine office must be procured by the board, and, subject to the following qualifications, the board controls and regulates the business of the mercantile marine office, including all expenses and the receipt and payment of money thereat (*f*). All superintendents (*g*), deputies, clerks and servants in mercantile marine offices must be appointed and may be removed by the Board of Trade (*h*). In the Port of London the Board of Trade may appoint any superintendent of, or other person connected with, a sailors' home to be a superintendent, with any necessary deputies, clerks or servants, and may appoint an office in any such home to be a mercantile marine office (*i*).

Where no local marine board.

1056. In ports where no local marine board exists the Board of Trade may either procure the buildings and other requisites to establish a mercantile marine office, and thereupon establish such an office, or may, with the consent of the Commissioners of Customs, direct that the business of a mercantile marine office shall be conducted at the custom-house, whereupon the custom-house becomes a mercantile marine office for the purposes

(*d*) M. S. Act, 1894, s. 245 (3).
(*e*) *Ibid.*, s. 246 (1).
(*f*) *Ibid.*, s. 246 (2) (b).
(*g*) For the definition, see *ibid.*, s. 742. Any superintendent or other employee of a mercantile marine office, who demands or receives any direct or indirect remuneration, outside the official remuneration, for the performance of any act forming part of his duty, is liable to a fine not exceeding £20, and is also subject to immediate dismissal (*ibid.*, s. 250). Furthermore, any person employed by or under a local marine board is within the scope of the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 68, relating to embezzlement (M. S. Act, 1894, s. 248 (1)), and will be held guilty of embezzlement if he fraudulently applies or disposes of any chattel, money, or valuable security received by him whilst so employed, for, or on account of any public board or department, to any use or purpose other than that for which it was paid to him (*ibid.*, s. 248 (2) (a)), or if he fraudulently withholds any part of such sum contrary to instructions received for the due performance of his office (*ibid.*, s. 248 (2) (b)). The Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 71, also applies as to the manner of charging embezzlement in this connexion under the M. S. Act, 1894 (*ibid.*, s. 248 (4)), and for an indictment in this regard it is sufficient to charge any such chattel etc. as the property of the local board by whom the employee was appointed, or of the department on whose account it was received (*ibid.*, s. 248 (3)).
(*h*) M. S. Act, 1906, ss. 74 (1), 85, Sched. II.
(*i*) M. S. Act, 1894, s. 246 (2) (d).

SECT. 3. Mercantile Marine Offices.

appointed, and any officer of customs appointed by the Board of Trade to carry out those purposes becomes a superintendent or deputy within the meaning of the Merchant Shipping Acts (*k*).

Duties of superintendents.

1057. The duties of a superintendent of a mercantile marine office are:—

(1) To afford facilities for engaging seamen by keeping a register of their names and characters (*l*), including especially a list of the seamen who, to the best of his belief, have deserted or failed to join their ships after signing the usual agreement. He must on request show this list to the master of any ship, and is not liable in respect of any entry in it made in good faith (*m*);

(2) To superintend and facilitate the engagement and discharge of seamen (*n*), that is, for example, to provide proper forms for ship's articles of agreement (*o*), to be present at the signing by each seaman of agreements with respect to foreign-going ships (*p*), to grant certificates to masters of foreign-going ships on the due execution of their agreements with seamen, or on the fulfilment of the provisions respecting running agreements (*q*), and generally to assist the masters of ships in making and attesting the necessary entries and alterations in their agreements with their crews (*r*);

(3) To provide such means as may be necessary to secure the presence on board ship of seamen who have signed proper agreements (*s*);

(4) To facilitate, by the supply of the necessary forms and information, or by any other means in their power, the making of apprenticeships to the sea service (*a*);

(5) To perform various other duties relating to seamen, apprentices, and merchant ships imposed upon him by the Acts relating to merchant shipping (*b*).

Deputy superintendent.

1058. All acts required by statute to be performed by, to, or before a superintendent have the same effect if done by, to, or before a duly appointed deputy (*c*). The Board of Trade may dispense with the statutory requirement as to the transaction of

(*k*) M. S. Act, 1894, s. 246 (3) (b).
(*l*) *Ibid.*, s. 247 (1).
(*m*) *Ibid.*, s. 230.
(*n*) *Ibid.*, s. 247 (1).
(*o*) Compare *ibid.*, s. 114.
(*p*) *Ibid.*, s. 115 (1).
(*q*) *Ibid.*, s. 118 (1).
(*r*) *Ibid.*, s. 122.
(*s*) *Ibid.*, s. 247 (1).
(*a*) *Ibid.*, s. 247 (1); and compare *ibid.*, ss. 105, 394—397; see p. 41, *ante*.
(*b*) M. S. Act, 1894, s. 247 (1). For example, to demand and to receive, within forty-eight hours of her arrival, the official log-book of every foreign-going ship (see *ibid.*, s. 742) which concludes her voyage at the port over which he has authority; to issue seamen's money orders, for the purpose of giving facilities for the remittal of wages and other money of seamen and apprentices to their relatives and others (*ibid.*, s. 145 (1)). For the duties as regards fishing boats and their crews and apprentices, see title FISHERIES, Vol. XIV., pp. 630 *et seq.*
(*c*) M. S. Act, 1894, s. 247 (2).

any matters which should be performed either in a mercantile marine office or before a superintendent; and thereupon such matters, if otherwise duly transacted, will be as valid as if performed in accordance with statutory requirements (*d*).

SECT. 3. **Mercantile Marine Offices.**

SECT. 4.—*Registration Authorities.*

Registrar-General of Shipping and Seamen.

1059. It is the duty of the Board of Trade to maintain in the Port of London an office called the General Register and Record Office of Seamen (*e*), and the Board has power to appoint, and if necessary remove, a "Registrar-General of Shipping and Seamen," together with a competent staff of clerks and assistants (*f*). This officer must, by means of the documents transmitted to him and by the employment of all other means in his power, keep a register of all persons who serve in ships subject to the Merchant Shipping Acts (*g*).

Lists of crew.

1060. The Registrar-General receives the lists of the crew, which must be made out, signed, and delivered to a port superintendent by the masters of foreign-going ships (*h*) whose crews are discharged in the United Kingdom within forty-eight hours after their arrival at their final port of destination, or upon the discharge of the crew, whichever first happens, and of all home-trade ships (*h*), on, or within twenty-one days after the 30th June and the 31st December in each year (*i*). The lists must state and contain :—

Contents.

(1) The number and date of the ship's register and her registered tonnage; (2) the length and general nature of the voyage or employment; (3) the names, ages, and places of birth of the master, crew, and apprentices; their ratings; their last ships or other employments, and the dates and places of their joining the ship; (4) the names of any of the crew who have ceased to belong to the ship, with the dates, places, and circumstances of their leaving; (5) the names of any of the crew who have been maimed or hurt, with the time, place, and circumstances of the casualty; (6) the wages due at the time of death to any of the crew who have died; (7) the property (*k*) of any of the crew who has died, the manner in which such property has been dealt with, and the money for which any part of it has been sold; (8) any marriage which has taken place on board, with the date and the names and ages of the parties (*l*).

Delivery compulsory.

1061. The delivery of such list is compulsory (*m*), and in the

(*d*) M. S. Act, 1894, s. 249.
(*e*) *Ibid.*, s. 251 (1).
(*f*) *Ibid.*, s. 251 (2).
(*g*) *Ibid.*, s. 252.
(*h*) For definition of "foreign-going ship," see *ibid.*, s. 742.
(*i*) *Ibid.*, s. 253 (1).
(*k*) As to what is included in such "property," see *ibid.*, ss. 172, 173; M. S. Act, 1906, s. 28 (6).
(*l*) M. S. Act, 1894, s. 253 (1).
(*m*) The penalty for failure to deliver or transmit a list of the crew as above described without reasonable cause is a fine not exceeding £5, leviable upon the master of a foreign-going ship, or upon the master or owner of a home-trade ship (*ibid.*, s. 253 (3)).

SECT. 4. Registration Authorities.

absence of a certificate of delivery, which the superintendent must give on receipt of it, a ship may be detained (*a*), and the officer of customs cannot clear inwards any foreign-going ship (*b*).

Births and deaths.

1062. It is the duty of every master of a British ship, registered or unregistered, to record in his log-book the occurrence of every birth and death happening on board his ship as soon as possible after the event (*c*), and upon his next arrival at a port in the United Kingdom, or on such other occasion as the Board of Trade may direct, to transmit a return of the facts so recorded to the Registrar-General of Shipping and Seamen (*d*), or, in such cases as the Board may direct, to the superintendent or chief officer of customs of the port (*e*), or, if elsewhere than in a British possession, to the British consular officer at the port (*e*), to be by him in turn transmitted to the Registrar-General (*e*). This duty is likewise imposed upon the master of any foreign ship carrying passengers to or from any port of the United Kingdom, if that port is either the ship's port of departure or port of destination (*f*).

Transfer of ownership or change of employment.

1063. In the case of a transfer of ownership or change of employment of a ship the outgoing owner or master must, if the ship is in the United Kingdom within one month, if elsewhere within six months, transmit to the superintendent of the port to which the ship belonged a list of the crew made up to the date when such return, by reason of such transfer or change, ceased to be required of him (*g*). Similarly, if a ship is lost or abandoned, the master or owner must transmit to the superintendent at her port of registry, as soon as possible, a list of her crew at the date of her loss or abandonment (*h*).

Ship lost or abandoned.

Mercantile documents.

1064. All documents delivered or transmitted to port superintendents and officers of customs under the Merchant Shipping Acts must be in turn transmitted by them to the Registrar-General of Shipping and Seamen as soon as their practical utility at the place where they come into the hands of the supervising officer is exhausted (*i*). The Registrar-General then records and preserves them, and they are open to public inspection (*k*).

Agreements with crew and apprenticeship indentures.

1065. Upon the arrival of any British ship, not being a passenger ship, at either a port in a British possession, or elsewhere, at

(*a*) As to enforcing detention, see M. S. Act, 1894, s. 692.
(*b*) *Ibid.*, s. 253 (2).
(*c*) *Ibid.*, s. 254 (1).
(*d*) *Ibid.*, s. 254 (2).
(*e*) *Ibid.*, s. 254 (3). The maximum penalty is £5 (*ibid.*, s. 254 (5)).
(*f*) *Ibid.*, s. 339. See title REGISTRATION OF BIRTHS, MARRIAGES, AND DEATHS, Vol. XXIV., pp. 457 *et seq.*
(*g*) M. S. Act, 1894, s. 255 (1).
(*h*) *Ibid.*, s. 255 (2). The maximum penalty is £10 (*ibid.*, s. 255 (3)).
(*i*) *Ibid.*, s. 256 (1).
(*k*) *Ibid.* A fee may be charged if fixed by the Board of Trade (*ibid.*). The documents so recorded are public records within the meaning of the Public Record Offices Acts, 1838 (1 & 2 Vict. c. 94) and 1877 (40 & 41 Vict. c. 55); as to their admissibility in evidence, mode of proof thereof, and exemption from stamp duty, see M. S. Act, 1894, ss. 694, 695, 719, 721.

which there is a British consular officer, for a stay of over forty-eight hours, it is the duty of the master, within forty-eight hours of arrival, to deposit with the chief officer of customs or consular officer, as the case may be, the agreement with the crew and all indentures and assignments of apprenticeships (*l*). The officer retains these documents during the ship's stay and makes any necessary indorsements thereon (*m*). He must return them to the master within a reasonable time before his departure, certifying the date of delivery and return (*m*), and, where it appears that any forms have been neglected or law trangressed, he must indorse the agreement to that effect and transmit to the Registrar-General a copy of his indorsement, together with the best information he can procure concerning the alleged neglect or transgression (*n*). Any master who is removed or suspended, or for any reason quits the ship during a voyage, must deliver to his successor the various documents relating to the navigation of the ship and to the crew (*o*). His successor has a corresponding duty to enter at once in the official log-book (*p*) a list of the documents delivered (*q*).

Part XXI.—Pleasure Yachts.

SECT. 1.—*Exemptions and Special Provisions under Statute.*

Exemption from registration.

1066. Ships not exceeding fifteen tons burden (*a*), which are only used on the rivers or coasts of the United Kingdom, or of some British possession where the managing owner resides, need not be registered (*b*).

Employment of officers and crew.

1067. The owners, masters and crews of pleasure yachts are not subject to the statutory provisions relating to the employment and competency of the officers and crew (*c*).

(*l*) M. S. Act, 1894, s. 257 (1). For omission of this duty the master is not only liable to a fine of £20, but in proceedings to recover the fine the burden lies upon him of proving, either that he obtained the necessary certificate, or that it was not practicable for him to obtain it (*ibid.*, s. 257 (4)). Compare as to production of indentures, *ibid.*, s. 109, and of certificates of agreement, *ibid.*, s. 118.

(*m*) *Ibid.*, s. 257 (2).

(*n*) *Ibid.*, s. 257 (3).

(*o*) *Ibid.*, s. 258. Penalty not exceeding £100 (*ibid.*).

(*p*) Compare *ibid.*, ss. 239, 240.

(*q*) *Ibid.*, s. 258.

(*a*) This means net register tonnage (*The Brunel*, [1900] P. 24, C. A.). For form of charter of sailing yacht, see Encyclopædia of Forms and Precedents, Vol. XIV., p. 90.

(*b*) M. S. Act, 1894, s. 3 (1). As to registration generally, see p. 16, *ante*. Yachts used for sea fishing must be registered as fishing boats; see title FISHERIES, Vol. XIV., pp. 628 *et seq.*

(*c*) The provisions from which pleasure yachts are exempt are those in the M. S. Act, 1894, Part II., relating to certificates of competency of officers; the record of indentures of apprenticeship; the entry of particulars respecting apprentices; the engagement of the crew through unlicensed persons; agreements with the crew (except those relating to the engagement of seamen abroad); the compulsory discharge and payment

SECT. 1. Exemptions and Special Provisions under Statute.

Light dues.

1068. Pleasure yachts are subject to an annual payment per ton, in place of payments per voyage, for light dues; and only yachts and pleasure boats of under five tons are exempted (*d*). Yachts laid up during the whole of any year ending the 31st March are exempt from light dues in respect of such year (*e*). Sailing yachts above five tons register tonnage, which are not registered in the British Isles and come into the territorial waters solely with the object of taking part in yacht-racing, may be exempted if holding a certificate in a form approved by the Board of Trade (*f*).

Death on board.

1069. The statutory provision requiring the Board of Trade superintendent to inquire into the cause of a death happening on any foreign-going British ship does not apply to pleasure yachts (*g*).

Marking.

1070. The Board of Trade may exempt pleasure yachts belonging to privileged clubs from the provisions requiring every registered British ship to have her name marked on each bow, and her name and port of registry on her stern, and scale of feet denoting her draught of water on stem and stern post (*h*), and from the provisions of the Customs Consolidation Act, 1876 (*i*), requiring name and port to be painted on every boat belonging to such ship (*j*).

Compulsory pilotage.

Yachts are exempted in all pilotage districts from compulsory pilotage (*k*).

Ensigns.

1071. The Lords of the Admiralty may grant to the members of certain yacht clubs the privilege of wearing on their yachts a special ensign (*l*). In the case of the Royal Yacht Squadron, this is the white ensign as worn in His Majesty's navy; in the case of the other privileged clubs, it is either the blue ensign of His Majesty's

of wages before a superintendent; the accommodation for seamen; fines; delivery of documents to consular or customs officers abroad; and official log-books (M. S. Act, 1894, s. 262).

(*d*) This was fixed at 1*s*. per ton by the Merchant Shipping (Mercantile Marine Fund) Act, 1898 (61 & 62 Vict. c. 44), Sched. II., reduced by 12½ per cent. by Order in Council dated the 10th August, 1903 (Stat. R. & O. Rev., Vol. VIII., Merchant Shipping, p. 305), and by a further 17½ per cent. for three years by Order in Council dated the 21st December, 1908 (Stat. R. & O., 1908, p. 549).

(*e*) Order in Council dated the 24th July, 1901 (Stat. R. & O. Rev., Vol. VIII., Merchant Shipping, p. 303).

(*f*) Order in Council dated the 4th July, 1908 (Stat. R. & O. 1908, p. 647).

(*g*) M. S. Act, 1894, s. 690 (3) (c).

(*h*) Yachts are exempted from external markings by virtue of a Board of Trade Circular (No. 1487) issued in December, 1909. This circular (which is an instruction to surveyors) contains a list of seventy-one clubs the yachts belonging to the members of which are so exempted. Other yacht clubs may make application for exemption to the Assistant Secretary, Marine Department, Board of Trade.

(*i*) 39 & 40 Vict. c. 36, s. 175.

(*j*) The practice is that instead of having the name on the stern, as in the case of an ordinary ship's boats, those belonging to a yacht have the burgee of the owner's club painted on each bow.

(*k*) Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 11 (3); see p. 610, *ante*.

(*l*) A warrant signed by two of the Lords of the Admiralty and the Secretary of the Admiralty is issued to the club defining the particular flag (colour and device) in each case. The warrant states that this flag may be worn on vessels belonging to members of such yacht club being natural-born or naturalised British subjects, subject to the following

fleet, with or without a device, or the red ensign with the distinctive marks of the club on the fly thereof (*m*). The privilege is in each case granted by individual warrant (*n*), and a vessel in order to be eligible to wear such ensign must be registered, must belong to a British subject, and must not, at the time, be lent on hire or otherwise to any person not being a member of the club or not being a British subject.

SECT. 1. Exemptions and Special Provisions under Statute.

SECT. 2.—*Privileges Accorded to Yachts Carrying Special Flag.*

1072. Yacht owners who possess Admiralty warrants are generally allowed the privilege of mooring to Government buoys, when these are not actually required at the time for the King's service. Mooring.

Owners in possession of Admiralty warrants are also allowed the privilege of taking wines, spirits, and tobacco out of bond to use on board during foreign voyages, and to lodge these commodities in the custom-house warehouses, free of duty, between foreign voyages. Wines, spirits and tobacco.

Yacht owners can also carry their personal furniture between places in the United Kingdom without the necessity of a coasting licence (*o*). Coasting licence.

Most foreign Governments grant exemptions from tonnage dues to yachts belonging to the privileged clubs. Foreign tonnage dues.

SECT. 3.—*Measure of Liability in Case of Collision.*

1073. The limitation of owner's liability in respect of damages caused by his ship in case of collision (*p*) does not apply where the owner is in command of his vessel (as is common in the case of small yachts), and is party or privy to the collision (*q*). Where a yacht, sailing under the rules of a club providing that she shall pay all damages, sinks another yacht in a race, the statutory limitation of liability is excluded by the implied contract (*r*). Liability in case of collision.

conditions, namely: "1. Every vessel belonging to the —— Club in order to be eligible to wear the Ensign authorised by this warrant, shall have been registered as a British vessel in accordance with the Merchant Shipping Act, 1894. 2. The Ensign shall not, without Our authority in writing, be worn on board any vessel belonging to the —— Club, while such vessel is lent on hire or otherwise, to any person not being a member of the Club, or who, being a member of the Club, is not a natural-born or naturalized British subject"; see Admiralty Letter dated the 25th July, 1913. In foreign ports the yacht's Admiralty warrant must, on demand, be shown to the port authorities or British consul (*ibid.*). Yachts in Turkish waters are recommended to fly the red ensign, otherwise they are treated as men-of-war and compelled to obtain an Imperial *irade* before being allowed to pass the Dardanelles (Admiralty Letter dated the 29th May, 1903).

(*m*) In the case of the Royal Cork Yacht Club (the oldest yacht club in the world), the device is not on the fly, but is a golden harp on a green ground in the centre of the Union Jack. As to flags generally, see M. S. Act, 1894, ss. 73, 74, 75.

(*n*) A separate warrant is required for each club to which the member belongs; yachts held in partnership are not eligible unless all the owners are members of the club. The owner has to apply, through the secretary of his club, on a form setting out full particulars as to name of yacht, registered tonnage, length, breadth, rig and port of registry.

(*o*) See, generally, title REVENUE, Vol. XXIV., p. 590.

(*p*) As to limitation of liability generally, see pp. 612 *et seq.*, *ante*.

(*q*) *The Diamond*, [1906] P. 282 ("without his actual fault or privity").

(*r*) *Clarke* v. *Dunraven* (*Earl*), *The "Satanita,"* [1897] A. C. 59. For a form of rules of a yacht club, see Encyclopædia of Forms and Precedents, Vol. III., p. 755.

PART XXII. Naval and Marine Courts.

Part XXII.—Naval and Marine Courts.

Naval courts.

1074. The constitution and jurisdiction of naval courts and courts of survey have been considered elsewhere (*a*). It should be added that the provisions of the Merchant Shipping Act, 1894 (*b*), with regard to naval courts on the high seas and abroad (*c*) apply to all sea-going ships registered in the United Kingdom (*d*), and to all ships registered in a British possession, when those ships are out of the jurisdiction of their respective Governments, and where they apply to a ship, they are deemed to apply to the owners, master, and crew of that ship (*e*). Anyone who wilfully and without due cause prevents and obstructs the making of any complaint to an officer empowered to summon a naval court (*f*), or the conduct of any hearing or investigation by such court, is liable to a fine not exceeding £50, or to imprisonment, with or without hard labour, for any period not exceeding twelve weeks (*g*).

Courts of survey.

1075. A court of survey (*h*) must hear every case in open court. The judge and each assessor may survey the ship or have it surveyed by some competent person or persons, and have the powers of a Board of Trade inspector in that respect (*i*); they have also large powers of inspection and detention, and must report to the Board of Trade. The owner and master of the ship and their representatives may attend at any inspection and survey (*k*). In difficult cases the matter may be referred by the Board of Trade to a scientific expert, who will have the same powers as a judge of the court of survey (*l*). The procedure of a court of survey is controlled by rules made by the Lord Chancellor (*m*).

(*a*) See title COURTS, Vol. IX., pp. 107 *et seq.*
(*b*) 57 & 58 Vict. c. 60, ss. 480—486.
(*c*) See title COURTS, Vol. IX., p. 108; and p. 591, *ante*.
(*d*) There is an exception, save in the case of Scotland, of fishing boats exclusively employed in fishing on the coasts of the United Kingdom (M. S. Act, 1894, s. 486).
(*e*) *Ibid.*, s. 486.
(*f*) See title COURTS, Vol. IX., p. 108.
(*g*) M. S. Act, 1894, s. 485.
(*h*) See title COURTS, Vol. IX., p. 107.
(*i*) See p. 650, *ante*.
(*k*) M. S. Act, 1894, s. 488.
(*l*) *Ibid.*, s. 490.
(*m*) *Ibid.*, s. 489. The rules in force are dated the 29th September, 1876; see Stat. R. & O. Rev., Vol. VIII., Merchant Shipping, p. 230.

APPENDIX.

Table of Collision Regulations, 1840—1910.

[Note.—*Hitherto it has been difficult to trace back one of the articles in the regulations, owing to the absence of any table showing the names of the different regulations which have been introduced, and what the regulations are or where they may be found, and the years during which they have been in force. And an additional difficulty has been that the law reports, especially of the older cases, have referred to articles of regulations in force at the time without giving the exact name of the regulations or the date at which they came in force. To remedy these difficulties the following table has been prepared, which will be of assistance in tracing the history of the regulations now in force, and in verifying the particular regulations in which any article referred to in the older law reports was contained.*—Eds.]

Authority.	In Force.	Statement or Summary of Regulations.	Where Found.
The Trinity House.	30th October, 1840. (These regulations were gradually superseded, partly by stat. (1846) 9 & 10 Vict. c. 100; partly again by the Steam Navigation Act, 1851 (14 & 15 Vict. c. 79), and the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104); and finally, apparently, by the Sea Regulations, 1863.)	The Trinity House Regulations, 1840. *Recognised rules.* Sailing vessels:— Wind free gives way to close-hauled. Vessel on larboard tack shall bear up for vessel on starboard tack. Both free and meeting, each must port. Steam vessels, considered in the light of vessels with fair wind, give way to sailing vessels on either tack. *New rules* (adopted by steam vessels in H.M.'s service.) When steam vessels must cross so near by continuing their courses that there would be risk of collision, each shall port so as to pass on the larboard side. Steam vessel, passing another in a narrow channel, must leave the vessel she is passing on the larboard hand.	1 Wm. Rob. 488. Pritchard's Admiralty Digest (hereafter in this Table cited as Pritchard), 1st ed. (1847), p. 134, n.; and cases thereon in 3rd ed. (1886), title Collision, p. 271, n.; 2nd ed. (1865), title Damage, pp. 163, 164, 192, 241. Abbott's Law of Merchant Ships, etc. (hereafter in this Table cited as Abbott), 11th ed. (1867), p. 605, and some cases thereon, pp. 605, 606. Marsden's Collisions at Sea (hereafter in this Table cited as Marsden), 3rd ed. (1891), p. 535; and cases

TABLE OF COLLISION REGULATIONS—*continued.*

Authority.	In Force.	Statement or Summary of Regulations.	Where Found.
			thereon, p. 339, and 4th ed. (1897), p. 365.
Sea Fisheries Act, 1843 (6 & 7 Vict. c. 79), s. 1, and Sched., arts. I., L., LI., LIII., LIV.; see amending Act, stat. (1855) 18 & 19 Vict. c. 101.	22nd August, 1843, till 1st February, 1869, as regards British subjects (the Sea Fisheries Act, 1843 (6 & 7 Vict. c. 79), was repealed by the Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45), s. 71, which came into force on 1st February, 1869; see below in this Table). In 1877 the Sea Fisheries Act, 1843 (6 & 7 Vict. c. 79), was revived, as regards French fishing boats, as if the Act had not been repealed, and as regards French fishing boats the regulations in the next column appear to be still in force (compare Stuart Moore's History and Law of Fisheries, 1903, pp. 194, 195), the convention scheduled to the Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45), not having come into force. Compare Fisheries (Oyster, Crab, and Lobster) Act, 1877 (40 & 41 Vict. c. 42), s. 15).	British and French Fishermen's Regulations, 1843 (as they may be called). *Day signals.* To distinguish drift net fishing boats from trawl boats, vanes 8 inches high and 2 feet broad were to be carried at the masthead, and their colours were to be— For British trawl boats, red; drift boats, white and red. For French trawl boats, blue; drift boats, white and blue. *Lights.* To distinguish boats fishing with drift nets, there were to be hoisted on one of their masts from sunset to sunrise during all the time their nets should be in the sea, two lights one over the other, 3 feet apart.	As regards this Act, see Stuart Moore's History and Law of Fisheries, 1903; and Maude and Pollock's Law of Merchant Shipping (hereafter in this Table referred to as Maude and Pollock), 4th ed. (1881), Vol. II., notes on pp. cclxxix, cclxxxix. An action of damage by collision did not lie for breach of these regulations, as all transgressions were to be submitted to the jurisdiction provided by the Act (*Marshall* v. *Nicholls* (1852), 18 Q. B. 882).

TABLE OF COLLISION REGULATIONS—*continued.*

Authority.	In Force.	Statement or Summary of Regulations.	Where Found.
Stat. (1846) 9 & 10 Vict. c. 100, preamble, ss. 9, 36.	1st January, 1847. (Till 31st December, 1851; see Steam Navigation Act, 1851 (14 & 15 Vict. c. 79), s. 1.)	Every steam vessel meeting or passing any other steam vessel shall pass as far as may be safe on the port side of such other vessel. Every steam vessel navigating any river or narrow channel shall keep as far as practicable to that side of the fairway or mid-channel of such river or channel which lies on the starboard side of such vessel, due regard being had to the tide and to the position of each vessel in such tide.	For cases thereon, see Pritchard, 3rd. ed. (1886), title Collision, p. 271, note 399; and 2nd ed. (1865), title Damage, p. 164
Admiralty Regulations as to lights, 1848 (made under stat. (1846) 9 & 10 Vict. c. 100, see ss. 10, 11, 12, 13, and 36; but it is a question whether s. 11 was complied with).	11th July, 1848. (Till 1st May, 1852, when revoked by Admiralty Regulations of that date.)	Lights shall be exhibited by all steam vessels, except in the river Thames, above Yantlett Creek, between sunset and sunrise :— When under weigh : bright white light at the foremast head, visible at least five miles in a clear dark night, and the lantern to be so constructed as to show a uniform and unbroken light over an arc of the horizon of twenty points of the compass, from right ahead to two points abaft the beam on each side ; green light on starboard side, and red light on port side, visible at least two miles in a clear dark night, and the lanterns so constructed as to show a uniform and unbroken light over an arc of ten points from right ahead to two points abaft the beam on their respective sides. The side lights to be fitted with inboard screens (placed in a fore and aft line with the inner edge of the side lights) at least 3 feet long, to prevent them from being seen across the bow. [Illustrative diagrams, and instructions as to fixing the lights, which in fact amounted to rules of navigation, were furnished by the Admiralty. The words referring to the fourth position shown in the diagrams were to the following effect, "4th situation : Here a *green* light only will be visible to each, the screens preventing the *red* lights being seen. They are, therefore, passing to *starboard* and will *starboard* their helms with confidence." See *The Rob Roy* (1849), 7 Notes of Cases, 280, 285.] When at anchor : a common bright light.	*London Gazette*, 11th July, 1848.
Steam Navigation Act, 1851 (14 & 15 Vict. c. 79), ss. 27, 48, 51.	31st December, 1851. (Till 1st May, 1855; see Merchant Shipping Repeal Act, 1854 (17 & 18 Vict. c. 120), s. 3, Schedule.)	Whenever any vessel proceeding in one direction meets a vessel proceeding in another direction, and the master or other person having charge of either such vessel perceives that if both vessels continue their respective courses they will pass so near as to involve any risk of collision, he shall put the helm of his vessel to port, so as to pass on the port side of the other vessel, due regard being had to the tide and to the position of each vessel with respect to the dangers of the channel, and as regards sailing vessels, to the keeping of each vessel under command ;	For cases thereon, see Pritchard, 2nd ed. (1865), title Damage, p. 165; 3rd ed. (1886), p. 271, note 401.

TABLE OF COLLISION REGULATIONS—*continued.*

Authority.	In Force.	Statement or Summary of Regulations.	Where Found.
		And the master of any steam vessel navigating any river or narrow channel shall keep as far as is practicable to that side of the fairway or midchannel which lies on the starboard side of such vessel.	
Admiralty Notice respecting lights, 1852 (made under the Steam Navigation Act, 1851 (14 & 15 Vict. c. 79), s. 26).	1st August, 1852. (Till 1st October, 1858; see Admiralty Notice, 1858. Not annulled by M. S. Repeal Act, 1854 (17 & 18 Vict. c. 120); compare *The Mangerton* (1856), Sw. 120.)	*Steam vessels.* All British sea-going steam vessels (whether propelled by paddles or screws) shall, within all seas, gulfs, channels, straits, bays, creeks, roads, roadsteads, harbours, havens, ports and rivers, and under all circumstances, between sunset and sunrise, exhibit :— When under steam : [The same lights prescribed in practically the same words as in 1848]. When at anchor : a common bright light. *Sailing vessels.* All sailing vessels, when under sail, or being towed, approaching or being approached by any other vessel, shall show, between sunset and sunrise, a bright light, in such a position as can be best seen by such vessel or vessels, and in sufficient time to avoid collision. All sailing vessels at anchor in roadsteads or fairways shall exhibit, between sunset and sunrise, a constant bright light at the masthead, except within harbours or other places where regulations for other lights for ships are legally established. The lantern to be used when at anchor, both by steam vessels and sailing vessels, is to be so constructed as to show a clear good light all round the horizon.	*London Gazette*, 4th May, 1852; Sw. Appendix, p. i. For cases thereon, see Pritchard, 2nd ed. (1865), title Damage, pp. 147—149; 3rd ed. (1886), p. 249, note 281.
M. S. Act, 1854 (17 & 18 Vict. c. 104), ss. 3, 4, 296, 297.	1st May, 1855. (Till 1st June, 1863; see M. S. Act Amendment Act, 1862 (25 & 26 Vict. c. 63), s. 2, Schedule.)	Whenever any ship, whether a steam or sailing ship, meets another ship, whether a steam or sailing ship, so that if both were to continue their courses they would pass so near as to involve any risk of a collision, the helms of both ships shall be put to port so as to pass on the port side of each other. And this rule shall be obeyed by all steam ships and by all sailing ships, whether on the port or starboard tack and whether close-hauled or not, unless the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger, and subject also to the proviso that due regard shall be had to the dangers of navigation, and as regards sailing ships on the starboard tack close-hauled, to the keeping such ships under command. Every steamship, when navigating any narrow channel, shall, whenever it is safe and practicable, keep to that side of the fairway or midchannel which lies on the starboard side of such ship.	For construction, and cases thereon, see Pritchard, 2nd ed. (1865), title Damage, pp. 165—168, and 192—194; and 3rd ed. (1886), p. 271, note 403, and pp. 273—275; Abbott, 11th ed. (1867), pp. 606—610.

TABLE OF COLLISION REGULATIONS—*continued.*

Authority.	In Force.	Statement or Summary of Regulations.	Where Found.
Admiralty Notice respecting lights and fog signals, 24th February, 1858. (Made under the M. S. Act, 1854 (17 & 18 Vict. c. 104), s. 295. As to the Admiralty Regulation, 26th October, 1858, exempting fishing vessels from the above notice, see *The Olivia* (1862), Lush. 497).	1st October, 1858. (Till 1st June, 1863; see M. S. Act Amendment Act, 1862 (25 & 26 Vict. c. 63), s. 2, Schedule.)	*Steam vessels.* All sea-going steam vessels, when under steam, shall, between sunset and sunrise, exhibit [the same lights prescribed in practically the same words as in 1848 and 1852]. Steam vessels under sail only are not to carry their masthead lights. *Fog signals.* All sea-going steam vessels, whether propelled by paddles or screws, when their steam is up, and when under way, shall in all cases of fog use as a fog signal a steam whistle, placed before the funnel at not less than 8 feet from the deck, which shall be sounded once at least every five minutes; but when the steam is not up, they shall use a fog horn or bell, as ordered for sailing ships. *Sailing vessels.* All sea-going sailing vessels when under way, or being towed, shall, between sunset and sunrise, exhibit a green light on the starboard side and a red light on the port side etc. [in practically the same words as the Admiralty Regulations, 1848, for steam vessels]. The coloured lights shall be fixed when ever practicable. When the coloured lights cannot be fixed (as in the case of small vessels in bad weather), they shall be kept on deck between sunset and sunrise, and on their proper sides of the vessel, ready for instant exhibition, and shall be exhibited in such a manner as can be best seen on the approach of, or to, any other vessel or vessels, in sufficient time to avoid collision, and so that the green light shall not be seen on the port side, nor the red light on the starboard side. *Fog signals.* All sea-going sailing vessels, when under way, shall, in all cases of fog, use when on the starboard tack a fog horn, and when on the port tack shall ring a bell. These signals shall be sounded once at least every five minutes. *Pilot vessels.* Sailing pilot vessels are to carry only a white light at the masthead, and are to exhibit a flare-up light every fifteen minutes, in accordance with Trinity House Regulation. *Vessels at anchor.* All sea-going vessels when at anchor in roadsteads or fairways shall, between sunset and sunrise, exhibit where it can best be seen, but at a height not exceeding 20 feet above the hull, a white light in a globular	Sw. Appendix, p. vi.; Pritchard, 2nd ed. (1865), title Damage, pp. 150—151; and cases thereon, pp. 151—153; and as to fishing vessels, p. 199.

TABLE OF COLLISION REGULATIONS—*continued.*

Authority.	In Force.	Statement or Summary of Regulations	Where Found.
		lantern of 8 inches in diameter, and so constructed as to show a clear, uniform, and unbroken light all round the horizon, at a distance of at least 1 mile.	
Regulations for Preventing Collisions at Sea (scheduled to Order in Council, 9th January, 1863; and made under M.S. Act Amendment Act, 1862 (25 & 26 Vict. c. 63), see ss. 25—28, 57, 58, 61).	1st June, 1863, as regards British ships, and in certain cases foreign ships (Orders in Council, 3rd January, 1863, and later). (Till 1st September, 1880, as regards British ships and in some cases foreign ships (except art 9, which continued in force till 1st September, 1884); see Orders in Council, 14th August, 1879, and 11th August, 1884, in Stat. R. & O. Rev., Merchant Shipping, Vol. VIII., pp. 246, 257.)	The Sea Regulations, 1863, arts. 1—20.	*London Gazette*, 13th January, 1863. Lush. Appendix, pp. 1 and lxxii; Brown. & Lush., p. 482. Pritchard, 2nd ed. (1865), p. ccxxviii; 3rd ed. (1886), p. 2522. And cases thereon, 2nd ed., title Damage; 3rd ed., title Collision, Parts IV.—VIII. Holt (ADM.), 1867, p. 7, and cases therein. Marsden, 1st ed. (1880), pp. 247 *et seq.*; 4th ed. (1897), pp. 416 *et seq.*
Order in Council, 30th July, 1868 (made under M.S. Act Amendment Act, 1862 (25 & 26 Vict. c. 63), as above).	30th July, 1868. (Till 1st September, 1880; see above.)	Additional Regulations, 1868 (as they may be called). Explaining arts. 11 and 13 of the Sea Regulations, 1863, which prescribed that sailing ships, meeting end on or nearly end on, should both port, and that ships under steam in the same case should do the like. The explanations are in practically the same terms as the explanatory paragraph in art. 18 of the Sea Regulations, 1910 (Stat. R. & O., 1910, p. 457).	*London Gazette*, 4th August, 1868. Maude and Pollock, 4th ed. (1881), Vol. II., p. 44.
The Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45), ss. 6, 20, Sched. I., arts. XII., XIII. & XIV. of	1st February, 1869. (Till 15th May, 1884, as regards British subjects.) (This Act, and the articles of the Convention as en-	Sea Fisheries Act Regulations, 1868 (as they may be called). As to all sea-fishing boats within the exclusive fishery limits of the British Islands, and as to British sea fishing boats outside of these limits. *Lights.* Boats fishing with drift nets shall carry on one of their masts between sunset and sunrise	As regards this Act, see above under the Sea Fisheries Act, 1843 (6 & 7 Vict. c. 79), in this Table, and the authorities there referred to.

TABLE OF COLLISION REGULATIONS—*continued.*

Authority.	In Force.	Statement or Summary of Regulations.	Where Found.
the Convention.	acted therein, came into force on 1st February, 1869; but the Convention did not then and apparently has not yet come into force; see the Board of Trade Notices in *London Gazette* of 22nd January, and 9th February, 1869. Arts. XII., XIII. and XIV. and other parts of the Act were repealed by the Sea Fisheries Act, 1883 (46 & 47 Vict. c. 22), s. 30 (2); see especially s. 30 (2) (b), which came into force on 15th May, 1884; see Notice in *London Gazette*, 28th March, 1884).	during all the time their nets shall be in the sea :— Two lights one over the other, 3 feet apart. A boat obliged to anchor between sunset and sunrise on grounds where drift net fishing is going on shall hoist so that they shall be seen from a distance :— Two lights placed horizontally about 3 feet apart.	
Regulations for Preventing Collisions at Sea (scheduled to Order in Council, 14th August, 1879; and made under M. S. Act Amendment Act, 1862 (25 & 26 Vict. c. 63), as above; compare M. S. Act, 1873 (36 & 37 Vict. c. 85), s. 17).	1st September, 1880, as regards British ships and in certain cases foreign ships (Order in Council, 14th August, 1879); except art. 10, which was suspended from time to time and never came into force (Order in Council, 11th August, 1884). (Till 1st September, 1884, as regards British ships; see Order in Council, 11th August, 1884.)	The Sea Regulations, 1880, arts. 1—26.	4 P. D. 241. Stat. R. & O. Rev., Vol. VIII., Merchant Shipping, pp. 246 *et seq.* Marsden, 2nd ed. (1885), p. 471. Pritchard, 3rd ed. (1886), p. 2519, and title Collision, Parts IV.—VIII.

TABLE OF COLLISION REGULATIONS—*continued.*

Authority.	In Force.	Statement or Summary of Regulations.	Where Found.
Regulations for Preventing Collisions at Sea (scheduled to Order in Council, 11th August, 1884; and made under M.S. Act Amendment Act, 1862 (25 & 26 Vict. c. 63), as above).	1st September, 1884, as regards British ships (Order in Council, 11th August, 1884); and afterwards as regards the ships of several foreign countries by later Orders in Council. (Till 1st July, 1897, as regards British ships (Order in Council, 27th November, 1896); except art. 10, which, with modifications, continued in force till 1st May, 1906, when it was annulled as regards British ships (Order in Council, 4th April, 1906).)	The Sea Regulations, 1884, arts. 1—27. Art. 10 of these Regulations as to open boats, fishing-vessels etc., was modified by the Fishing-Vessels Lights Regulations, 1885, and the Sailing Trawlers Lights Regulations 1885, and the Fishing-Vessels Fog Signals Regulations, 1905, below. Other articles of these Regulations were modified by the Steam Pilot Vessels Lights Regulations, 1892, and Vessels Side Lights Regulations, 1893.	9 P. D. 247. Stat. R. & O. Rev., Vol. VIII., Merchant Shipping, p. 257. Marsden, 3rd ed. (1891), and 4th ed. (1897). Pritchard, 3rd ed. (1886), Appendix, p. 2512, and Addendum, Collision, p. 2352, Parts IV.—VIII.
Order in Council, 30th December, 1884 (made under M.S. Act Amendment Act, 1862 (25 & 26 Vict. c. 63)).	1st January, 1885. (Till 1st May, 1906; see Orders in Council, 30th December, 1884, and 4th April, 1906.)	Fishing-Vessels Lights Regulations, 1885 (as they may be called). The Sea Regulations, 1884 (arts. 3, 6, and 10) shall be modified and added to as regards British fishing vessels and boats in the sea off the coast of Europe lying north of Cape Finisterre. Steam vessels of 20 tons gross register or upwards: sailing vessels of 20 tons net register or upwards:— Engaged in trawling but not having their trawls in the water, when under way between sunset and sunrise, shall show the lights required for steamships and sailing vessels respectively under the Sea Regulations, 1884, arts. 3 and 6. Engaged in trawling and having their trawls in the water, and not being stationary in consequence of their gear getting fast to a rock or other obstruction, shall between sunset and sunrise show the lights required above, or the following lights:— Steam vessels, two lanterns:— (1) On or in front of the foremast head and in the same position as a steamship's white light, a lantern so constructed etc.	Stat. R. & O. Rev., Vol. VIII., Merchant Shipping, p. 264.

TABLE OF COLLISION REGULATIONS—*continued.*

Authority.	In Force.	Statement or Summary of Regulations.	Where Found.
		as to show an uniform and unbroken white light over an arc of horizon of four points of the compass from right ahead to two points on either bow; and uniform and unbroken green and red lights over ten points of the compass from two points abaft the starboard and port bows to four points abaft the beam on the starboard and port sides. (2) A white light in a globular lantern of not less than 8 inches diameter so constructed as to show a clear, uniform and unbroken light all round the horizon. Sailing vessels, two lanterns :— (1) On or in front of the foremast head a lantern having a green light on the starboard, and a red light on the port side, so constructed etc. that the red and green do not converge and so as to show each of these lights over an arc of horizon of twelve points of the compass, from right ahead to four points abaft the beam on the starboard and port sides. (2) A white light in a globular lantern (the same as for steam vessels). The second lantern of steam and sailing vessels was required to be carried not less than 6 and not more than 12 feet vertically below the other lantern. The red and green lights in the first lantern were required to be visible not less than two miles on a dark night with a clear atmosphere.	
Order in Council, 24th June, 1885 (made under M. S. Act Amendment Act, 1862 (25 & 26 Vict. c. 63)).	24th June, 1885. (Till 1st May, 1906; see Order in Council, 4th April, 1906.)	Sailing Trawlers Lights Regulations, 1885 (as they may be called). Further modifying and adding to the Sea Regulations, 1884 (arts. 6 and 10), as regards British sailing fishing vessels and boats of whatever tonnage when in the sea off the coast of Europe, north of Cape Finisterre. Sailing vessels, engaged in trawling and having their trawls in the water, and not being stationary in consequence of their gear getting fast to a rock or other obstruction, if they do not show the lights required by art. 6 of the Sea Regulations, 1884, or the lights required by the Fishing Vessels Lights Regulations, 1885, shall show :— (1) A white light in a globular lantern (the same as in the Fishing Vessels Lights Regulations, 1885). (2) Also a sufficient supply of red pyrotechnic lights, each burning for at least thirty seconds, and visible for the same distance under the same conditions as the white light.	Stat. R. & O. Rev., Vol. VIII., Merchant Shipping, p. 269.

TABLE OF COLLISION REGULATIONS—*continued.*

Authority.	In Force.	Statement or Summary of Regulations.	Where Found.
Order in Council, 18th August, 1892 (made under M. S. Act Amendment Act, 1862 (25 & 26 Vict. c. 63)).	18th August, 1892. (Till 13th October, 1910; see Orders in Council, 7th July, 1897, and 13th October, 1910.)	Steam Pilot Vessels Lights Regulations, 1892 (as they may be called). Further modifying the Sea Regulations, 1884, by adding to art. 9 the following provisions: A steam pilot vessel, exclusively employed for the service of pilots licensed or certified by any pilotage authority or the committee of any pilotage district in the United Kingdom, when engaged on her station on pilotage duty and in British waters and not at anchor etc. (in the same terms as the fourth paragraph of art. 8 of the Sea Regulations, 1910). When engaged on her station on pilotage duty and in British waters and at anchor etc. (in the same terms as the fifth paragraph of the said art. 8). When not engaged on her station on pilotage duty, she shall carry the same lights as other steam vessels.	Stat. R. & O. Rev., Vol. VIII., Merchant Shipping, p. 273.
Order in Council, 30th January, 1893 (made under M. S. Act Amendment Act, 1862 (25 & 26 Vict. c. 63)).	30th January, 1893. (Till 1st July, 1897, when Order in Council, 27th November, 1896, annulled the Sea Regulations, 1884, except art. 10.)	Vessels Side Lights Regulations, 1893 (as they may be called). Further modifying the Sea Regulations, 1884, and explaining arts. 3 and 15, by adding to art. 3 the following provisions:— (e) To ensure that the red and green side lights shall show an uniform light from right ahead of the ship to two points abaft the beam on the port and starboard sides respectively, and shall not show across the bow of the ship itself, the said lights must be fixed and the screens fitted so that the rays from the red and green lights shall cross the line of the ship's keel projected ahead of the ship at a reasonable distance ahead of the ship. With regard to all vessels whose lights are inspected by the officers of the Board of Trade, the red or green side light will not be deemed to be fixed and fitted in accordance with the regulations, unless it is so fixed and screened that a line drawn from the outside edge of the wick to the foremost end of the inboard screen of such light shall make an angle of four degrees, or as near thereto as may be practicable, with a line drawn parallel with the keel of the ship from the outside edge of the wick.	*London Gazette*, 3rd February, 1893
Regulations for Preventing Collisions at Sea (scheduled to Order in Council, 27th No-	1st July, 1897, as regards British ships (Order in Council, 27th November, 1896); and afterwards as regards the	The Sea Regulations, 1897, arts. 1—31.	[1896] P. 307. Stat. R. & O. Rev., Vol. VIII., Merchant Shipping p. 275. Marsden, 6th ed. (1910), and 5th ed. (1904). Stuart Moore's Rules

TABLE OF COLLISION REGULATIONS—*continued.*

Authority.	In Force.	Statement or Summary of Regulations.	Where Found.
vember, 1896; and made under M. S. Act, 1894 (57 & 58 Vict. c. 60), see ss. 418, 419, 424, 434, 741).	ships of most foreign countries by later Orders in Council; except art. 9, which did not come into force till 1st May, 1906 (Order in Council, 4th April, 1906). (Till 13th October, 1910, as regards British ships and the ships of such foreign countries; see Order in Council, 13th October, 1910.)		of the Road at Sea, 3rd ed. (1900).
Order in Council, 23rd October, 1905 (made under M. S. Act, 1894, ss. 418, etc.).	7th August, 1905 (Order in Council, 23rd October, 1905). (Till 1st May, 1906; see Order in Council, 4th April, 1906.)	Fishing Vessels Fog Signals Regulations, 1905 (as they may be called). Amending art. 10 of the Sea Regulations, 1884, by substituting the following provisions for paragraph (g) of that article. In fog, mist, falling snow or heavy rainstorms, drift-net vessels attached to their nets, and vessels when trawling, dredging or fishing with any kind of drag net, and vessels line-fishing with their lines out, shall, if of 20 tons gross tonnage or upwards, respectively:— At intervals of not more than one minute make a blast:— If steam vessels, with the whistle or syren, and if sailing vessels, with the foghorn, each blast to be followed by ringing the bell. Fishing vessels and boats of less than 20 tons gross tonnage shall not be obliged to give the above signals; but if they do not, they shall make some other efficient sound signal at intervals of not more than one minute.	Stat. R. & O., 1905, p. 211.
Order in Council, 4th April, 1906 (made under M.S.	1st May, 1906, as regards the British ships and boats mentioned in	Fishing-Vessels and Fishing-boats Regulations, 1906 (as they may be called). These Regulations were styled "Art. 9," and the article was to be read as if it had formed one of the Sea Regulations, 1897.	Stat. R. & O., 1906, p. 400.

TABLE OF COLLISION REGULATIONS—*continued.*

Authority.	In Force.	Statement or Summary of Regulations.	Where Found.
Act, 1894, see ss. 418, etc.).	the article (Order in Council, 4th April, 1906). (Till 13th October, 1910; see Order in Council, 13th October, 1910.)	This article is the same as art. 9 of the Sea Regulations, 1910.	
Regulations for Preventing Collisions at Sea (scheduled to Order in Council, 13th October, 1910; and made under M.S. Act, 1894, see ss. 418, 419, 424, 434, 741.)	13th October, 1910.	The Sea Regulations, 1910, arts. 1—31.	Stat. R. & O., 1910, p. 457; and see pp. 374—499, *ante.*

SHIP'S PAPERS.

See SHIPPING AND NAVIGATION.

SHIPWRECK.

See ADMIRALTY; CRIMINAL LAW AND PROCEDURE; INSURANCE; SHIPPING AND NAVIGATION.

SHOEBLACKS.

See STREET AND AERIAL TRAFFIC.

SHOOTING.

See CRIMINAL LAW AND PROCEDURE; GAME; WATERS AND WATERCOURSES.

SHOP ASSISTANTS.

See FACTORIES AND SHOPS.

SHOP CLUBS.

See CLUBS.

SHORE.

See BOUNDARIES, FENCES, AND PARTY WALLS; CONSTITUTIONAL LAW; WATERS AND WATERCOURSES.

SHOWS.

See THEATRES AND OTHER PLACES OF ENTERTAINMENT.

SIDESMEN.

See ECCLESIASTICAL LAW.

SIDINGS.

See CARRIERS; RAILWAYS AND CANALS; RATES AND RATING.

SIGN MANUAL.

See Constitutional Law.

SIGNATURE.

See Contract; Deeds and Other Instruments; Guarantee; Sale of Goods; Wills.

SILVER.

See Constitutional Law.

SIMONY.

See Ecclesiastical Law.

SINKING FUND.

See Local Government; Revenue.

SITE VALUE.

See Revenue.

SITTING AND PEW RENTS.

See Ecclesiastical Law.

SITTINGS.

See Time.

SKIMMED MILK.

See Food and Drugs.

SKY SIGNS.

See Highways, Streets, and Bridges; Public Health and Local Administration.

SLANDER.

See CRIMINAL LAW AND PROCEDURE; LIBEL AND SLANDER.

SLANDER OF GOODS.

See TRADE AND TRADE UNIONS.

SLANDER OF TITLE.

See TORT.

SLANDER OF WOMEN.

See LIBEL AND SLANDER.

SLATE CLUBS.

See BANKRUPTCY AND INSOLVENCY; FRIENDLY SOCIETIES.

SLAUGHTER-HOUSES.

See ANIMALS; PUBLIC HEALTH AND LOCAL ADMINISTRATION.

SLAVE TRADE.

See ADMIRALTY; CRIMINAL LAW AND PROCEDURE; TRADE AND TRADE UNIONS.

SMALL DWELLINGS.

See SMALL HOLDINGS AND SMALL DWELLINGS.

SMALL HOLDINGS AND SMALL DWELLINGS.

PAGE

PART I. SMALL HOLDINGS - - - - - - - - - 670

SECT. 1. DEFINITION OF A SMALL HOLDING - - - - 670

SECT. 2. AUTHORITIES FOR THE PROVISION OF SMALL HOLDINGS 670

Sub-sect. 1. The Board of Agriculture and Fisheries - - 670
Sub-sect. 2. The Small Holdings Commissioners - - - 672
Sub-sect. 3. County Councils - - - - - - 673
Sub-sect. 4. Small Holdings and Allotments Committees - 676

SECT. 3. SCHEMES - - - - - - - - - - 677

Sub-sect. 1. Preparation - - - - - - - 677
Sub-sect. 2. Procedure - - - - - - - 677
Sub-sect. 3. Enforcement - - - - - - - 678

SECT. 4. ACQUISITION OF LAND FOR SMALL HOLDINGS - - 678

Sub-sect. 1. By Agreement - - - - - - 678
Sub-sect. 2. Compulsorily - - - - - - - 680

(i.) Purchase - - - - - - - - - 680
(ii.) Hiring - - - - - - - - - 682
(iii.) Provisions Relating to Compulsory Purchase and Compulsory Hiring - - - - - 684

SECT. 5. DEALINGS WITH LAND - - - - - - - 686

Sub-sect. 1. Adaptation for Small Holdings - - - 686
Sub-sect. 2. Sale - - - - - - - - - 687
Sub-sect. 3. Letting - - - - - - - - 690
Sub-sect. 4. Registration of Title - - - - - 691

SECT. 6. MISCELLANEOUS POWERS OF COUNTY COUNCILS - - 691

SECT. 7. FINANCE - - - - - - - - - - 693

PART II. SMALL DWELLINGS - - - - - - - - 695

SECT. 1. POWER OF LOCAL AUTHORITIES TO MAKE ADVANCES - 695

SECT. 2. REPAYMENT OF ADVANCES AND SECURITY THEREFOR - 696

SECT. 3. CONDITIONS IMPOSED WHILE ADVANCE IS OUTSTANDING 697

SECT. 4. REMEDIES FOR BREACH OF CONDITION - - - - 698

Sub-sect. 1. Possession - - - - - - - 698
Sub-sect. 2. Sale - - - - - - - - - 700

SECT. 5. FINANCE - - - - - - - - - - 700

Sub-sect. 1. In General - - - - - - - 700
Sub-sect. 2. In the Metropolis - - - - - - 702

For Agriculture - - - - *See title* AGRICULTURE.
Allotments - - - - ,, ALLOTMENTS.
Compulsory Purchase - - ,, COMPULSORY PURCHASE OF LAND AND COMPENSATION.

For Local Government - - - *See title* LOCAL GOVERNMENT.
Open Spaces - - - - ,, COMMONS AND RIGHTS OF COMMON; OPEN SPACES AND RECREATION GROUNDS.
Public Health - - - ,, PUBLIC HEALTH AND LOCAL ADMINISTRATION.
Water Supply to Small Houses ,, WATER SUPPLY.

Part I.—Small Holdings.

SECT. 1.

SECT. 1.—*Definition of a Small Holding.*

Definition of a Small Holding.

Definition.

1076. The expression "small holding" means an agricultural holding which exceeds one acre, and either does not exceed fifty acres, or, if exceeding fifty acres, is at the date of sale or letting of an annual value, for the purpose of income tax, not exceeding £50 (*a*).

SECT. 2.—*Authorities for the Provision of Small Holdings.*

SUB-SECT. 1.—*The Board of Agriculture and Fisheries.*

Powers and duties of the Board.

1077. The Board of Agriculture and Fisheries, hereinafter frequently referred to as the Board (*b*), may appoint two or more persons possessed of a knowledge of agriculture to act as Small Holdings Commissioners, hereinafter frequently referred to as the Commissioners, together with such other officers as it may, with the consent of the Treasury, determine (*c*), and must (1) ascertain, through inquiries made under their direction by the Commissioners, the demand in the various counties for small holdings, and the facilities for meeting it (*d*), and (2) regulate the proceedings of

(*a*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 61 (1). This Act, which consolidates the law on the subject, repeals the Allotments Acts, 1887 (50 & 51 Vict. c. 48) and 1890 (53 & 54 Vict. c. 65), the Small Holdings Act, 1892 (55 & 56 Vict. c. 3) (except so far as it relates to Scotland), and the Small Holdings and Allotments Act, 1907 (7 Edw. 7, c. 54); besides the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 6 (3), (4), and the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 19 (see Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 61, Sched. III.). For the provisions of these earlier Acts with respect to allotments, see title ALLOTMENTS, Vol. I., pp. 331 *et seq.* The Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), and the Small Holdings Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 34), as to which see p. 692, *post*, may be cited together as the Small Holdings and Allotments Acts, 1908 and 1910 (Small Holdings Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 34), s. 3). For the meaning of "agricultural holding," see title AGRICULTURE, Vol. I., p. 239; and for the method of assessing the annual value of land for income tax purposes, see title INCOME TAX, Vol. XVI., pp. 619 *et seq.* Small holdings are in certain cases exempt from undeveloped land duty; see Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 18; title REVENUE, Vol. XXIV., p. 566.

(*b*) For the constitution of the Board, see titles AGRICULTURE, Vol. I., p. 297; CONSTITUTIONAL LAW, Vol. VII., p. 104. As to its jurisdiction as a judicial body, see title COURTS, Vol. IX., pp. 222, 223.

(*c*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 2 (1). The appointment of the Commissioners was originally provided for by the now repealed Small Holdings and Allotments Act, 1907 (7 Edw. 7, c. 54), s. 1; see note (*a*), *supra*.

(*d*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 3; and see p. 672, *post*.

SECT. 2. Authorities for the Provision of Small Holdings.

county councils, and, where these decline or neglect to act, of the Commissioners, with respect to the preparation and application of schemes for the provision of such holdings (*e*).

The Board must make an annual report to Parliament of its proceedings and those of the Commissioners, and also of the proceedings of the several councils under its control (*f*).

Powers in relation to Public Health Acts.

1078. For the purpose of local inquiries, notices of which must be given and published in accordance with the directions of the Board, the Board, and the Commissioners and their officers, have the same powers as are possessed by the Local Government Board and its inspectors under the Public Health Acts (*g*).

Exercise of powers.

1079. The Board may, to demonstrate the feasibility of establishing small holdings in any locality, exercise all the powers conferred on county councils with respect to the provision of such holdings (*h*), except such as relate to borrowing (*i*) and the compulsory acquisition of land (*k*); and its expenses in such cases may be defrayed out of, and its receipts be paid into, the Small Holdings Account (*l*). Where the Board thus exercises the powers of a county council, it may appoint such advisory and managing committees, and confer or impose on them such powers and duties, as it thinks fit; and may, with the consent of the Treasury, pay all reasonable travelling and out-of-pocket expenses of the members of such committees out of the Small Holdings Account (*m*).

Compensation.

1080. Subject to regulations to be approved by the Treasury, the Board may repay, or undertake to repay, out of the Small Holdings Account, any compensation paid by a county council to a tenant who has to quit land in consequence of its being required for small holdings, and any costs necessarily and reasonably incurred by the council in relation to a claim for such compensation (*n*); and the whole or any part of the expenses incurred by a council with respect to the acquisition and adaptation of land for small holdings, except

(*e*) See, *e.g.*, Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), ss. 4, 6; pp. 677, 678, *post.*

(*f*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 59. As to reports by county councils to the Board, see p. 675, *post.*

(*g*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 57 (1), (2). As to these powers, see Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 293—296; title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 374 *et seq.* For a list of the Public Health Acts, see *ibid.*, p. 361, note (*a*).

(*h*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 20. For the powers of county councils, see p. 673, *post.*

(*i*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), ss. 52, 53; see pp. 693 *et seq.*, *post.*

(*k*) Small Holdings and Allotments Act, 1908 (7 Edw. 7, c. 36), ss. 38—48; see pp. 680 *et seq.*, *post.*

(*l*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 20. The Small Holdings Account was opened with the Bank of England under the repealed Small Holdings and Allotments Act, 1907 (7 Edw. 7, c. 54), and provision was made for its continuance by the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 51 (1); see p. 693, *post.*

(*m*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 22. As to the Small Holdings Account, see note (*l*), *supra.*

(*n*) Small Holdings Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 34), s. 1 (2). As to such compensation, see p. 692, *post.*

SECT. 2. Authorities for the Provision of Small Holdings.

any purchase-money, compensation, or rent payable in respect of such land (*o*).

Transfer of land to county councils.

1081. Any land acquired by the Commissioners is vested in the Board, which may, however, at any time transfer such land to the county council at whose expense it was acquired, and must do so on payment of all sums due from the council in connexion therewith, and on proof, to the satisfaction of the Board, that the council is willing to exercise and perform its duties with regard to it (*p*).

SUB-SECT. 2.—*The Small Holdings Commissioners.*

Duties of the Small Holdings Commissioners.

1082. The Small Holdings Commissioners are the officers of the Board, by whom they are appointed, and act entirely under its direction (*q*).

It is their duty, when required by the Board, to hold an inquiry in any specified county, and to report to the Board with regard to the extent to which there is a demand in it for small holdings and the practicability of satisfying it (*r*). They must for this purpose confer with county councils, who must supply them with such information and render them such assistance as they may reasonably require, and co-operate with such other authorities, associations, and persons as they think best qualified to assist them (*s*). When reporting the information acquired by them through their inquiry in any county, the Commissioners must state whether it is in their opinion desirable that a scheme for the provision of small holdings therein should be made, and indicate the nature of the proposals which they consider it desirable to embody in such scheme (*t*).

Powers of Commissioners to prepare scheme.

1083. In the event of the default within a prescribed time of a county council to prepare a draft scheme, the Commissioners may do so if directed by the Board (*a*). When directed by order of the

(*o*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 21. As this power of repayment extends to vendor's and lessor's costs payable by county councils, the Board by Circular Letters dated the 22nd September, 1909, 30th September, 1911, and 23rd September, 1913, made recommendations as to the manner in which accounts should be presented to them. As to the acquisition and adaptation of land, see pp. 678, 686, *post*; as to the payment of loss arising from the carrying out of a scheme, see p. 678, *post*.

(*p*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 55.

(*q*) *Ibid.*, ss. 2 (1), 3 (1), 4 (2), 57 (1). Anything required or authorised to be done by or to the Commissioners may be done by or to any of them, and any document purporting to be signed by a Commissioner may be received in evidence without proof of his appointment or handwriting (*ibid.*, s. 56).

(*r*) *Ibid.*, s. 3 (1). For the powers of the Commissioners for the purpose of inquiries, see p. 671, *ante*.

(*s*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 3 (2), (3). Where the Commissioners in the course of their inquiry receive any information of the existence of a demand for allotments, they must communicate the information to the councils of the county, borough, urban district, or parish concerned (*ibid.*, s. 3 (4)); as to allotments, see, generally, title ALLOTMENTS, Vol. I., pp. 331 *et seq.*

(*t*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 3 (3).

(*a*) *Ibid.*, s. 4 (2). As to schemes, see p. 677, *post*.

SECT. 2. Authorities for the Provision of Small Holdings.

Board, they may also carry into effect any approved scheme (*b*); and where they thus act in default of a county council, the Commissioners may appoint such advisory and managing committees, and confer or impose on them such powers and duties, as they think fit (*c*).

The expenses incurred by the Commissioners in the preparation or carrying out of a scheme in default of a county council are repayable by such defaulting county council, on demand, to the Board, out of the county fund, and are recoverable as a debt due to the Crown (*d*). Such sums as the Board certifies to have been received by the Commissioners in respect of any land acquired must be paid to the council (*d*).

Expenses of scheme.

1084. Where the Commissioners are acting in default of a county council in a case where a notice to treat for the compulsory acquisition of land is withdrawn, all compensation payable to any person in respect of his interest in such land must be paid out of the Small Holdings Account (*e*). When land has been hired compulsorily by the Commissioners acting in default of a county council (*f*), questions respecting the right of the landlord to resume possession of his land, and all questions referred to arbitration relating to orders authorising the compulsory acquisition of land by them, must be determined by an arbitrator (*g*) appointed by the Lord Chief Justice of England (*h*).

Arbitration.

SUB-SECT. 3.—*County Councils.*

1085. A county council, if of opinion that there is sufficient demand in its county to justify their provision (*i*), may provide small holdings for persons who desire to buy or lease and will themselves cultivate them (*k*), and may prepare and send to the Board of Agriculture and Fisheries one or more draft schemes for the purpose (*l*). A county council may also, however, be required

Power of county council to provide small holdings.

(*b*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 6 (2); see p. 678, *post*.

(*c*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 22. As to the powers of the Commissioners when enforcing a scheme in default of a council, see, further, p. 678, *post*.

(*d*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), ss. 4 (2), 6 (2).

(*e*) *Ibid.*, s. 39 (8); and compare p. 671, *ante*. As to compulsory acquisition of land for small holdings, see p. 680, *post*; as to the Small Holdings Account, see p. 693, *post*.

(*f*) See p. 684, *post*.

(*g*) As to arbitration, see, further, p. 684, *post*.

(*h*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), ss. 46 (2), 58 (2).

(*i*) As to the repayment of a portion of the expenses incurred in ascertaining the demand, see Treasury Minutes of the 19th October, 1908, and 21st August, 1912, and the Circular Letters of the Board of Agriculture and Fisheries of the 20th November, 1908, 22nd September, 1900, and 21st October, 1912.

(*k*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 1. By *ibid.*, s. 7 (1), the land acquired by the council may be without as well as within its county. The term "person" includes both men and women (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 1 (1)).

(*l*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 4 (3).

SECT. 2. Authorities for the Provision of Small Holdings.

by the Board to provide small holdings, where the Board is satisfied, on consideration of a report of the Small Holdings Commissioners, that their provision is desirable and feasible (*m*).

Duty to furnish Commissioners with information.

1086. Where the Commissioners are directed by the Board to hold an inquiry with respect to the provision of small holdings in any county, the county council must furnish them with such information, and render them such assistance, as they may reasonably require, and may make representations to them respecting the land available and the demand for holdings (*n*).

On receiving the report of the Commissioners from the Board, the county council must prepare one or more draft schemes to give effect to it (*o*), and, after a scheme has been settled and confirmed by the Board, must carry it into effect within the prescribed time (*p*).

Power to acquire land for holdings.

1087. A county council may take on lease or purchase by agreement, or, if unable to do so, compulsorily, land either within or without its county for providing small holdings (*q*), and before selling or letting it may adapt such land for the purpose (*r*). It may either sell or let the holdings thus acquired (*s*), and must keep a list of those sold or let by it, and a map or plan showing the size, boundaries, and situation of such holdings (*t*).

Advances on sale of small holding.

1088. Where the tenant of a small holding has agreed with his landlord for its purchase, the council of the county in which it, or any part of it, is situate, if satisfied that the title is good (*u*), that the sale is made in good faith, and that the price is reasonable, may advance to the tenant an amount not exceeding four-fifths of the purchase-money, on the security of the holding (*v*).

Delegation of powers.

1089. A county council may delegate (*a*) to the council of any

(*m*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), ss. 1, 3—6.

(*n*) *Ibid.*, s. 3 (2), (3). The Act contains no provision for enforcing this duty.

(*o*) *Ibid.*, s. 4 (1).

(*p*) *Ibid.*, s. 6 (1). As to the obligation of a council to carry out a scheme if no time limit is fixed, compare *Bradley* v. *Greenwich Board of Works* (1878), 3 Q. B. D. 384, 388; as to the liability of a council which makes default in preparing or carrying out a scheme, see p. 673, *ante*.

(*q*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 7 (1), (2). Land acquired compulsorily may be used only for leasing (*ibid.*, s. 7 (2)). As to compulsory acquisition of land, see p. 680, *post*.

(*r*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 8 (1); and see p. 680, *post*.

(*s*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 9 (1); and see *ibid.*, s. 7 (2), note (*q*), *supra*; see, further, pp. 687 *et seq.*, 690 *et seq.*, *post*.

(*t*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 14.

(*u*) On such a sale the council does not guarantee the title of the holding; otherwise the provisions of *ibid.*, ss. 11, 12, apply to *ibid.*, s. 19 (2); see p. 687, *post*.

(*v*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 19 (1), (3).

(*a*) "Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that perso

borough or urban district in the county any of its powers for the acquisition, adaptation, and management of small holdings for the borough or district, and the borough or district council may undertake to pay the whole or any part of the loss, if any, incurred in connexion with such small holdings; and any sum so payable must be defrayed as part of the general expenses of the borough or district council in the execution of the Public Health Acts (*b*).

Co-operative societies.

1090. County councils may promote the formation or extension of and assist co-operative societies established for the provision of small holdings or allotments, whether in relation to the purchase of requisites, the sale of produce, credit banking, or insurance; and may also employ as their agents any society having as its object, or one of its objects, the promotion of co-operation in connexion with the cultivation of small holdings (*c*). For the purpose of assisting a co-operative society, a county council may, with the consent of and subject to regulations made by the Local Government Board, make grants or advances to, or guarantee advances made to, the society, upon such terms and conditions as to interest and repayment, and on such security, as the council thinks fit (*d*).

Reports by county councils.

1091. Every county council must, before such date in every year as the Board of Agriculture and Fisheries may determine, send a report of its proceedings during the preceding year to the Board (*e*).

Restriction on expenditure of councils.

1092. A county council may not take any proceedings relating to small holdings whereby the annual charge (*f*) for the time being on the county fund, including the annual payments in respect of loans raised for the purpose of small holdings, is likely to be raised above in any one year the amount produced by a rate of a penny in the pound (*g*). Where such charge at any time equals, or nearly equals,

would have to do himself" (*Huth* v. *Clarke* (1890), 25 Q. B. D. 391, *per* WILLS, J., at p. 395).

(*b*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 18; compare Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 207, 209, 210; and see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., p. 380. As to the duty of the council to appoint a small holdings and allotments committee, see p. 676, *post*.

(*c*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 49 (1), (4). As to the power of letting to a co-operative society, see title INDUSTRIAL, PROVIDENT AND SIMILAR SOCIETIES, Vol. XVII., p. 7. As to the meaning of a "co-operative society," see *ibid.*, p. 3.

(*d*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 4 (2).

(*e*) *Ibid.*, s. 59; see, further, p. 671, *ante*. For form of report, see Board's Circular Letters of the 20th February, 1909, and 13th December, 1913.

(*f*) "Charge" means the net charge on the county fund calculated in accordance with regulations made by the Local Government Board, after taking into account all receipts from or on account of small holdings or otherwise under the provisions of the Act relating to small holdings (Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 17 (2)). As to finance, see, further, p. 693, *post*.

(*g*) As to the assessment of the rate, see title RATES AND RATING, Vol. XXIV., pp. 69 *et seq.*

SECT. 2. Authorities for the Provision of Small Holdings.

that amount, no further land may be purchased for small holdings until the charge has been decreased so as to admit of the further purchase without the charge exceeding such amount (*h*).

SUB-SECT. 4.—*Small Holdings and Allotments Committees.*

Constitution.

1093. It is the duty of every county council to establish a small holdings and allotments committee, which must consist either wholly or partly of members of the council, who must constitute a majority thereof (*i*).

All matters relating to the exercise and performance by the council of its powers and duties with respect to small holdings, except the power of raising a rate or borrowing money, must be referred to the committee, and the council, before exercising any such powers must, unless the matter is in its opinion urgent, receive and consider the report of the committee with respect to the matter in question. The council may also delegate (*j*) to the committee, with or without restrictions or conditions, any of its powers with regard to small holdings, except the power of raising a rate or borrowing money (*k*).

Delegation of powers to sub-committees.

1094. A small holdings and allotments committee may delegate any of its powers to sub-committees consisting either wholly or partly of members of the committee. In appointing any such sub-committee to which is committed the powers of management of small holdings the small holdings and allotments committee must consider the advisability of including amongst its members members of the council of the borough, urban district, or parish, in which the holdings are situate and for which they are provided, and other persons acquainted with the needs and circumstances of the area for which the sub-committee act (*l*).

Accounts.

1095. The accounts of any receipts or payments of money with respect to small holdings entrusted by the county council to the small holdings and allotments committee, or any of its sub-committees, are accounts of the county council, and must be made up and audited accordingly (*m*).

(*h*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 17 (1).
(*i*) *Ibid.*, s. 50 (1).
(*j*) As to the meaning of "delegate," see note (*a*), p. 674, *ante*.
(*k*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 50 (1).
(*l*) *Ibid.*, s. 50 (2).
(*m*) *Ibid.*, s. 50 (3). These provisions apply to the council of a county borough in like manner as to a county council so far as the section relates to small holdings, but not so far as it relates to allotments. The council of a county borough may, however, appoint its small holdings committee, if duly qualified, to be allotment managers under *ibid.*, Part II. (*ibid.*, s. 50 (4)). As to the duties of this committee in connexion with allotments, see title ALLOTMENTS, Vol. I., p. 342: the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 50 (1)—(3), correspond to the repealed Small Holdings and Allotments Act, 1907 (7 Edw. 7, c. 54), s. 36 (1)—(3). As to the auditing of the accounts of county councils, see title LOCAL GOVERNMENT, Vol. XIX., pp. 363, 364.

SECT. 3.—*Schemes.*

SUB-SECT. 1.—*Preparation.*

Preparation of scheme by county council.

1096. Where, after considering the report of the Small Holdings Commissioners (*n*), the Board of Agriculture and Fisheries considers it desirable that a scheme should be made, it must forward the report, with such modifications and reservations as it thinks desirable, to the county council, and thereupon it is the duty of the council to prepare one or more schemes to give effect thereto. In preparing the drafts the council must have regard to any proposals of the Commissioners indicated in their report (*o*). If the county council declines to undertake this duty or fails to prepare within six months, or within such extended time as is permitted by the Board, one or more draft schemes, the Board may direct the Commissioners to prepare a scheme (*p*).

A county council may, however, without receiving any such report as aforesaid from the Board, itself prepare and send to the Board one or more draft schemes for providing small holdings for its county.

Contents of scheme

1097. A draft scheme may specify—(1) the localities in which land is to be acquired for small holdings; (2) the approximate quantity of land to be acquired, and the number, nature, and size of the small holdings to be provided in each locality; (3) whether, and to what extent, grazing and other similar rights, to be defined in the scheme, should be attached to the small holdings, and, if so, the approximate quantity of land, or extent and nature of the rights, to be acquired for the purpose; and (4) the time within which the scheme, or any part thereof, is to be carried into effect. The scheme may also contain such incidental, consequential, or supplementary provisions, including provisions for the subsequent variation of the scheme, as may be necessary (*q*).

Commissioners' report.

1098. Where the Commissioners report, or the county councils concerned are of opinion, that a scheme should be made affecting two or more counties, the scheme may be prepared by the councils jointly, and may provide for joint action being taken by them (*r*).

SUB-SECT. 2.—*Procedure.*

Publication of draft scheme.

1099. A copy of any draft scheme prepared by a county council must be sent to the Board, and if prepared by the Commissioners must also be sent to any county council concerned, and must be published and advertised, with any modifications proposed to be made by the Board, in such manner as the Board thinks best

(*n*) See p. 672, *ante*.

(*o*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 4 (1), The wording of the Act is " shall have regard " ; compare as to this *Julius* v. *Oxford* (*Lord Bishop*) (1880), 5 App. Cas. 214; and see title STATUTES, Vol. XXVII., p. 170.

(*p*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 4 (2); see p. 672, *ante*.

(*q*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 4 (3), (4).

(*r*) *Ibid.*, s. 4 (5).

SECT. 3. Schemes.

adapted for informing the persons affected and for ensuring publicity; notice must be given of the time within and the manner in which objections are to be sent to the Board (*s*).

Public local inquiry.

1100. After consideration of the draft scheme and any objections duly made thereto, the Board may in any case, and must, if the county council objects to the scheme, or, where the scheme was made by a council, to any modifications therein proposed by the Board, hold a public local inquiry, at which the county council, and such other persons as the person holding the inquiry may allow, may appear and be heard (*t*).

The Board may then, after considering the report of the person by whom any inquiry is held, settle and confirm the scheme, either with or without modifications, or may annul it (*u*).

SUB-SECT. 3.—*Enforcement.*

Duty of county council to carry scheme into effect.

1101. A county council must carry into effect the obligations imposed on it by a scheme within the time specified therein, or such further time as may be allowed by the Board, and may for that purpose exercise any of its statutory powers relating to small holdings (*a*). On default by a county council the Board must, by order, direct the Commissioners to take such steps as are necessary for carrying the scheme into effect, and for that purpose the Commissioners will have all the powers of a county council from the time that such order is made (*b*).

An order made by the Board directing the Commissioners to carry a scheme into effect must be laid before both Houses of Parliament as soon as may be after it is made (*c*).

Board may pay loss resulting from schemes in certain cases.

1102. If it appears to the Board that the carrying out of a scheme has resulted, or is likely to result, in a loss, it may, with the consent of the Treasury, pay or undertake to pay the whole or any part of such loss out of the Small Holdings Account (*d*).

SECT. 4.—*Acquisition of Land for Small Holdings.*

SUB-SECT. 1.—*By Agreement.*

Purchase of land by agreement.

1103. The purchase of land (*e*) by agreement for the provision of

(*s*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 5 (1).
(*t*) *Ibid.*, s. 5 (2).
(*u*) *Ibid.*, s. 5 (3).
(*a*) *Ibid.*, s. 6 (1).
(*b*) *Ibid.*, s. 6 (2). As to the payment of the Commissioners' expenses, see p. 673, *ante*; as to the powers of the Commissioners when acting in default of a council, see, further, p. 672, *ante*.
(*c*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 6 (3).
(*d*) *Ibid.*, s. 6 (4). As to the Small Holdings Account, see note (*l*), p. 671, *ante*.
(*e*) "Land" includes "any right or easement in or over land" (Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 61 (2)). Under its power of acquiring land a council may acquire land for the purpose of attaching to small holdings rights of grazing and other similar rights, and may acquire for that purpose stints and other alienable common rights of grazing. Any rights created or acquired by the council are attached to the small holdings in such manner and subject to such

small holdings by a county council is governed by statute (*f*); land may be acquired from the Duchy of Lancaster for the purpose of small holdings in the same manner as by a local sanitary authority for its purposes (*g*).

Powers of limited owners to lease.

1104. Any person having power to lease land for agricultural purposes for a limited term, whether subject to any conditions or not, may, subject to the like consent and conditions, if any, lease land to a council for the purpose of small holdings for a term not exceeding thirty-five years, either with or without the right of renewal for not less than fourteen nor more than thirty-five years, at such rent as, in default of agreement, may be determined by a valuer appointed by the Board, but otherwise on the same terms and conditions as the original lease. The term of renewal must be specified in a notice to be delivered to the landlord not more than two years or less than one year before the expiration of the tenancy; and if on such notice being given the landlord proves to the satisfaction of the Board that any land included in a tenancy is required for the amenity or convenience of any dwelling-house, such land must be excluded from the renewed tenancy (*h*).

Powers of leasing particular lands.

Similar powers of leasing may be exercised, in the case of— (1) Crown lands, by the Commissioners of Woods and Forests (*i*); (2) land forming part of the Duchy of Lancaster, by the Chancellor and Council by deed under the seal of the Duchy, in the name of His Majesty, his heirs and successors (*k*); (3) land forming part of the Duchy of Cornwall, by the Duke of Cornwall or other persons empowered to dispose of such land (*l*); and (4) glebe or other land belonging to an ecclesiastical benefice (*m*) by the incumbent, with the consent of, and upon such terms and conditions and in such manner as may be approved by, the Ecclesiastical Commissioners (*n*).

Powers of tenant for life under Settled Lands Acts.

1105. Where a person having the powers of a tenant for life within the meaning of the Settled Lands Acts (*o*), sells, exchanges, or leases any settled land to a county council for the purposes of small holdings, the consideration for the sale, exchange, or lease

regulations as the council deems expedient; and where any right of grazing, sheepwalk, or other similar right is attached to land acquired by a county council, the council may in like manner attach any share of such right to any small holding (Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 42). As to the purchase of land generally, see title SALE OF LAND, Vol. XXV., pp. 289 *et seq.*

(*f*) See title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 168 *et seq.*

(*g*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 38; Public Health Act, 1875 (38 & 39 Vict. c. 18), s. 178; see title CONSTITUTIONAL LAW, Vol. VII., p. 221; see also *ibid.*, pp. 234, note (*o*), 235, note (*a*), 254, note (*b*).

(*h*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), ss. 40, 44 (1); see also title LANDLORD AND TENANT, Vol. XVIII., pp. 358 *et seq.*

(*i*) See also title CONSTITUTIONAL LAW, Vol. VII., pp. 191, 192.

(*k*) See *ibid.*, p. 234.

(*l*) See *ibid.*, pp. 253, 254.

(*m*) Compare the Glebe Lands Act, 1888 (51 & 52 Vict. c. 20); and see title ECCLESIASTICAL LAW, Vol. XI., pp. 760 *et seq.*

(*n*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 40 (2), (3).

(*o*) See title SETTLEMENTS, Vol. XXV., p. 624.

SECT. 4. Acquisition of Land for Small Holdings.

must be the best that can reasonably be obtained (*p*); and the land may be granted in perpetuity at a fee farm or other rent secured by condition of re-entry or otherwise (*q*).

Compensation payable to county councils.

1106. A county council which has hired land by agreement for small holdings is entitled to be paid compensation, subject to any agreement to the contrary, at the determination of the tenancy on quitting the land in respect of the same improvements and in the same manner as tenants of market gardens and agricultural holdings (*r*).

SUB-SECT. 2.—*Compulsorily.*

(i.) *Purchase.*

Purchase of land under compulsory powers.

1107. Where a council proposes to purchase land (*s*) compulsorily (*t*) it may submit to the Board of Agriculture and Fisheries an order putting in force the provisions of the Lands Clauses Acts (*u*) as respects the land specified therein (*x*).

The order.

The order must be in such form (*y*), and contain such provisions for carrying it into effect, and for protecting the council and the persons interested in the land, as the Board may prescribe (*a*), and must, subject to the necessary adaptations, incorporate certain statutory provisions as to compulsory acquisition of land (*b*), but

(*p*) Compare Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), s. 36; Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 74.

(*q*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 40 (4), (5); see title SETTLEMENTS, Vol. XXV., pp. 653 *et seq.*

(*r*) See Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 47 (2), Sched. II., Parts I., II.; and title AGRICULTURE, Vol. I., pp. 260, note (*c*), 269, 270. To the improvements there enumerated drainage must be added.

(*s*) See note (*e*), p. 678, *ante.*

(*t*) Land can only be acquired compulsorily if the county council is unable to acquire by agreement, and on reasonable terms, suitable land for the purpose of providing small holdings for persons who desire to have small holdings (Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 7 (2). As to compulsory purchase generally, see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 5, 10, note (*n*), 50, note (*l*), 168 *et seq.* For the powers of councils, including parish councils, to acquire land for allotments and common pasture, see title ALLOTMENTS, Vol. I., pp. 341 *et seq.*; and see also Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 39 (7).

(*u*) See title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 12 *et seq.*

(*x*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 39, Sched. I., Part I. (1).

(*y*) See the Small Holdings and Allotments (Compulsory Purchase) Regulations, 1908; Small Holdings and Allotments (Compulsory Purchase) Regulation, 1908 (No. 2) (Stat. R. & O., 1908, Allotments, England, pp. 27, 30).

(*a*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 39, Sched. I., Part I. (1).

(*b*) *I.e.*, the Lands Clauses Acts (see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 12 *et seq.*; and, see, generally *ibid.*, pp. 1 *et seq.*) and the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 77—85 (see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 50 *et seq.*; RAILWAYS AND CANALS, Vol. XXIII., pp. 685, 686). In construing any enactment incorporated with the order the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), is deemed to be the special Act and the council the promoters of the undertaking

subject to the modification that any dispute with respect to compensation will be determined by a single arbitrator appointed by the Board, who will be deemed to be an arbitrator within the meaning of the Lands Clauses Acts (*c*), the provisions of which respecting arbitration will apply accordingly (*d*).

Publication and confirmation of order.

1108. The council must publish the order in such manner and give such notice, both in the locality in which the land proposed to be acquired is situated, and also to owners (*e*), lessees, and occupiers of such land, as the Board may prescribe (*f*).

If no objection is presented to the council by a person interested in the land within the prescribed period, or if every such objection is withdrawn, the Board must confirm the order without further inquiry. If, however, an objection is presented and is not withdrawn, the Board must forthwith cause to be held, in the locality in which the land is proposed to be acquired, a public inquiry, at which the council and all persons interested in the land, and such other persons as the person holding the inquiry thinks fit to allow, may appear and be heard, and, before confirming the order, the Board must consider the report of the person holding the inquiry and all objections made thereat (*g*).

Duties of arbitrator as to compensation.

1109. The arbitrator must, so far as is practicable, act on his own knowledge and experience in assessing compensation (*h*). Persons authorised to appear must be heard, by themselves or their agents, and witnesses must be heard; but counsel or expert witnesses are not to be heard without the express direction of the Board (*i*). The Board may, with the concurrence of the Lord Chancellor, make rules for fixing a scale of costs to apply to an arbitration, and the arbitrator may, notwithstanding anything in the Lands Clauses Acts (*j*), determine the amount of costs, and may also

(*ibid.*, Part I. (7)); see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 49 *et seq.*

(*c*) See note (*b*), p. 680, *ante*.

(*d*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), Sched. I., Part I. (1).

(*e*) See title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., p. 15; the expression "owners" includes legal and equitable mortgagees; see *Martin* v. *London, Chatham and Dover Rail. Co.* (1866), 1 Ch. App. 501. Compare the definition of "landlord" in the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 61 (1), as being the person entitled to receive the rent of the land (compulsorily hired from him) from the council.

(*f*) *Ibid.*, Sched. I., Part I. (2).

(*g*) *Ibid.*, Sched. I., Part I. (3), (4). The Board may confirm any order for the compulsory purchase or the compulsory hiring of land either with or without modification. An order is of no effect until confirmed, but on confirmation it is final, and the confirmation is conclusive evidence that the order was duly made (Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 39 (3)). The effect of this provision is that an order for the compulsory acquisition of land has, after confirmation, the effect of an Act of Parliament, and *certiorari* will therefore not be granted to bring up and quash such an order (*Ex parte Ringer* (1909), 73 J. P. 436).

(*h*) See, further, p. 685, *post*.

(*i*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), Sched. I., Part I. (5). As to the duty of the arbitrator, see *Carlisle's* (*Earl*) *Executrix* v. *Northumberland County Council* (1911), 75 J. P. 539.

(*j*) See Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 34; title

SECT. 4. Acquisition of Land for Small Holdings.

disallow as costs in the arbitration the costs of any unnecessary witness and any other costs unnecessarily caused or incurred (*k*).

Glebe land.

1110. Where the land is glebe or other land belonging to an ecclesiastical benefice, the order must provide that sums agreed upon or awarded for the purchase of land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, must not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners, to be applied as money paid to them upon a sale under the Ecclesiastical Leasing Acts (*l*) of land belonging to a benefice (*m*).

(ii.) *Hiring.*

Hiring of land under compulsory powers.

1111. A county council may submit to the Board an order for the compulsory hiring of the land (*n*) specified therein for a period not less than fourteen (*o*) nor more than thirty-five years (*o*), and the provisions with respect to an order for compulsory purchase, as above stated, will, with certain modifications (*p*), apply to such order as if the term "hiring" were substituted for the term "purchase" (*o*).

The order.

The order must incorporate only such of the statutory provisions relating to compulsory acquisition of land incorporated in orders for compulsory purchase (*q*) as may, subject to the prescribed adaptations, appear to the Board necessary or expedient for the purpose (*r*).

Necessary terms:

The terms and conditions of the hiring, other than the rent, must be determined in the order, and must in particular provide:—

cultivation;

(1) For the insertion in the lease of covenants by the council to cultivate the land in a proper manner (*s*), and to pay to the landlord at the determination of the tenancy on the council quitting the lands compensation for any depreciation thereof through any failure by the council, or any person deriving title under it, to observe such covenants, or by reason of any user thereof by it or any such person, and, unless otherwise agreed, to keep the buildings and premises demised in repair.

pasture;

(2) That no pasture shall be broken up unless the Board is satisfied that it can be broken up without depreciating the value of the land, or that the circumstances are such that small holdings cannot otherwise be successfully cultivated; and

COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 83, 84. As to the Lands Clauses Acts, see *ibid.*, p. 12.

(*k*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), Sched. I., Part I. (6).

(*l*) See title ECCLESIASTICAL LAW, Vol. XI., pp. 760 *et seq.*

(*m*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), Sched. I., Part I. (8); compare *ibid.*, s. 48, as to glebe land hired by a council; and see p. 679, *ante*.

(*n*) See note (*e*), p. 678, *ante*.

(*o*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 39 (2); see Small Holdings and Allotments (Compulsory Hiring) Regulations, 1908 (Stat. R. & O., 1908, p. 17).

(*p*) See the text *infra*.

(*q*) See note (*b*), p. 680, *ante*.

(*r*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), Sched. I., Part II. (1). For form of order and notice of order for compulsory hiring, see Encyclopædia of Forms and Precedents, Vol. XVI., pp. 71 *et seq.*

(*s*) As to the effect of such covenants, see Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), s. 26; title AGRICULTURE, Vol. I., pp. 243, 250.

(3) That, without the consent of the landlord, no right shall be conferred on the council to fell or cut timber or trees, or to take, sell or carry away any minerals, gravel, sand, or clay, except so far as may be necessary or convenient for the erection of buildings on the land or otherwise adapting it for small holdings, and except upon payment of compensation for minerals, gravel, sand, or clay so used (*t*). timber and minerals.

1112. In default of agreement the Board must appoint a single valuer to determine by valuation the amount of the rent to be paid by the council for the land compulsorily hired (*u*), the amount of any other compensation to be paid by the council to any person entitled thereto in respect of the land or any interest therein, or in respect of improvements executed on the land or otherwise, and, where part only of a holding held for an unexpired term is hired, the rent to be paid during the remainder of that term (*x*). Rent.

The valuer may require assistance, information, and explanation from any person interested in any valuation, and the production of or access to all such books, accounts, vouchers, and other documents relating to the land to be compulsorily hired as he may reasonably require for the purposes of valuation, and such expenses as are certified by him to have been properly incurred in furnishing such assistance, information, and explanations, or otherwise, in relation to the valuation, will be paid by the council (*y*). Method of valuation.

In default of agreement, any questions as to the amount due by the council for depreciation on the determination of the tenancy must be determined by arbitration (*z*).

(*t*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), Sched. I., Part II. (2).

(*u*) In fixing the rent the valuer must take into consideration any rent at which the land has been let; the annual value at which it is assessed for purposes of income tax or rating; any loss caused to the owner by severance; the terms and conditions of the hiring, including the reservation of sporting or fishing rights; and all other circumstances connected with the land. He must not, however, make an allowance in respect of any use to which the land might otherwise be put by the owner during the term of hiring, being a use in respect of which the owner is entitled to resume possession of the land (*ibid.*, Sched. I., Part II. (4)). For the "uses" referred to, see *ibid.*, s. 46 (1); and p. 684, *post*.

(*x*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), Sched. II., Part II. (3). Any compensation awarded to a tenant in respect of any depreciation of the value to him of the residue of his holding caused by the withdrawal from the holding of the hired land must, as far as possible, be provided for by taking such compensation into account in fixing the rent to be paid for the residue of the holding during the remainder of the term for which it is held by the tenant (*ibid.*, Sched. I., Part II. (3)). Where the land hired is in the occupation of a tenant he may, by notice in writing served on the council before the determination of his tenancy, require that any claim by him against the council which, under the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), might be referred to arbitration thereunder, shall be so referred, and in such case those claims shall be determined by arbitration under that Act, and not by arbitration under the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36); see title AGRICULTURE, Vol. I., pp. 258 *et seq.*

(*y*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), Sched. I., Part II. (6).

(*z*) *Ibid.*, s. 58 (1), Sched. I., Part II. (7). Unless otherwise expressly provided, all questions which are referred to arbitration under the Act

SECT. 4. Acquisition of Land for Small Holdings.

1113. The regulations with respect to the renewal of leases of land hired by agreement by a county council for the provision of small holdings apply also to leases of lands compulsorily hired by the council for that purpose (*a*).

Renewal of leases of land compulsorily hired.

1114. Where the land authorised to be compulsorily hired by an order is subject to a mortgage, any lease made in pursuance of the order by the mortgagor or mortgagee in possession has the like effect as if it were a lease authorised by the Conveyancing and Law of Property Act, 1881 (*b*), s. 18 (*c*).

Lands subject to mortgage.

Power of landlord to resume possession of land compulsorily hired.

1115. Where land, or any part thereof, which has been hired compulsorily by a council is at any time during the tenancy shown to the satisfaction of the Board of Agriculture and Fisheries to be required by the landlord for building, mining, or other industrial purposes, or for roads (*d*) necessary therefor, the landlord may resume possession of such land or part thereof upon giving twelve months' previous notice in writing to the council of his intention to do so. If a part only of the land is resumed, the rent payable by the council must, as from the date of resumption, be reduced by such sum as, in default of agreement, may be determined by valuation by a valuer appointed by the Board (*e*).

Compensation for improvements on land compulsorily hired.

1116. In the case of land hired compulsorily compensation will be payable in respect of the same improvements as in the case of land hired by agreement (*f*), but the amount of the compensation payable to the council will be such sum as fairly represents the increase, if any, in the value to the landlord and his successors in title of the holding due to those improvements (*g*).

(iii.) *Provisions Relating to Compulsory Purchase and Compulsory Hiring.*

Restrictions as to price for acquisition of land.

1117. A county council may not acquire land for small holdings save at such price or rent that, in the opinion of the council, all expenses incurred in relation thereto will be recouped out of the purchase-money for the land sold by it, or, in the case of land let, out of the rent; and the council must fix the purchase-money or rent at such reasonable amount as will, in its opinion, guard it against loss (*h*). Any expenses incurred in the enfranchisement of any land acquired, or in the purchase or redemption of land tax, or

must be determined by a single arbitrator in accordance with the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28) (Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 58 (1)).

(*a*) See *ibid.*, s. 45 (6), and p. 679, *ante*.

(*b*) 44 & 45 Vict. c. 41.

(*c*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 39 (6); see titles LANDLORD AND TENANT, Vol. XVIII., pp. 356 *et seq.*; MORTGAGE, Vol. XXI., pp. 163 *et seq.*

(*d*) As to road making, see Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), s. 23 (viii.).

(*e*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 46 (1); as to hiring compulsorily by the Commissioners acting in default of a county council, see p. 673, *ante*.

(*f*) See p. 680, *ante*.

(*g*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 47 (2).

(*h*) *Ibid.*, s. 7 (3).

any quit-rent, chief rent, tithe or other rentcharge, or other perpetual sum issuing out of the land so acquired, are deemed to have been incurred in the purchase of the land (*i*).

In determining the amount of any disputed compensation (*k*) under an order for the compulsory acquisition of land no additional allowance is to be made on account of the purchase or hiring being compulsory (*l*).

Compensation where notice to treat withdrawn.

1118. If after the determination of the amount of compensation to be paid to any person in respect of his interest in the land to be compulsorily acquired, including, in the case of land hired compulsorily, the rent, it appears to the council that the land cannot be let for small holdings at such a rent as will secure the council from loss, it may, at any time within six weeks after such determination, withdraw by notice in writing any notice to treat served on such person, or on any other person interested in the land. In such case any person on whom such notice of withdrawal has been served must be compensated by the council for any loss or expenses sustained or incurred by reason or in consequence of the notice to treat and of the notice of withdrawal. The amount of such compensation must, in default of agreement, be determined by arbitration (*m*), and, where the notice of withdrawal is given by the Small Holdings Commissioners acting in default of the council (*n*), is to be paid out of the Small Holdings Account (*o*).

Land exempt from compulsory acquisition.

1119. No holding of fifty acres or less in extent, nor any part thereof, may be authorised by an order to be acquired compulsorily (*p*), nor land which at the date of the order forms part of the home farm attached to and usually occupied with a mansion-house, or is otherwise required for the amenity or convenience of any dwelling-house; or which is the property of any local authority or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water or other public undertaking; or which is the site of an ancient monument or other object of archæological interest (*q*).

Considerations affecting compulsory acquisition of land.

1120. A council in making, and the Board in confirming, an order for the compulsory acquisition of land must have regard to the

(*i*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 61 (3).

(*k*) As to the principles upon which compensation is assessed in such cases, see *Re Lucas and Chesterfield Gas and Water Board*, [1909] 1 K. B. 16, C. A., *per* FLETCHER MOULTON, L.J., at p. 29; and see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 31 *et seq.*

(*l*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 39 (5).

(*m*) Compare *ibid.*, s. 58 (1); p. 683, *ante*.

(*n*) See p. 680, *ante*.

(*o*) *Ibid.*, s. 39 (8).

(*p*) *Ibid.*, s. 41 (3). In fixing the rents to be charged regard must be had to the fact that a shorter term of years will be allowed for repayment of loans in respect of decoration and other repairs of a temporary nature than for structural repairs or new work; see Circular Letter of the Board of Agriculture and Fisheries of the 10th October, 1912.

(*q*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 41 (1); see, further, title OPEN SPACES AND RECREATION GROUNDS, Vol. XXI., p. 580.

SECT. 4. Acquisition of Land for Small Holdings.

extent of land held or occupied in the locality by any owner or tenant, and to the convenience of other property belonging to or occupied by the same owner or tenant, and must, so far as practicable, avoid taking an undue or inconvenient quantity of land from any one owner or tenant. For that purpose it must, where part only of a holding is taken, take into consideration the size and character of the existing agricultural buildings not proposed to be taken, which are used in connexion with the holding, and the quantity and nature of the land available for occupation therewith, and must, so far as practicable, avoid displacing any considerable number of agricultural labourers or others employed on or about the land (*r*).

Order may provide for continuance and creation of easements.

1121. An order for the compulsory sale or hiring of land may provide for the continuance of existing and the creation of new easements (*s*) over the land authorised to be acquired, and every order must, if so required by the owner of the land, provide for the creation of such new easements as are reasonably necessary to secure the continued use and enjoyment by him and his tenants of all means of access, drainage, water supply, and other similar conveniences theretofore used and enjoyed by them over such land. A new easement created by or in pursuance of the order over land hired by a council must not, however, continue beyond the determination of the hiring (*t*).

SECT. 5.—*Dealings with Land.*

SUB-SECT. 1.—*Adaptation for Small Holdings.*

Adaptation before sale and letting.

1122. A county council may, before sale or letting, adapt (*u*) for small holdings any land acquired by it for that purpose, by dividing and fencing it, making occupation roads, and executing any other works, such as works for the provision of drainage or water supply, which can, in the opinion of the council, be more economically and efficiently executed for the land as a whole. The council may also, as part of the agreement for the sale or letting of a small holding, adapt the land by erecting thereon such buildings, or making such adaptation of existing buildings (*a*), as in the opinion of the council are required for the due occupation of the holding and cannot be made by the purchaser or tenant (*b*).

(*r*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 41 (6). As to the compensation payable to displaced agricultural labourers, see p. 692, *post*.

(*s*) Compare Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 61 (2), by which the expression "land" includes any right or easement in or over land; see note (*e*), p. 678, *ante*. As to easements generally, see title EASEMENTS AND PROFITS À PRENDRE, Vol. XI., pp. 233 *et seq.*

(*t*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 39 (4).

(*u*) As to compensation to a council for improvements necessary for adapting land for small holdings, see *ibid.*, s. 47 (2); and p. 671, *ante*.

(*a*) As to restrictions with respect to dwelling-houses, see *ibid.*, s. 12 (1) (d)—(g); p. 688, *post*.

(*b*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 8. As to buildings and equipment, see Circular Letters of the Board of Agriculture and Fisheries dated the 17th July and 23rd September, 1913, and forms issued therewith.

Apportionment of expenses.

The total cost of the acquisition and adaptation of the land must be apportioned by the council amongst the several holdings in such manner as seems just, and must include every expense incurred by it in relation to the land, inclusive of any allowance to any officers of the council for work done in relation thereto (*c*).

SUB-SECT. 2.—*Sale.*

Conditions of sale.

1123. A county council must offer the small holdings for sale (*d*) to persons who desire to buy and will themselves cultivate them (*e*), in accordance with rules made by the council and confirmed by the Board of Agriculture and Fisheries. The rules must in particular prescribe the manner in which holdings are to be sold or offered for sale, the notice to be given of the offer for sale, and the terms and conditions on or subject to which small holdings are to be sold by the county council; and must provide against any small holding being sold to a person who is unable to cultivate it properly, and otherwise for securing the proper cultivation of a holding (*f*).

A county council has power to sell one or more small holdings to a number of persons working on a co-operative system approved by the council (*g*).

Completion and payment of purchase-money.

1124. A purchaser must complete the purchase within such time, not less than one month after the agreement for the purchase, as is fixed by the rules, and on completion must pay not less than one-fifth of the purchase-money, which, in the case of each small holding sold by a county council, must include the costs of registration of title (*h*), but must not include any expense incurred by the purchaser for legal or other advice or assistance (*i*). A portion representing not more than one-fourth of the purchase-money may, if the council thinks fit, be secured by a perpetual rentcharge (*j*). Any residue must be secured by a charge in favour of the council, to be repaid by half-yearly instalments of principal, with such interest and within such time, not exceeding fifty years from the date of sale, as may be agreed upon, or may, if the purchaser so requires, be repaid with such interest and within such term as aforesaid by a terminable

(*c*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 9 (1).

(*d*) The power of acquiring land for small holdings compulsorily only extends to cases where it is to be let on lease (Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 7 (2)); it seems, therefore, that land compulsorily acquired cannot be sold to tenants of the holdings.

(*e*) *Ibid.*, ss. 1, 7 (1). As to the meaning of "will themselves cultivate the holdings," see Circular Letter of the Board dated the 26th May, 1908.

(*f*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), ss. 9 (1), 10. Model Rules were issued by the Board on the 6th March, 1908. For rules of a county council as to the acquisition of small holdings, see Encyclopædia of Forms and Precedents, Vol. XVI., pp. 42 *et seq.* As to the conditions subject to which small holdings must be sold, see p. 688, *post.*

(*g*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 9 (2).

(*h*) *I.e.*, by the small holder; compare *ibid.*, s. 13 (2); p. 691, *post.*

(*i*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 11 (1), (2), (3).

(*j*) The rentcharge is redeemable in the manner provided by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 45 (Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 11 (4)); see title RENTCHARGES AND ANNUITIES, Vol. XXIV., p. 512.

SECT. 5. Dealings with Land.

annuity payable by equal half-yearly instalments, and the interest for the time being unpaid may at any time be discharged and the annuity may at any time be redeemed in accordance with tables fixed by the county council (*k*).

A council may agree to postpone for a term not exceeding five years the time for payment of all or any part of an instalment, either of principal or of a terminable annuity, in consideration of expenditure by the purchaser which, in the opinion of the council, increases the value of the holding; but the council must do so on such terms as will, in its opinion, prevent it from incurring any loss (*l*).

Sale subject to right of way.

1125. A small holding may be sold subject to such rights of way or other rights for the benefit of other small holdings as the county council considers necessary or expedient (*m*).

Conditions affecting holdings sold by council.

1126. Any small holding sold by a county council must for a term of twenty years from the date of the sale, and so long thereafter as any part of the purchase-money remains unpaid, be held subject to the following conditions:—

(1) any periodical payments due in respect of the purchase-money must be duly made;

(2) the holding is not to be divided, subdivided, assigned, let, or sublet without the consent of the council (*n*);

(3) the holding must be cultivated by the owner or occupier, and must not be used for any purpose other than agriculture (*o*);

(4) not more than one dwelling-house must be erected on the holding, unless, in the opinion of the council, the relaxation of this condition will be for the benefit of that or adjacent small holdings, and the council must not authorise more than one dwelling-house to be erected for occupation with any one small holding;

(5) any dwelling-house so erected must comply with such requirements as the county council may impose for securing healthiness and freedom from overcrowding;

(6) no dwelling-house or building on the holding may be used for the sale of intoxicating liquors;

(7) no dwelling-house shall be erected without the consent of the county council on any holding on which, in their opinion, a dwelling-house ought not to be erected.

If any of these conditions is broken, the council may, after giving the owner an opportunity of remedying the breach, if capable of remedy, cause the holding to be sold (*p*).

(*k*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 11 (4), (5). For forms, see Encyclopædia of Forms and Precedents, Vol. I., pp. 487, 488.

(*l*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 11 (6). For a form of agreement, see Encyclopædia of Forms and Precedents, Vol. I., pp. 484, 485.

(*m*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 11 (7).

(*n*) As to subdivision on the death of the owner, see p. 689, *post*.

(*o*) "Agriculture" includes horticulture and the use of land for any purposes of husbandry, inclusive of the keeping or breeding of live stock, poultry or bees, and the growth of fruit, vegetables, and the like (Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 61 (1)).

(*p*) *Ibid.*, s. 12 (1), (2); as to the right of purchase if land is diverted

Death of owner of small holding.

1127. If the holding, while subject to the foregoing conditions, would on the decease of the owner become subdivided by reason of any devise, bequest, intestacy, or otherwise, the council may require it to be sold within twelve months of such decease to some one person, and if default is made in so selling it, the council may itself cause it to be sold (*q*).

Power of county council to require holding to be sold to them in certain cases.

1128. Where a county council, either on breach of any condition or on the decease of an owner, has power as aforesaid to cause or require a small holding to be sold, it may, in the event of its requiring it for the purposes of small holdings, by notice in writing require the holding to be sold to the council at such price as, in default of agreement, may be determined by arbitration (*r*), and thereupon the council, after such date as may be specified by the notice, and on production to the registrar of the Land Registry of evidence of service of the notice (*s*) and of the payment of the sum so agreed or determined, or of the tender of such payment, is registered as the proprietor of the land in place of the registered proprietor, and such registration operates as a registration on a transfer for valuable consideration (*t*) under the Land Transfer Acts, 1875 and 1897 (*u*).

Conditions governing sale of small holdings.

1129. Any sale by a council under the foregoing conditions may be made either subject to, or wholly or partly free from, the charge in respect of purchase-money, and in either case the regulations aforesaid with respect to the purchase-money (*a*) apply as if the sale were a first sale of the holding. The proceeds of the sale must be applied in discharge of any unpaid purchase-money or redemption of any rentcharge or terminable annuity which is not to continue a charge on the holding, and, subject as aforesaid, must be paid to the person appearing to the council to be entitled to receive the same (*b*). A council may, however, in special circumstances, to be recorded in its minutes, sell or consent to the sale of a small holding free from all or any of the foregoing conditions, and may give such consent on such terms as it thinks fit (*c*).

from agriculture after restrictive conditions have ceased to attach to a holding, see Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 15; p. 690, *post;* compare Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 41.

(*q*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 12 (3).

(*r*) Compare *ibid.*, s. 58 (1).

(*s*) A notice for these purposes is sufficiently served if sent by registered post addressed to the owner, or the personal representative of the deceased owner, at his registered address, or at his last known place of abode (*ibid.*, s. 12 (4)).

(*t*) *Ibid.*, s. 12 (4). This provision does not apply where a small holding has been let by a county council (*ibid.*).

(*u*) 38 & 39 Vict. c. 87; 60 & 61 Vict. c. 65; see titles REAL PROPERTY AND CHATTELS REAL, Vol. XXIV., pp. 308 *et seq.;* SALE OF LAND, Vol. XXV., pp. 432 *et seq.*

(*a*) See Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 11; and p. 687, *ante.*

(*b*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 12 (6).

(*c*) *Ibid.*, s. 12 (7).

SECT. 5. Dealings with Land.

User for purposes other than agriculture.

1130. If at any time after the restrictive conditions aforesaid have ceased to attach to a small holding the owner thereof desires to use it for purposes other than agriculture (*d*), he must before so doing, whether the holding is situate within a town or built upon or not, offer it for sale, first to the county council from which it was purchased, and secondly to the person or persons, if any, then entitled to the lands from which such holding was originally severed (*e*).

SUB-SECT. 3.—*Letting.*

Letting of small holdings.

1131. The letting of small holdings is governed by the same rules and regulations as their sale (*f*), and a small holding let by a county council is held subject to the conditions aforesaid under which it would be held if it were sold, except so far as those conditions relate to the purchase-money, and with the following modifications:—

(1) The provisions empowering a county council on breach of a condition or the decease of an owner to require a small holding to be sold to the council (*g*) do not apply where a small holding has been let by a council (*h*), and if any condition or any term of the letting is broken, the council may, after giving the tenant an opportunity of remedying the breach, if it is capable of remedy, determine the tenancy (*i*);

(2) A county council may, with the consent of the Board of Agriculture and Fisheries, let one or more small holdings to any association formed for the purposes of creating or promoting the creation of small holdings, and so constituted that the division of profits among the members of the association is prohibited or restricted (*k*);

(3) Any tenant to whom a small holding has been let by a county council has as against the council the same rights with respect to compensation for improvements as he would have had if the holding had been a market garden (*l*); and

(4) A tenant of any small holding may before the expiration of his tenancy remove any fruit and other trees planted or acquired by him for which he has no claim for compensation, and may remove any hothouse, shed, greenhouse, fowlhouse, or pigsty built or acquired by him for which he has no claim for compensation (*m*).

(*d*) See note (*o*), p. 688, *ante*.

(*e*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 15. The Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 127—130 (see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 26 *et seq.*), will apply as if the owner of the small holding were the promoter of the undertaking and the holding were superfluous lands within the meaning of those provisions (*ibid.*).

(*f*) See Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), ss. 9—12.

(*g*) *Ibid.*, s. 12 (2)—(4).

(*h*) *Ibid.*, s. 12 (4).

(*i*) *Ibid.*, s. 12 (8); compare Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 14; title LANDLORD AND TENANT, Vol. XVIII., pp. 539 *et seq.*

(*k*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 9 (2) (b).

(*l*) *Ibid.*, s. 47 (1); as to improvements prohibited by the council, see *ibid.*; and see title AGRICULTURE, Vol. I., pp. 269, 270.

(*m*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 47 (4).

SUB-SECT. 4.—*Registration of Title.*

SECT. 5. **Dealings with Land.**

1132. Where a county council has purchased land it must apply to be registered as proprietor thereof under the Land Transfer Acts, 1875 and 1897 (*n*), and may be registered as proprietor of the land with any title authorised by those Acts (*o*). Registration of county council.

1133. When, after having been so registered, a county council transfers any such land to a purchaser of a small holding, the purchaser must be registered as proprietor thereof with an absolute title, subject only to the incumbrances authorised to be created on such transfer (*p*); the remedy of any person claiming by title paramount to the county council in respect either of title or incumbrances will be in damages only, which may be recoverable as against the county council (*q*). Registration of purchaser.

SECT. 6.—*Miscellaneous Powers of County Councils.*

1134. A county council must, if practicable, sell or let as small holdings any land acquired by it for the purpose in accordance with the foregoing provisions, but if it is of opinion that any such land is not needed, or is unsuitable for small holdings, or cannot be sold or let under such provisions, or that some more suitable land is available, it may sell or let such land otherwise than under those provisions, or exchange it for other land more suitable. The council may pay or receive money for equality of exchange, and may erect such buildings or execute such works as will enable the land to be sold or let without loss. The statutory provisions relating to the right of pre-emption of superfluous land (*r*) apply upon any sale before any such buildings or works are erected or executed on the land proposed to be sold (*s*). The Letting of unsold and superfluous land.

(*n*) 38 & 39 Vict. c. 87; 60 & 61 Vict. c. 65; see titles REAL PROPERTY AND CHATTELS REAL, Vol. XXIV., pp. 308 *et seq.*; SALE OF LAND, Vol. XXV., pp. 432 *et seq.* Rules under the Land Transfer Acts, 1875 (38 & 39 Vict. c. 87) and 1897 (60 & 61 Vict. c. 65), may adapt these Acts to the registration of small holdings with such modifications as appear to be required; and, on the application and at the expense of a county council, may provide, by the appointment of local agents or otherwise, for carrying this provision into effect (Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 13 (3)). The Land Registry (Small Holdings) Rules, issued on the 9th August, 1892 (Stat. R. & O. Rev., Vol. VII., Land (Registration), England, p. 23), have not been altered, and therefore remain in force in virtue of the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 62 (a), which, while repealing, *inter alia*, the Small Holdings Act, 1892 (55 & 56 Vict. c. 31), under which these rules were made, enacts that nothing shall affect any order, scheme, and rules etc. made under any of the enactments repealed.

(*o*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 13 (1). As to the titles which may be registered, see title REAL PROPERTY AND CHATTELS REAL, Vol. XXIV., pp. 308 *et seq.*

(*p*) *I.e.*, under the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36); see p. 687, *ante*.

(*q*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 13 (2). As to damages generally, see title DAMAGES, Vol. X., pp. 301 *et seq.*

(*r*) Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 128—132; see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 26 *et seq.*

(*s*) "Save as aforesaid, the provisions of the Lands Clauses Consolidation

SECT. 6. Miscellaneous Powers of Councils.

council may also temporarily let or manage a holding for such time and in such manner as it thinks expedient while any lease or sale thereof is pending (*t*).

Compensation for loss of employment by labourers.

1135. Where a labourer (*u*) who has been regularly employed on land (*a*) acquired by a county council for small holdings proves to the satisfaction of the council that the effect of the acquisition was to deprive him of his employment, and that there was no employment of an equally beneficial character available to him in the same locality, the council may pay (*b*) to him proper compensation for his loss of employment, or for his expenses in moving to another locality, and any sum so paid must be treated as part of the expenses of the acquisition of the land (*c*).

Compensation to tenants for disturbance.

1136. Where a tenant is given notice to quit in order that the land may be used for small holdings, he may, upon quitting, recover from the council compensation for the loss and expense directly attributable to the quitting which he incurs upon or in connexion with the sale or removal of his household goods, implements of husbandry, produce, or farm stock on or used in connexion with the land, but he must give the council a reasonable opportunity of making a valuation thereof, and must claim within three months after quitting. Any difference must, in default of agreement, be settled by arbitration (*d*).

Interchange of land for small holdings and allotments.

1137. A county council may sell or let to a borough, urban district, or parish council for the purposes of allotments (*e*), any land acquired by it for small holdings, and a borough, urban district, or parish council may sell (*f*) or let to the county council for the purpose of small holdings any land acquired by it for allotments,

Act, 1845, with respect to the sale of superfluous lands shall not apply" (Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 16 (3)). For forms of agreement for sale, see Encyclopædia of Forms and Precedents, Vol. XVI., p. 51; and for forms of transfer, see *ibid.*, Vol. I., pp. 485, 488.

(*t*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 16.

(*u*) Compare the expression "labouring population" in *ibid.*, s. 23, relating to allotments, which appears to be used with regard to urban labourers only.

(*a*) By *ibid.*, s. 61 (2), "land" includes any right or easement over it.

(*b*) Compare Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 120; and, as to unreasonable disturbance of a tenant, Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), s. 11.

(*c*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 43.

(*d*) Small Holdings Act, 1910 (7 Edw. 7 & 1 Geo. 5, c. 34), s. 1; and see Circular Letter of the Board of Agriculture and Fisheries of the 23rd September, 1913, and forms of claim issued therewith. As to the repayment out of the Small Holdings Account of sums paid by a council under this enactment, see p. 671, *ante*. As regards the compensation payable to an outgoing tenant, see *Re Evans and Glamorgan County Council Arbitration* (1912), 76 J. P. 468, where it was held that loss incurred on the compulsory sale of household goods, stock etc. and the cost of refreshments supplied at such sale could be allowed as reasonable expenses, but that the valuation fee for valuing stock before the sale and the cost of preparing the agreement with the county council were unavoidable expenses of the sale and ought to be disallowed.

(*e*) See title ALLOTMENTS, Vol. I., p. 341.

(*f*) Compare Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 8 (2), as

but the provisions of the Lands Clauses Acts (*g*) with respect to the sale of superfluous land do not apply on any such sale (*h*).

SECT. 7.—*Finance.*

Small Holdings Account.

1138. All moneys from time to time provided by Parliament towards defraying the costs and expenses of the Board of Agriculture and Fisheries in connexion with small holdings, and all sums received by the Board and directed by statute to be so paid into the account, must be paid into the Small Holdings Account (*i*); and the costs and expenses of the Board directed to be so paid must be paid by it out of the money standing to the Small Holdings Account (*j*).

Audit.

Accounts of the receipts and expenditure of the Small Holdings Account must be made up at the end of every financial year, in such form and with such particulars as may be directed by the Treasury, and must be audited by the Comptroller and Auditor-General as public accounts in accordance with such regulations as the Treasury may make, and must be laid before Parliament, together with his report thereon; and payments out of and into, and all other matters relating to, that account, and to the money standing to the credit thereof, must be paid and regulated in such manner as the Treasury direct (*k*).

Borrowing powers and expenses.

1139. A county council may borrow money (*l*) for the purposes of small holdings, and for the purpose of making grants or advances to co-operative societies, except that any money so borrowed must, notwithstanding anything in the provisions regulating the borrowing (*m*), be repaid within such period, not exceeding eighty years where the purpose for which the money is borrowed is the purchase of land, and fifty years in any other case, as the county council, with the consent of the Local Government Board, determines in each case (*n*).

to the powers of a parish council, with consent of the parish meeting, with respect to the sale and lease of land and buildings.

(*g*) See title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., p. 12.

(*h*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 45; see also Circular Letter of the Board of Agriculture and Fisheries of the 23rd September, 1913.

(*i*) See note (*l*), p. 671, *ante*.

(*j*) Small Holdings and Allotments Act 1908 (8 Edw. 7, c. 36), s. 51 (1), (3).

(*k*) *Ibid.*, s. 51 (4), (5).

(*l*) "In accordance with the Local Government Act, 1888" (51 & 52 Vict. c. 41), *i.e.*, by *ibid.*, s. 69; see title LOCAL GOVERNMENT, Vol. XIX., p. 361; if the council of a county borough, it borrows "in accordance with the Public Health Acts," *i.e.*, Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 233, 234; see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 382 *et seq.*

(*m*) See note (*l*), *supra*.

(*n*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 52 (1). Money so borrowed must not (*ibid.*) be reckoned as part of the total debt of a county for the purpose of the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 69 (2). As to loans for equipment or adaptation, see Circular Letters of the Board of Agriculture and Fisheries of the 22nd May, 1911, 10th October, 1912, 17th July and 23rd September, 1913.

SECT. 7. Finance.

Loans by Public Works Loan Commissioners.

1140. The Public Works Loan Commissioners may (*o*) lend any money which may be borrowed by a county council for the purposes aforesaid; the loan must be made at the minimum rate (*p*) allowed for the time being for loans out of the local loans fund, and the period for which a loan is made may, if the Local Government Board makes a recommendation to that effect, exceed the period allowed by statute (*q*), but must not exceed that recommended by the Local Government Board, nor, where the purpose of the loan is the purchase of land, eighty years, or in any other case fifty years (*r*).

Interest.

1141. As between loans for different periods, the longer duration of the loan must not be taken as a reason for fixing a higher rate of interest (*r*).

Application of capital money by county councils.

1142. Any capital money received by a county council in payment or discharge of purchase-money for land sold by them, or in repayment of an advance made by them, must be applied, with the sanction of the Local Government Board, either in repayment of debt or for any other purpose for which capital money may be applied (*s*).

Expenses of county borough council.

1143. The expenses incurred by the council of a county borough with respect to small holdings must be defrayed out of the borough fund or borough rate, and any money borrowed by such a council must be borrowed on the security of the borough fund or borough rate (*t*).

County councils to keep separate accounts of receipts and expenditure.

1144. Separate accounts must be kept of the receipts and expenditure of a county council with respect to small holdings, and any such receipts are applicable to the purposes of such holdings, but not for any other purpose except with the consent of the Local Government Board (*u*).

(*o*) See title MONEY AND MONEY-LENDING, Vol. XXI., pp. 58 *et seq.*

(*p*) This rate was fixed at 3½ per cent. by a Treasury Minute of the 6th September, 1907.

(*q*) *I.e.*, under the Public Works Loans Act, 1875 (38 & 39 Vict. c. 89), and amending Acts; see title MONEY AND MONEY-LENDING, Vol. XXI., p. 58, note (*a*). The period is fifty years; see *ibid.*, p. 60.

(*r*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 52 (2). As to variations in the period for repayment of loans for adaptation, see the Circular Letters mentioned in note (*n*), p. 693, *ante*.

(*s*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 52 (3).

(*t*) *Ibid.*, s. 52 (4); and see title LOCAL GOVERNMENT, Vol. XIX., pp. 317, 319. Compare Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 235, empowering local authorities to borrow on security of sewage land and other property, to pay out of rates levied by them the interest on moneys borrowed by them in pursuance of this provision; see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 383, note (*t*), 386. The council of a county borough borrows "in accordance with the Public Health Acts"; see note (*l*), p. 693, *ante*. As to the borough fund and borough rate, see title LOCAL GOVERNMENT, Vol. XIX., pp. 319 *et seq.*

(*u*) Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 54 (1).

Part II.—Small Dwellings.

SECT. 1.—*Power of Local Authorities to make Advances.*

SECT. 1. **Power of Local Authorities to make Advances.**

1145. County councils, councils of county boroughs, and on passing the necessary resolutions councils of urban districts not being county boroughs, and of rural districts (in this part of this title referred to as the local authority) have power to advance money for the purpose of enabling any resident in their respective areas to acquire the ownership (*v*) of the house in which he resides; in the case of the councils of districts containing a population according to the last census for the time being of not less than 10,000, the consent of the county council to the resolution is necessary (*w*).

Authorities having power to make advances.

The council of an urban or rural district becomes the local authority for the purposes of the Small Dwellings Acquisition Act, 1899 (*a*), by passing a resolution to act under that Act, and thereupon all the powers, rights, and liabilities of the county council in respect of advances already made by it for the purpose of the ownership of any house in the district vest in the council of the urban or rural district, subject to the payment by that council to the county council of the outstanding principal and interest of any such advance (*b*).

1146. Before making an advance in respect of a house the local authority (*c*) must be satisfied that the applicant is resident or intends to reside in the house (*d*), and is not already the proprietor of a house to which the statutory conditions apply (*e*); that the value of the ownership (*f*) is sufficient (*g*), and the title one

Conditions governing advances.

(*v*) "Ownership" means such interest or combination of interest in a house as, together with the interest of the purchaser of the ownership, constitutes either a fee simple in possession or a leasehold interest in possession of at least sixty years unexpired at the date of the purchase; and where the ownership of a house is acquired by means of an advance, the purchaser thereof, or, in the case of devolution or transfer, the person in whom the interest of the purchaser is for the time being vested, is the proprietor of the house (Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 10 (2), (3)).

(*w*) *Ibid.*, ss. 1 (1), 9 (1). If the council of any district is dissatisfied with any refusal or failure of the county council to give its consent, it may appeal to the Local Government Board, and the Board may, if it thinks fit, give its consent, which when given has the same effect as that of the county council (*ibid.*, s. 9 (1)). As to the power of a county council to make an advance to a co-operative society for the purpose of erecting or improving working-class dwellings, see title INDUSTRIAL, PROVIDENT, AND SIMILAR SOCIETIES, Vol. XVII., p. 6.

(*a*) 62 & 63 Vict. c. 44.

(*b*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 9 (2).

(*c*) See the text, *supra*.

(*d*) See pp. 697, 698, *post*.

(*e*) See Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 10, and the text, *infra*.

(*f*) For definition of "ownership," see note (*v*), *supra*.

(*g*) See p. 696, *post*.

SECT. 1. Power of Local Authorities to make Advances.

which an ordinary mortgagee would be willing to accept; that the house is in good sanitary condition and good repair, and that the repayment of the advance is secured by an instrument vesting the ownership, including any interest already held by the purchaser, in the local authority subject to the right of redemption by the applicant, and that such instrument contains nothing inconsistent with the provisions of the statute (*h*).

Amount of advance authorised.

1147. An advance may be made either to a resident in any house within the area of the local authority (*i*), or to an applicant who intends to reside in a house as if he were resident, if he undertakes to begin his residence therein within such period, not exceeding six months from the date of the advance, as the local authority may fix, and in that case the statutory condition requiring residence is suspended during that period (*k*).

An advance must not exceed £240, or, in the case of a fee simple or leasehold of not less than ninety-nine years unexpired at the date of the purchase, £300, nor may it exceed four-fifths of what is, in the opinion of the authority, the market value of the ownership (*l*).

No advance may be made for the acquisition of the ownership (*l*) of the house where, in the opinion of the local authority, the market value of the house exceeds £400 (*m*).

Local authority to keep list of advances open to inspection.

1148. A local authority must keep at its office a book containing a list of advances made by it; the book must be open to inspection during office hours free of charge, and there must be entered therein with regard to each advance a description of the house in respect of which the advance is made, the amount advanced, the amount for the time being repaid, the name of the proprietor for the time being of the house, and such other particulars as the local authority may think fit (*n*).

SECT. 2.—*Repayment of Advances and Security Therefor.*

Period of repayment and interest payable.

1149. Every advance must be repaid within such period, not exceeding thirty years from the date of the advance, as may be agreed upon, with interest not exceeding 10*s.* above the rate at which the local authority can at the time borrow from the Public Works Loan Commissioners the money for the advance (*o*).

The repayment may be made either by equal instalments of principal or by an annuity of principal and interest combined, and all payments on account of principal or interest must be made

(*h*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 2. For forms of agreements and mortgages, see Encyclopædia of Forms and Precedents, Vol. I., pp. 492, 493, 495.

(*i*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 1 (1). A person is not deemed to be resident in a house unless he is both the occupier of and resident in that house (*ibid.*, s. 10 (1)).

(*k*) *Ibid.*, s. 7 (1).

(*l*) See note (*v*), p. 695, *ante*.

(*m*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 1 (1).

(*n*) *Ibid.*, s. 8.

(*o*) *Ibid.*, s. 1 (2), (3). As to loans by the Public Works Loan Commissioners, see title MONEY AND MONEY-LENDING, Vol. XXI., pp. 58 *et seq.*

either weekly or at any periods not exceeding a half-year, as may be agreed (*p*).

SECT. 2. Repayment of Advances and Security Therefor.

The proprietor of a house in respect of which an advance has been made may also, at any of the usual quarter days, after one month's written notice, and on paying all sums due on account of interest, repay to the local authority the whole of the outstanding principal of the advance, or any part thereof being £10 or a multiple of £10; and where the mode of repayment is by an annuity of principal and interest combined, the amount so outstanding, and the amount by which the annuity will be reduced where a part of the advance is paid off, is determined by a table annexed to the instrument securing the repayment of the advance (*a*).

Personal liability and powers of proprietor.

1150. Where the ownership of a house has been acquired by means of an advance, the person who is the proprietor is personally liable for the repayment of any sum due in respect of the advance, until he ceases to be proprietor by reason of a transfer made under the statute (*b*); but the proprietor may, with the permission of the local authority, at any time transfer his interest in the house, provided that such transfer is made subject to the statutory conditions (*c*).

SECT. 3.—*Conditions Imposed while Advance is Outstanding.*

Conditions affecting house subject to advance.

1151. Where the ownership (*d*) of a house has been acquired by means of an advance, the house is, until such advance with interest has been fully paid, or the local authority has taken possession or ordered a sale (*e*), held subject to the following conditions:—

(1) Every sum for the time being due in respect of principal or interest of the advance must be punctually paid;

(2) The proprietor of the house must reside therein (*f*);

(3) The house must be kept insured against fire to the satisfaction of the local authority, and the receipts for the premiums produced when required by it;

(4) The house must be kept in good sanitary condition and repair;

(5) The house must not be used for the sale of intoxicating liquors, or in such manner as to be a nuisance to adjacent houses (*g*); and

(*p*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 1 (4), (5).

(*a*) *Ibid.*, s. 1 (5).

(*b*) *Ibid.*, s. 4 (1).

(*c*) *Ibid.*, s. 3 (2). The permission of the local authority must not be unreasonably withheld (*ibid.*). As to the effect of permission to assign being unreasonably withheld, compare title LANDLORD AND TENANT, Vol. XVIII., pp. 579 *et seq.* The permission of the local authority is not required in the case of any charge made by the proprietor on his interest, so far as the charge does not affect any rights or powers of the local authority (*ibid.*, s. 4 (2)).

(*d*) See note (*v*), p. 695, *ante*.

(*e*) See p. 698, *post*.

(*f*) As to the exemptions from this provision, see p. 698, *post*. As to non-compliance with this requirement, see *ibid.*

(*g*) As to user of property constituting a nuisance, see, generally, title NUISANCE, Vol. XXI., pp. 513 *et seq.*

SECT. 3. Conditions Imposed while Advance is Outstanding.

(6) The local authority must have power to enter the house by any person authorised by the authority in writing for the purpose, at all reasonable times, for the purpose of ascertaining whether the statutory conditions are complied with (*h*).

Conditions of non-residence; subletting; absence on official duties; death.

1152. A local authority may allow a proprietor to permit, by letting or otherwise, a house to be occupied as a furnished house by some other person during a period not exceeding four months in the whole in any twelve months, or during absence from the house in the performance of any duty arising from or incidental to any office, service, or employment held or undertaken by him, and the condition requiring residence will be suspended while the permission continues (*i*).

Where the proprietor of a house subject to statutory conditions dies, the condition requiring residence is suspended until the expiration of twelve months from the death, or any earlier date at which the personal representatives transfer the ownership or interest of the proprietor in the course of administration. Where the proprietor of any such house becomes bankrupt, or his estate is administered in bankruptcy under the provisions for the administration of the estates of persons dying insolvent (*k*), and in either case an arrangement is made with the trustee in bankruptcy, the condition as to residence will, if the local authority thinks fit, be suspended during the continuance of the arrangement (*l*).

SECT. 4.—*Remedies for Breach of Conditions.*

SUB-SECT. 1.—*Possession.*

Default in complying with statutory conditions as to residence.

1153. Where default is made in complying with the statutory condition as to residence (*m*), the local authority may take possession of the house, and where default is made in complying with any of the other statutory conditions (*m*), whether the statutory condition as to residence has or has not been complied with, the local authority may either take possession of the house or order the sale thereof without taking possession (*n*).

Proprietor may avoid consequences of breach in certain cases.

1154. In the case of the breach of any condition other than that of the punctual payment of the principal and interest of the advance, the authority must, previously to taking possession or ordering a sale, by notice in writing delivered at the house and addressed to the proprietor, call on him to comply with the condition, and must not take possession or order a sale, as the case may be, if within fourteen days after the delivery of the notice he gives an undertaking in

(*h*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 3 (1).
(*i*) *Ibid.*, s. 7 (2).
(*k*) *I.e.*, under the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 125; see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 93 *et seq.*
(*l*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 7 (3). As to postponing the time when residence must begin, under *ibid.*, s. 7 (1), see p. 696, *ante*.
(*m*) See p. 697, *ante*.
(*n*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 3 (3).

writing to the authority to comply therewith and does comply therewith within two months after the delivery of such notice (*o*).

SECT. 4. Remedies for Breach of Conditions.

Bankruptcy.

1155. In the case of the bankruptcy of the proprietor of the house, or in the case of a deceased proprietor's estate being administered in bankruptcy (*p*), the local authority may either take possession of the house or order the sale of the house without taking possession, and must do so unless some arrangement to the contrary is made with the trustee in bankruptcy (*q*).

Recovery of possession and disposal of house.

1156. Where a local authority takes possession of a house, all the estate, right, interest, and claim of the proprietor in or to the house vests in and becomes the property of the local authority, which may either retain it under its own management or sell or otherwise dispose of it as it thinks expedient (*r*).

Method of recovery of possession.

Where the local authority is entitled to take possession of a house, possession may be recovered, whatever may be the value of the house, by or on behalf of the local authority either under the County Courts Act, 1888 (*a*), or under the Small Tenements Recovery Act, 1838 (*b*), as in the cases therein provided for, and in either case may be recovered as if the local authority was the landlord and the proprietor the tenant of the house (*c*).

Compensation to proprietor.

1157. On taking possession the local authority must pay to the proprietor either such sum as may be agreed upon, or a sum equal to the value of the interest in the house, after deducting therefrom the amount of the advance then remaining unpaid and any sum due for interest; and such value, in the absence of a sale and in default of agreement, must be settled by a county court judge as arbitrator, or, if the Lord Chancellor so authorises, by a single arbitrator appointed by the county court judge, and the Arbitration Act, 1889 (*d*), applies to any such arbitration (*e*). If the sum so payable to the proprietor is not paid within three months after taking possession, it carries interest at the rate of 3 per cent. per annum from the date of taking possession (*f*).

All the costs of or incidental to the taking possession, sale, or other disposal of the house, including the costs of the arbitration, if any, incurred by the local authority before the amount payable to the proprietor has been settled either by agreement or arbitration,

(*o*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 3 (4).

(*p*) *I.e.*, under the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 125; see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 93 *et seq.*

(*q*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 3 (5). As to the suspension of the condition of residence in such a case, see p. 698, *ante*.

(*r*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 5 (1).

(*a*) 51 & 52 Vict. c. 43, ss. 138—145; see title COUNTY COURTS, Vol. VIII., p. 685.

(*b*) 1 & 2 Vict. c. 74.

(*c*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 5 (5); see also title LANDLORD AND TENANT, Vol. XVIII., pp. 558 *et seq.*

(*d*) 52 & 53 Vict. c. 49; see title ARBITRATION, Vol. I., pp. 455 *et seq.*

(*e*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 5 (2).

(*f*) *Ibid.*, s. 5 (3).

SECT. 4. Remedies for Breach of Conditions.

must be deducted from the amount otherwise payable to the proprietor (*g*).

SUB-SECT. 2.—*Sale.*

Procedure as to ordering sale.

1158. Where a local authority orders the sale of a house without taking possession, it must cause it to be put up for sale by auction, and out of the proceeds of the sale retain any sum due to it on account of the interest or principal of the advance, and all costs, charges, and expenses properly incurred by it in or about the sale of the house, and pay over any balance to the proprietor (*h*). If, however, the authority is unable at the auction to sell the house for such a sum as will allow of the payment out of the proceeds of sale of the interest and principal of the advance due to it and the costs, charges, and expenses aforesaid, the local authority may take possession (*i*) of the house, without being liable to pay any sum to the proprietor (*k*).

SECT. 5.—*Finance.*

SUB-SECT. 1.—*In General.*

Expenses of local authority.

1159. All expenses of a local authority with respect to advances for the acquisition of small dwellings are paid, in the case of a county, out of the county rate (*l*); in the case of a county borough, out of the borough fund or borough rate (*m*); and in the case of an urban (*a*) or rural district, out of any fund or rate applicable to the general purposes (*b*) of the Public Health Acts (*c*); but no sum may be raised in any urban or rural district the council of which has, by passing the necessary resolution, become a statutory local authority (*d*), on account of the expenses of a county council in connexion with advances for the acquisition of small dwellings (*e*).

Limits of expenditure.

1160. If in any local financial year the expenses payable by a council, and not reimbursed by the receipts in connexion with advances for the acquisition of small dwellings, exceed in a county a sum equal to one halfpenny, and in a county borough or urban or rural district a sum equal to one penny, in the pound upon the rateable value of the county, county borough, or district, deducting in the case of a county the rateable value of any urban or rural district therein, the council of which has become a statutory local authority (*d*), no further advance may be made by that council until the expiration of five years after the end of that financial

(*g*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 5 (4).
(*h*) *Ibid.*, s. 6 (1).
(*i*) See p. 699, *ante*.
(*k*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 6.
(*l*) As to the county rate, see title LOCAL GOVERNMENT, Vol. XIX., pp. 359 *et seq.*
(*m*) As to the borough fund rate, see *ibid.*, pp. 319 *et seq.*
(*a*) See *ibid.*, pp. 280 *et seq.*
(*b*) See *ibid.*, pp. 335 *et seq.*
(*c*) See title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., p. 361, note (*a*); see also *ibid.*, pp. 380 *et seq.*
(*d*) See p. 695, *ante*.
(*e*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 9 (3).

year, or, if these expenses at that date exceed one halfpenny or one penny in the pound, as the case may be, on the rateable value for the time being, until they fall below that sum (*f*).

Borrowing powers of local authority.

1161. For the purposes of the Small Dwellings Acquisition Act, 1899 (*g*), a county council may borrow in the same way as it may borrow for the purposes of the Local Government Act, 1888 (*h*), the council of a county borough may borrow in the same way as for the purchase of land (*i*), and an urban or rural district council which has become a statutory local authority (*k*) may borrow as for the purposes of the Public Health Acts; and the provisions of the applied enactments (*l*) apply accordingly with the necessary modifications (*m*).

The money borrowed is not (*n*), however, in the case of a county council reckoned as part of the total debt of a council for the purposes of the statutory limitation upon borrowing (*o*), nor in the case of an urban or rural district council as part of their debt for the purpose of the limitation on borrowing under the Public Health Act, 1875 (*p*).

The Public Works Loan Commissioners may, in manner provided by the Public Works Loans Act, 1875 (*q*), lend any money which may be borrowed by a local authority (*r*)

Capital money may be applied in repayment of debt etc.

1162. Any capital money received or retained by a local authority in payment or discharge of any advance, or in respect of the sale or other disposal of any house taken possession of by them, must be applied, with the sanction of the Local Government Board, either

(*f*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 9 (4).

(*g*) 62 & 63 Vict. c. 44.

(*h*) 51 & 52 Vict. c. 41; see title LOCAL GOVERNMENT, Vol. XIX., pp. 361, 362.

(*i*) *I.e.*, under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 106; see title LOCAL GOVERNMENT, Vol. XIX., pp. 317, 318.

(*k*) See p. 695, *ante*.

(*l*) *I.e.*, in the case of a county council, the Local Government Act, 1888 (51 & 52 Vict. c. 41); in the case of a county borough council, the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50); and in the case of an urban or rural district council, the Public Health Acts (see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., p. 361, note (*a*)).

(*m*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 9 (5); see titles LOCAL GOVERNMENT, Vol. XIX., pp. 282, 383 (urban district), 337 (rural district); PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 382 *et seq.*

(*n*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 9 (6).

(*o*) *I.e.*, under the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 69 (2), requiring a provisional order of the Local Government Board confirmed by Parliament to enable a county council to borrow where its debt, after deducting any sinking fund, exceeds or, with the proposed loan, will exceed, one-tenth of the annual rateable value of the county, according to the assessment for the county rates.

(*p*) 38 & 39 Vict. c. 55, s. 234 (2); see title PUBLIC HEALTH AND LOCAL ADMINISTRATION, Vol. XXIII., pp. 383 *et seq.*

(*q*) 38 & 39 Vict. c. 89.

(*r*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 9 (7); see title MONEY AND MONEY-LENDING, Vol. XXI., pp. 58 *et seq.*

SECT. 5 Finance.

in repayment of debt or for any other purpose to which capital money may be applied (*s*).

Accounts.

1163. Every local authority must keep separate accounts of its receipts and expenditure (*t*).

SUB-SECT. 2.—*In the Metropolis.*

Special provisions relating to London.

1164. In the County of London any sanitary authority (*a*) has the same powers as an urban district council, and the expenses of such authority are paid out of the general rate; it may borrow (*b*) in the same manner as for the purposes of the Metropolis Management Acts, 1855—1893 (*c*), which apply with the necessary modifications (*d*).

(*s*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 9 (8).
(*t*) *Ibid.*, s. 9 (9).
(*a*) See title METROPOLIS, Vol. XX., p. 408.
(*b*) London County Council (General Powers) Act, 1893 (56 & 57 Vict. c. ccxxi.).
(*c*) Metropolis Management Act, 1855 (18 & 19 Vict. c. 120); Metropolis Management Amendment Acts, 1856 (19 & 20 Vict. c. 112), 1858 (21 & 22 Vict. c. 104), and 1862 (25 & 26 Vict. c. 102); Metropolis Management and Building Acts Amendment Act, 1878 (41 & 42 Vict. c. 32), Part I.; Metropolis Management Amendment Act, 1885 (48 & 49 Vict. c. 33); Metropolis Management (Battersea and Westminster) Act, 1887 (50 & 51 Vict. c. 17); Metropolis Management Act, 1862, Amendment Act, 1890 (53 & 54 Vict. c. 54); Metropolis Management Amendment Act, 1890 (53 & 54 Vict. c. 66); Metropolis Management (Plumstead and Hackney) Act, 1893 (56 & 57 Vict. c. 55).
(*d*) Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), s. 9 (10); see title METROPOLIS, Vol. XX., pp. 444 *et seq.*

SMALLPOX.

See MEDICINE AND PHARMACY; PUBLIC HEALTH AND LOCAL ADMINISTRATION.

SMOKE.

See NUISANCE; PUBLIC HEALTH AND LOCAL ADMINISTRATION; RAILWAYS AND CANALS.

SMOKING.

See INFANTS AND CHILDREN.

SMOKING COMPARTMENTS.

See Railways and Canals.

SMUGGLING.

See Criminal Law and Procedure.

SNOW.

See Highways, Streets, and Bridges; Nuisance.

SNUFF.

See Revenue.

SOCAGE.

See Infants and Children; Real Property and Chattels Real.

SOCIETIES.

See Building Societies; Clubs; Friendly Societies; Industrial, Provident, and Similar Societies; Literary and Scientific Institutions; Loan Societies; Trade and Trade Unions.

SODOMY.

See Criminal Law and Procedure.

SOLD NOTE.

See Sale of Goods; Stock Exchange.

SOLDIERS.

See Royal Forces.

SOLE CORPORATION.

See Corporations; Ecclesiastical Law.

SOLEMN FORM.

See Executors and Administrators.

SOLEMNISATION OF MARRIAGE.

See Ecclesiastical Law; Husband and Wife.

SOLICITOR-GENERAL.

See Barristers; Constitutional Law.

SOLICITORS.

PAGE

PART I. THE LAW SOCIETY - - - - - - - - 707

PART II. ADMISSION AND REGISTRATION - - - - 710

SECT. 1. CONDITIONS OF ADMISSION - - - - - - 710
SECT. 2. SERVICE UNDER ARTICLES - - - - - - 710
SECT. 3. EXAMINATIONS - - - - - - - - - 716
SECT. 4. ADMISSION - - - - - - - - - - 719
SECT. 5. PRACTISING CERTIFICATE - - - - - - 720
SECT. 6. COLONIAL SOLICITORS - - - - - - - 722

PART III. RIGHTS AND PRIVILEGES OF SOLICITORS - - 722

SECT. 1. RIGHT TO PRACTISE - - - - - - - 722
SECT. 2. RIGHT OF AUDIENCE - - - - - - - 723
SECT. 3. PRIVILEGES - - - - - - - - - 726

PART IV. SOLICITOR AND CLIENT - - - - - - - 728

SECT. 1. RETAINER - - - - - - - - - - 728
Sub-sect. 1. What Constitutes a Retainer - - - - 728
Sub-sect. 2. Duration of Retainer - - - - - 737
Sub-sect. 3. Ownership of Documents - - - - 740

SECT. 2. AUTHORITY OF SOLICITOR TO BIND HIS CLIENT - - 741
Sub-sect. 1. In General - - - - - - - 741
Sub-sect. 2. Contentious Business - - - - - 741
Sub-sect. 3. Non-contentious Business - - - - 744

SECT. 3. TRANSACTIONS BETWEEN SOLICITOR AND CLIENT - - 746
Sub-sect. 1. In General - - - - - - - 746
Sub-sect. 2. Gifts - - - - - - - - - 747
Sub-sect. 3. Purchases and Sales - - - - - 748
Sub-sect. 4. Mortgages - - - - - - - 751
Sub-sect. 5. Wills - - - - - - - - - 752
Sub-sect. 6. Solicitor as Trustee - - - - - 752

SECT. 4. OBLIGATIONS OF SOLICITOR TOWARDS HIS CLIENT - - 753
Sub-sect. 1. Possession of Legal Skill and Knowledge - 753
Sub-sect. 2. Personal Attention and Protection of Client's Interests - - - - - - - - 758
Sub-sect. 3. Liability for Acts of Partners - - - - 758

PART V. REMUNERATION OF SOLICITORS: COSTS - - - 760

SECT. 1. AMOUNT FIXED BY LAW - - - - - - 760
Sub-sect. 1. In General - - - - - - - 760
Sub-sect. 2. Non-contentious Business - - - - 760
Sub-sect. 3. Contentious Business - - - - - 767

PAGE

PART V. REMUNERATION OF SOLICITORS: COSTS—*continued.*

SECT. 2. SPECIAL AGREEMENTS FIXING AMOUNT - - - - 770
Sub-sect. 1. In General - - - - - - - - 770
Sub-sect. 2. Under the Attorneys and Solicitors Act, 1870 - 771
Sub-sect. 3. Under the Solicitors Remuneration Act, 1881 - 773

SECT. 3. DELIVERY OF A BILL OF COSTS - - - - - 774

SECT. 4. TAXATION OF COSTS - - - - - - - - 780
Sub-sect. 1. Jurisdiction of the Court - - - - 780
Sub-sect. 2. The Making of the Order - - - - 784
Sub-sect. 3. The Conduct of the Taxation - - - - 793
Sub-sect. 4. Review of Taxation - - - - - 795

SECT. 5. WHAT COSTS ALLOWED ON TAXATION - - - - 797
Sub-sect. 1. In General - - - - - - - 797
Sub-sect. 2. Costs as between Solicitor and Client - - 797
Sub-sect. 3. Costs as between Party and Party - - - 799
Sub-sect. 4. Costs Regulated by Statute - - - - 807
Sub-sect. 5. Costs of Taxation - - - - - - 807

SECT. 6. INTEREST ON COSTS - - - - - - - - 809

SECT. 7. SECURITY FOR COSTS - - - - - - - - 811

SECT. 8. SOLICITOR'S REMEDIES FOR COSTS- - - - - 812
Sub-sect. 1. Action - - - - - - - - - 812
Sub-sect. 2. Proceedings in Bankruptcy - - - - 813
Sub-sect. 3. Proceedings on Allocatur - - - - 813

SECT. 9. LIEN - - - - - - - - - - - - 814
Sub-sect. 1. Kinds of Lien - - - - - - 814
Sub-sect. 2. Retaining Lien - - - - - - 814
Sub-sect. 3. Common Law Lien on Property or Funds Recovered - - - - - - - 820
Sub-sect. 4. Statutory Lien and Charging Orders - - 823

PART VI. LIABILITIES OF SOLICITORS AS OFFICERS OF THE HIGH COURT - - - - - - - - - 828

SECT. 1. IN GENERAL - - - - - - - - - - 828

SECT. 2. LIABILITY UPON UNDERTAKINGS GIVEN AS A SOLICITOR 830

SECT. 3. LIABILITY TO PAY COSTS - - - - - - - 832

SECT. 4. LIABILITY TO THIRD PERSONS - - - - - 835

SECT 5. LIABILITY TO CLIENT - - - - - - - 837
Sub-sect. 1. To Pay over Money Received - - - - 837
Sub-sect. 2. To Deliver up Papers - - - - - 840

PART VII. PARTNERSHIPS BETWEEN SOLICITORS - - - 842

SECT. 1. IN GENERAL - - - - - - - - - 842

SECT. 2. PROFITS OF OFFICES AND PREMIUMS - - - - 842

SECT. 3. GOODWILL - - - - - - - - - - 843

PART VIII. LONDON AGENTS - - - - - - - - 844

SECT. 1. SCOPE OF COUNTRY CERTIFICATE - - - - - 844

SECT. 2. RELATIONS BETWEEN LONDON AGENT AND COUNTRY SOLICITOR'S CLIENT - - - - - - - - 844

SECT. 3. RELATIONS BETWEEN LONDON AGENT AND COUNTRY SOLICITOR - - - - - - - - - - 846

SECT. 4. RELATIONS BETWEEN LONDON AGENT AND OPPOSITE PARTIES - - - - - - - - - - 847

	PAGE
PART IX. DISCIPLINE	848
SECT. 1. GROUNDS FOR STRIKING SOLICITOR OFF THE ROLLS	848
SECT. 2. PROCEDURE	852
SECT. 3. APPEAL	855
PART X. UNQUALIFIED PERSONS	855
PART XI. COMMISSIONERS FOR OATHS	857
PART XII. PERPETUAL COMMISSIONERS	859

For Agency	*See title*	AGENCY.
Arbitrations	,,	ARBITRATION.
Attorney-General	,,	BARRISTERS; CONSTITUTIONAL LAW.
Barristers	,,	BARRISTERS.
Champerty	,,	ACTION.
Deeds, Preparation of	,,	BILLS OF SALE; BONDS; DEEDS AND OTHER INSTRUMENTS; FAMILY ARRANGEMENTS; LANDLORD AND TENANT; MORTGAGE; PARTNERSHIP; REAL PROPERTY AND CHATTELS REAL; SALE OF LAND; SETTLEMENTS.
Maintenance	,,	ACTION.
Notaries	,,	NOTARIES.
Pleadings	,,	PLEADING; PRACTICE AND PROCEDURE.
Practice and Procedure	,,	ACTION; ADMIRALTY; BANKRUPTCY AND INSOLVENCY; CORONERS; COUNTY COURTS; COURTS; CRIMINAL LAW AND PROCEDURE; CROWN PRACTICE; DISCOVERY, INSPECTION, AND INTERROGATORIES; ECCLESIASTICAL LAW; EVIDENCE; EXECUTION; EXECUTORS AND ADMINISTRATORS; INJUNCTION; INTERPLEADER; JUDGMENTS AND ORDERS; LIMITATION OF ACTIONS; MAGISTRATES; MAYOR'S COURT, LONDON; PLEADING; PRACTICE AND PROCEDURE; SET-OFF AND COUNTERCLAIM.
Solicitor-General	,,	BARRISTERS; CONSTITUTIONAL LAW.
Title, Investigation of	,,	SALE OF LAND.
Wills, Preparation of	,,	WILLS.

Part I.—The Law Society.

PART I. **The Law Society.**

Charter of incorporation.

1165. The Law Society (*a*), in its present form (*b*), was incorporated by Royal Charter in 1845, and further provisions for its

(*a*) The original name of the society was "The Society of Attorneys, Solicitors, Proctors, and others not being Barristers, practising in the Courts of Law and Equity of the United Kingdom" (Charter of 1845, clause 1), The society afterwards came to be known as the Incorporated Law Society (see Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 1), and its present name was substituted by the Charter of 1903. Many provincial law societies have also been formed: they possess certain rights of representation on the council of the Law Society and on various statutory committees; see pp. 709, 710, *post*.

(*b*) For the history of the Law Society, and of the societies which preceded it, see Handbook of the Law Society, pp. 1 *et seq*. For the Inns of Court

PART I. The Law Society.

constitution were made by supplemental charters in 1872, 1903, and 1909 (*c*). By the Charter of 1845 the Law Society was made a body corporate with a common seal (*d*) and perpetual succession (*e*), and was empowered to acquire, hold, and sell land to a limited extent (*f*).

No limit is placed by the charter upon the number of members (*g*), and all solicitors of the Supreme Court (*h*), who have at any time taken out a practising certificate, including those who have voluntarily retired from practice (not being barristers (*i*)), are eligible for membership (*k*).

Government.

1166. The Law Society is governed by a President, Vice-President, and Council (*l*), which consists at present of fifty members (*m*). Of these forty are ordinary members, elected by the members of the society (*n*), and ten are extraordinary members, nominated by the various provincial law societies (*o*). Ordinary members of the Council hold office for four years, ten members retiring each year (*p*), and are eligible for re-election (*q*), with the exception of not more than three of the retiring members, who are ineligible for a period not exceeding a year (*r*). Extraordinary members of the Council are appointed for three years, and are eligible for reappointment (*s*). The President and Vice-President are elected by the members of the Society from the members of the Council (*t*), and hold office for one year (*a*). Ordinary members of the Council (*b*) and extraordinary members, who have served on the

and Chancery, see title BARRISTERS, Vol. II., pp. 358 *et seq.*; *Smith* v. *Kerr*, [1902] 1 Ch. 774, C. A.

(*c*) For the charters, see the Handbook of the Law Society, 1905, pp. 32 *et seq.*

(*d*) Charter of 1845, clauses 1, 2.

(*e*) *Ibid.*, clause 3.

(*f*) *Ibid.*, clauses 3, 4.

(*g*) *Ibid.*, clause 7.

(*h*) By the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 87, all persons admitted as solicitors, attorneys, or proctors of, or by law empowered to practise in, any court the jurisdiction of which is by that Act transferred to the High Court or to the Court of Appeal, and all persons who from time to time, if the Act had not passed, would have been entitled to be admitted as such, are to be called in future solicitors of the Supreme Court.

(*i*) As to solicitors becoming barristers, see title BARRISTERS, Vol. II., p. 364, note (*d*).

(*k*) Charter of 1845, clause 1. Irish and Scotch solicitors and writers to the signet are also eligible for membership (*ibid.*). For the bye-laws relating to members, see Bye-laws 2 *et seq.*

(*l*) Charter of 1845, clause 8. For the bye-laws relating to the Council, see Bye-laws 39 *et seq.*

(*m*) Charter of 1845; Charter of 1872; Bye-law 39.

(*n*) *Ibid.*

(*o*) Charter of 1872; Bye-law 47; General Regulations 31 *et seq.*

(*p*) Charter of 1845, clause 13; Bye-law 40.

(*q*) Bye-law 40.

(*r*) Charter of 1909.

(*s*) Charter of 1872; Charter of 1903.

(*t*) Charter of 1845, clause 8. They must be solicitors practising in England (*ibid.*).

(*a*) For the bye-laws relating to the election of President and Vice-President, see Bye-laws 54 *et seq.*

(*b*) Charter of 1845, clause 8; Bye-law 54.

Council for not less than four years (*c*), are eligible for the office of President or Vice-President; but both offices are not to be filled in the same year by members, whether ordinary or extraordinary, of the Council holding country certificates only (*d*).

General meetings.

A general meeting of the members of the Society must be held once a year for the purpose of electing the President, Vice-President, and the Council (*e*). A special general meeting may be called at any time by the Council (*f*), and must be called on a written requisition signed by twenty or more members, otherwise any ten of the requisitioners may call the meeting themselves (*g*). The general meeting is empowered by the charter to make bye-laws for the regulation and good government of the Society, and for carrying out the purposes for which the Society was founded (*h*).

Management.

1167. Subject to the provisions of the charter and of the bye-laws for the time being in force, the management of the Society's affairs is vested in the hands of the Council (*i*). The Council is empowered to appoint a secretary, a librarian, and such other officers, clerks, and servants as it may think fit, and to prescribe their respective duties (*k*). The Council may appoint committees (*l*); and various committees have been appointed (*m*), including an Examination Committee, which has been constituted for the purpose of conducting the examination of persons desiring to become solicitors (*n*). In addition to the ordinary committees appointed by the Council, there is a statutory committee of not less than three and not more than seven members of the Council appointed by the Master of the Rolls for disciplinary purposes (*o*).

Duties of Law Society.

1168. The duties of the Registrar of Solicitors (*p*) and the powers and duties of the Clerk of the Petty Bag Office (*q*) in relation to the roll of solicitors and to solicitors (*r*) are exercised by the Law Society.

The Law Society is entitled to be represented on the following committees, namely:—the Rule Committee of the Supreme

(*c*) Charter of 1909.
(*d*) *Ibid.*
(*e*) Charter of 1845, clause 13. For the bye-laws relating to general meetings, see Bye-laws 13 *et seq.*
(*f*) Charter of 1845, clause 13. For the bye-laws relating to special general meetings, see Bye-laws 18 *et seq.*
(*g*) Bye-laws 19 *et seq.*
(*h*) Charter of 1845, clause 12. Bye-laws have been made by the Society, and are printed in the Handbook of the Law Society, pp. 47 *et seq.* General regulations have also been made by the Council in pursuance of the bye-laws, and are printed *ibid.*, pp. 60 *et seq.*
(*i*) Charter of 1845, clause 11; Bye-law 50.
(*k*) Charter of 1845, clause 11; Bye-laws 66 *et seq.*
(*l*) Bye-law 50.
(*m*) See Handbook of the Law Society.
(*n*) See Regulation of the 3rd March, 1905.
(*o*) Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 12; see pp. 848 *et seq.*, *post.*
(*p*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 21; see pp. 713, 721, *post.*
(*q*) As to the powers and duties not transferred to the Law Society, see title CONSTITUTIONAL LAW, Vol. VII., pp. 11, 12.
(*r*) Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 5; see pp. 713, 719, 721, 851, *post.*

PART I. The Law Society.

Court, by two practising solicitors appointed by the Lord Chancellor, one of whom is to be a member of the Council and the other a member of the Law Society and also of a provincial law society (*s*); the Rule Committee under the Solicitors Remuneration Act, 1881 (*t*), by the president for the time being of the Law Society, and also by the president of a provincial law society selected by the Lord Chancellor (*u*); the Advisory Committee on the Rules under the Land Transfer Act, 1897 (*v*), by one person chosen by the Council of the Law Society (*w*); and the Inspection Committee of Trustee Savings Banks, by one member appointed by the Council (*x*). The Law Society is also represented on the governing bodies of various universities, and on the Incorporated Council of Law Reporting of England and Wales.

Part II.—Admission and Registration.

SECT 1.—*Conditions of Admission.*

Qualification.

1169. No person is entitled to be admitted and enrolled as a solicitor unless (1) he is a British subject of the male sex (*a*); (2) he is of full age (*b*); (3) he has been articled to a practising solicitor in England or Wales for the requisite period, or is exempted from serving under articles (*c*); and (4) he has passed the requisite examinations or is exempted therefrom (*d*).

The solicitors to the Treasury, Customs, Excise, Post Office, Stamp Duties, or any other branch of His Majesty's Revenue, the Solicitor to the City of London, the Assistant Solicitor to the Admiralty, and the Solicitor to the Board of Ordnance are not required to be admitted as solicitors (*e*), and these offices are frequently held by barristers (*f*).

SECT. 2.—*Service under Articles.*

How far service necessary.

1170. Service under articles (*g*) is a necessary preliminary to admission as a solicitor in the case of all persons except (1) barristers

(*s*) Judicature (Rule Committee) Act, 1909 (9 Edw. 7, c. 11), s. 1 (1).
(*t*) 44 & 45 Vict. c. 44.
(*u*) *Ibid.*, s. 2.
(*v*) 60 & 61 Vict. c. 65.
(*w*) *Ibid.*, s. 22 (2).
(*x*) In pursuance of the scheme framed under the Savings Banks Act, 1891 (54 & 55 Vict. c. 21), s. 2 (2).
(*a*) *Bebb* v. *Law Society*, [1913] W N. 355, C. A.
(*b*) *Ex parte Cragg* (1838), 6 Dowl. 256; *Ex parte Evans* (1838), 2 Jur. 47; *Ex parte Steele* (1864), 10 Jur. (N. S.) 1254. As to the age on entering articles, see p. 712, *post.*
(*c*) See pp. 711 *et seq.*, *post.*
(*d*) See pp. 716 *et seq.*, *post.*
(*e*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 47; Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 33; Solicitors Act, 1874 (37 & 38 Vict. c. 68), s. 12; and title CONSTITUTIONAL LAW, Vol. VII., p. 77. As to the Solicitor-General and the Solicitor-General for the County Palatine of Durham, see title CONSTITUTIONAL LAW, Vol. VII., pp. 71 *et seq.*, 76, 77.
(*f*) See title BARRISTERS, Vol. II., p. 383.
(*g*) An articled clerk is an "apprentice" for the purpose of acquiring a settlement within a parish (*St. Pancras Parish* v. *Clapham Parish* (1860),

called to the Bar in England for not less than five years who have caused themselves to be disbarred with a view to becoming solicitors and who have obtained a certificate of fitness signed by two Benchers of their Inn (*h*); (2) certain colonial solicitors (*i*).

Period of service.

1171. Where service under articles is necessary, the period of service required is, as a general rule, five years (*k*). The period of service is, however, reduced to three years in the case of (1) certain graduates (*l*); (2) barristers-at-law (*m*), who must first be disbarred (*n*); (3) advocates (*o*) and other legal practitioners (*p*) in Scotland; (4) persons who have served for ten years as *bonâ fide* clerks to a solicitor, and have been *bonâ fide* engaged during that period in the transaction and performance of their duties under the superintendence of such solicitor (*q*). Service for four years only (*r*) is required from persons who, before being articled, have passed certain examinations specified in the regulations made from time

2 E. & E. 742); compare *Re Bush and Prideaux, Ex parte Prideaux* (1838), 3 My. & Cr. 327; see title MASTER AND SERVANT, Vol. XX., p. 71, note (*l*).

(*h*) Solicitors Act, 1877 (40 & 41 Vict. c. 25), s. 12; as to Benchers, see title BARRISTERS, Vol. II., p. 361. As to the necessity of passing the final examination, see pp. 718, 719, *post*.

(*i*) See p. 722, *post*.

(*k*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 3.

(*l*) Namely, persons who have taken the degree of Bachelor of Arts or Bachelor of Laws in the Universities of Oxford, Cambridge, Dublin, Durham, or London (Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 2), or in the Victoria University of Manchester (Victoria University Act, 1888 (51 & 52 Vict. c. 45), or in the Universities of Wales (University of Wales Act, 1902 (2 Edw. 7, c. 14), s. 1), Liverpool (University of Liverpool Act, 1904 (4 Edw. 7, c. 11), s. 1), Leeds (Leeds University Act, 1904 (4 Edw. 7, c. 12), s. 1), or Bristol (University of Bristol Act, 1909 (9 Edw. 7, c. 42), s. 9), or the degree of Bachelor of Arts, Master of Arts, Bachelor of Laws, or Doctor of Laws in any of the Universities of Scotland (Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 2) (none of such degrees being honorary). The Royal University of Ireland, which was included in the list of exemptions, was abolished by an order of the Lord Lieutenant, under the Irish Universities Act, 1908 (8 Edw. 7, c. 38), ss. 2, 20, and two new universities have been established under the Act, namely, the National University of Ireland and the Queen's University of Belfast, but the Act does not confer upon their graduates the privilege of three years articles under the Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 2.

(*m*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 3. As to the position of a barrister of five years' standing, see p. 710, *ante*.

(*n*) *Ex parte Bateman* (1845), 6 Q. B. 853; see title BARRISTERS, Vol. II., pp. 361, 362.

(*o*) Attorneys and Solicitors Act (1860) Amendment Act, 1872 (35 & 36 Vict. c. 81).

(*p*) Namely, writers to the signet, solicitors in the Supreme Courts, and procurators before the Sheriffs' Courts (Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 15).

(*q*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 4; *Re Milliken* (1870), 18 W. R. 809. Students who have before entering into articles attended for one year the curriculum of study at the Law Society approved by the Council, and have passed an examination therein to the satisfaction of the Council, may be admitted after four years' service under articles (Judges' Order of the 16th June, 1913).

(*r*) Service under articles for four years in the mistaken belief that a particular examination which the clerk has passed confers exemption from five years' service, cannot be recognised (*Ex parte Jones* (*an Articled Clerk*) (1870), 22 L. T. 300).

SECT. 2. Service under Articles.

to time by the Master of the Rolls, with the concurrence of the Lord Chancellor and the Lord Chief Justice, or, in case of difference, of one of them (*s*).

Articles.

1172. A person desiring to be articled must be of sufficient age to study his profession (*t*). The articles must be in writing (*a*), and are almost invariably entered into by deed (*b*). Where the clerk is under age his father or guardian also enters into them, covenanting that the clerk shall faithfully, honestly, and diligently serve the master during the term of the articles. The master on his side covenants to teach the clerk, and at the end of the articles, if the clerk shall have well and faithfully served his articles, to use his best endeavours to cause and procure the clerk to be admitted a solicitor of the Supreme Court. It is usual to pay a premium to the solicitor, the amount being a matter of negotiation. In the the absence of agreement (*c*), there is no right to repayment of any portion of the premium, in the event of either the master (*d*) or the clerk (*e*) dying before the expiration of the term. A covenant, therefore, providing for these contingencies is frequently inserted,

(*s*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 5; Solicitors Act, 1877 (40 & 41 Vict. c. 25), s. 13; as amended by the Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 24. The examinations at present recognised are:—(i.) the First Public Examination before Moderators at Oxford, the Previous Examination at Cambridge, the Arts Examination for the second year at Durham, or the Responsions Examination at St. David's College, Lampeter; (ii.) the Matriculation or Entrance Examination (First Division) of the Universities of London or Birmingham; (iii.) the Examination (First Division) of the Joint Matriculation Board of the Victoria University of Manchester, and the Universities of Liverpool, Leeds, and Sheffield; (iv.) the Entrance Examination (Honours) at the University of Dublin (Judges' Order of the 8th February, 1905); (v.) the Preliminary Examination in Jurisprudence at Oxford (Judges' Order of the 21st February, 1907); (vi.) the Responsions Examination at Oxford (Judges' Order of the 25th May, 1906); (vii.) the Senior School Examination (Honours Division) of the University of London (Judges' Order of the 28th July, 1910). Latin must be one of the subjects taken, and all the subjects required to be taken by a candidate must be taken at one examination (*ibid.*).

(*t*) *Re Donne* (1794), 3 Swan. 96, n. As to age on admission, see p. 710, *ante*.

(*a*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 3.

(*b*) For forms of articles of clerkship, see Encyclopædia of Forms and Precedents, Vol. II., pp. 76 *et seq.* The stamp duty on the articles must be paid before their execution (Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 26, 27). The duty is £80 (*ibid.*, Sched. I., title "Articles of Clerkship"); and see title REVENUE, Vol. XXIV., pp. 700 *et seq.* The articles may contain a covenant restricting the clerk from practising subsequently in competition with his master (*Howard* v. *Woodward* (1864), 10 Jur. (N. S.) 1123; *May* v. *O'Neill* (1875), 44 L. J. (CH.) 660; *Hayne* v. *Burchell* (1890), 7 T. L. R. 116, C. A.; *Woodbridge & Sons* v. *Bellamy*, [1911] 1 Ch. 326, C. A.; compare *Capes* v. *Hutton* (1826), 2 Russ. 357. As to restraint of trade generally, see titles CONTRACT, Vol. VII., p. 332; MASTER AND SERVANT, Vol. XX., pp. 88 *et seq.*; TRADE AND TRADE UNIONS, Vol. XXVII., pp. 548 *et seq.*

(*c*) As to return of premium in the case of the solicitor's bankruptcy or misconduct, see pp. 713, 714, *post*.

(*d*) *Ferns* v. *Carr* (1885), 28 Ch. D. 409; but see *Hirst* v. *Tolson* (1850), 2 Mac. & G. 134, disapproved in *Whincup* v. *Hughes* (1871), L. R. 6 C. P. 78; see title EXECUTORS AND ADMINISTRATORS Vol. XIV., p. 305.

(*e*) *Re Thompson* (1848), 1 Exch. 864. The clerk is not entitled to a return of premium when he leaves his master to enter another profession (*Craven* v. *Stubbins* (1864), 10 Jur. (N. S.) 1189).

SECT. 2. Service under Articles.

making the amount repayable depend upon the length of time during which the service continues (*f*). It is prudent to insert a provision authorising the master to dismiss the clerk for misconduct during the articles, and any such provision is valid in law (*g*).

Registration of articles.

The articles must be registered within six months of their date with the Law Society (*h*), whose duty it is to enter them under their date in a register book (*i*), which is open to inspection during office hours without fee (*k*). The duty of registering the articles rests on the master, even where the clerk is of full age (*l*). Articles not registered within six months of their date may be registered subsequently; but in that case, unless the Master of the Rolls otherwise directs, the period of service will date from registration and not from the commencement of the articles (*m*).

Number of articled clerks.

1173. No solicitor may take more than two articled clerks at the same time (*n*). Where two or more solicitors practise in partnership, each may have two clerks articled to him at the same time, but the premium must not be received on account of the partnership (*o*). A clerk may, however, be bound to a firm; but where this is done the binding will be regarded as being to each member of the firm, and the clerk so bound will count as one of the two clerks which each member is entitled to take (*p*).

Qualifications of master.

1174. The master must be a solicitor practising on his own account, and service after the master has ceased to practise, or whilst he is employed as clerk to another solicitor, cannot be counted (*q*). In the event of the master becoming bankrupt, the clerk may apply to the court to discharge his articles or to assign them to another solicitor on such terms as the court may direct (*r*). The order of adjudication also operates as a discharge of the articles if either the master or the clerk gives notice to the trustee in bankruptcy to that effect (*s*). The trustee in bankruptcy may, upon the demand of the clerk or of some person on his behalf, repay out of the bankrupt's estate for the use of the clerk a

Bankruptcy of master.

(*f*) See Encyclopædia of Forms and Precedents, Vol. II., p. 78.

(*g*) *Westwick* v. *Theodor* (1875), L. R. 10 Q. B. 224; see *Learoyd* v. *Brooke*, [1891] 1 Q. B. 431.

(*h*) As Registrar of Solicitors (Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 5); see p. 709, *ante*.

(*i*) The fee for making the entry is 5*s*. (Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 7).

(*k*) *Ibid.*

(*l*) *Dufaur* v. *Sigel* (1853), 22 L. J. (CH.) 678, C. A.

(*m*) Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 8. As to registration of a copy where the original has been destroyed, see *Ex parte Briggs* (1843), 1 Dow. & L. 94.

(*n*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 4.

(*o*) *Re Harper, Ex parte Bayley* (1829), 9 B. & C. 691; see, however, pp. 842, 843, *post*.

(*p*) *Re Holland* (1872), L. R. 7 Q. B. 297.

(*q*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 4.

(*r*) *Ibid.*, s. 5. This remedy is also available where the master is imprisoned for debt for twenty-one days (*ibid.*); see Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4, under which a debtor is not liable to be imprisoned merely on making default in payment of a sum of money; title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 337, 338.

(*s*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 41 (1).

SECT. 2. **Service under Articles.**

reasonable portion of the premium, if any, which may have been paid to the bankrupt (*a*), or, instead of repaying the premium, he may transfer the articles to another solicitor (*b*). If the master omits to take out his annual certificate (*c*), a clerk articled to him, who has otherwise become entitled by service to be admitted a solicitor, is not thereby prevented or disqualified from being admitted (*d*). If the solicitor to whom the clerk was bound is struck off the rolls after the termination of the articles, this fact will not prevent the clerk from being admitted, provided there is no other legal impediment to his admission (*e*).

Master failing to take out certificate.

Master struck off the rolls.

Master dying or ceasing to practise: discharge of clerk.

If the master dies or ceases to practise before the expiration of the term, or if by consent of the parties the articles are cancelled, or the clerk is otherwise legally discharged therefrom, the clerk may be bound to another solicitor for the remainder of his term, and may be admitted on making a proper and satisfactory affidavit of the facts (*f*).

Where service not continuous.

1175. Where the service has not been continuously with one master, but there has, in fact, been *bonâ fide* service with one or more solicitors for the necessary qualifying period subsequently to the execution of the original articles, the clerk, on obtaining the necessary certificates of service (*g*), may be admitted as a solicitor if the Master of the Rolls is satisfied that the irregularity of the service was occasioned by accident, mistake, or some other sufficient cause, and that the actual service was substantially equivalent to a regular service (*h*). Applications to the Master of the Rolls for this purpose should not be made until the ultimate term making up the full period of service is ended (*i*).

Employment exclusive.

1176. Service under articles, if duly registered, counts from the date when they were actually executed (*k*). The service must be continuous (*l*), and the clerk must be actually employed upon his master's proper business (*m*).

(*a*) The trustee's discretion as to the amount to be repaid is subject to an appeal to the court (Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 41 (1)).

(*b*) *Ibid.*, s. 41 (2).

(*c*) See pp. 721, 722, *post.*

(*d*) Solicitors (Clerks) Act, 1844 (7 & 8 Vict. c. 86), s. 4.

(*e*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 28.

(*f*) *Ibid.*, s. 13; see *Ex parte Wallis* (1862), 2 B. & S. 416; *Ex parte Johnson* (1838), 2 Jur. 966; *Ex parte Tomkins* (1837), 6 Dowl. 3; *Ex parte Lee* (1860), 8 W. R. 541; *Ex parte Adams* (1876), 4 Ch. D. 39; *Ex parte Adams* (1875), L. R. 10 Q. B. 227; *Ex parte Williamson* (1876), 4 Ch. D. 581. As to the effect of an interval between the death of the master and the assignment of articles, see *Re O'Brien* (1839), 1 I. Eq. R. 480; and compare *Ex parte Harrison* (1875), 44 L. J. (Q. B.) 103.

(*g*) See p. 718, *post.*

(*h*) Solicitors Act, 1877 (40 & 41 Vict. c. 25), s. 15; Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 24.

(*i*) *Ex parte Keddle* (1865), 4 B. & S. 993; *Ex parte Trenchard* (1874), L. R. 9 Q. B. 406.

(*k*) *Ex parte Angel* (1840), 4 Jur. 656. As to the exact date when the period of service expires, see *Re Ellis* (1862), 5 L. T. 686; as to the effect of registration out of time, see p. 713, *ante.*

(*l*) *Ex parte Matthews* (1830), 1 B. & Ad. 160; *Ex parte Marshall* (1874), 22 W. R. 754; *Ex parte Digby* (1876), 45 L. J. (CH.) 692; *Ex parte Moses* (1873), L. R. 9 Q. B. 1; *Ex parte Fereday* (1877), 46 L. J. (CH.) 504.

(*m*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 12.

SECT. 2. Service under Articles.

Articled clerks bound for four (*n*) or five (*o*) years respectively may, however, with the permission of their masters, serve one year out of their term with a practising barrister, and in addition thereto, or instead thereof, a like period with the London agent of their master. A clerk bound for three years only may serve one year with his master's London agent (*p*), but not with a practising barrister (*q*).

With these exceptions, the clerk during the term of his articles is forbidden to hold any office or engage in any other employment whatsoever (*r*) without the consent of his master and the sanction of the Master of the Rolls or one of the judges of the High Court (*s*). The master's consent must be in writing, and the judge's sanction must be evidenced by an order (*t*). Notice in writing of the application for the judge's sanction must be given to the Law Society not less than fourteen days before it is made, and the notice must state the names and addresses of the applicant and of his master, the nature of the employment, and the time it is expected to occupy (*a*). The judge, as a condition of making such order, may impose such terms and conditions as he may think fit (*b*).

Proof of service.

1177. Every clerk before being admitted must, together with his master, give proof that his service under articles has been in accordance with the regulations. This is done by answers to prescribed questions (*c*), or, if he has been engaged in some other employment, by proof that he has obtained the requisite consent of his master and order of the judge, and has duly complied with any terms and conditions imposed by the order (*d*).

Dismissal or breach of contract by master.

1178. If the master dismisses the clerk for insufficient cause, or commits a gross breach of his contract to teach or give proper instruction, application may, it seems, be made to the court to

(*n*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 6.

(*o*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 6; *Re an Articled Clerk* (1871), 25 L. T. 161.

(*p*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), ss. 2—4, 15.

(*q*) *Ex parte Earle* (1853), Bail Ct. Cas. 180.

(*r*) See the text, *supra*.

(*s*) Attorneys and Solicitors Act, 1874 (37 & 38 Vict. c. 68), s. 4.

(*t*) *Ibid.*

(*a*) *Ibid.*

(*b*) *Ibid.*, s. 5. The court acts with great caution and strictness in making such an order as that above alluded to, and will not make the order unless the employment is similar to that which the clerk would be engaged in were he exclusively doing the work of his master; such employments as assistant town clerk or assistant solicitor to a local authority where the master was town clerk or principal solicitor would in all probability be held to be such as could properly be authorised. The object of these provisions was to mitigate the hardships which were found to arise under the old law. For decisions under the earlier statutes, see *Re Taylor* (1825), 4 B. & C. 341, 344; *Re Peppercorn* (1866), L. R. 1 C. P. 473; *Re Greville* (1873), L. R. 9 C. P. 13; *Ex parte Joyce* (1877), 4 Ch. D. 596; *Re Mills* (1862), 33 L. J. (Q. B.) 191, n.

(*c*) See Regulations dated the 3rd March, 1905.

(*d*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 10; Attorneys and Solicitors Act, 1874 (37 & 38 Vict. c. 68), s. 4.

SECT. 2. Service under Articles.

discharge the articles upon such terms as to return of a proportion of the premium as to the court may seem meet (*e*).

SECT. 3.—*Examinations.*

Examinations.

1179. Every person desiring to be admitted as a solicitor of the Supreme Court of Judicature in England must, unless he is exempted therefrom (*f*), pass three examinations, which are held under the management of the Law Society, namely, the "preliminary," the "intermediate," and the "final" (*g*).

Preliminary examination.

1180. The preliminary examination (*h*) is held in the months of February, May, July, and October at the Hall of the Law Society, Chancery Lane, London, by examiners appointed by the Society (*i*); and the examination may also be held locally by two local solicitors, at certain towns, as appointed by the Examination Committee (*j*).

On passing the examination the candidate becomes entitled to receive a certificate which must be produced to the Law Society before or at the time when his articles are produced for registration (*k*).

Exemptions.

The following are exempt from the necessity of passing the preliminary examination:—(1) certain graduates (*l*); (2) persons

(*e*) *Ex parte Lewis* (1844), 8 Jur. 539; *Ex parte Hancock* (1842), 2 Dowl. (N. S.) 54; *Ex parte Darbell* (1838), 6 Dowl. 505; *Ex parte Prankerd* (1819), 3 B. & Ald. 257; *Ex parte Cartley* (1842), 12 L. J. (Q. B.) 98; *Ex parte* —— (1844), 8 Jur. 848. As to what is sufficient supervision by the master, see *Ex parte Duncan* (1864), 5 B. & S. 341.

(*f*) See the text, *infra*, and pp. 717 *et seq.*, *post*.

(*g*) Solicitors Act, 1877 (40 & 41 Vict. c. 25), s. 6.

(*h*) The subjects of the preliminary examination are as follows:—(i.) writing from dictation; (ii.) writing a short English composition; (iii.) arithmetic; (iv.) algebra and geometry as treated in Euclid, books 1 to 4; (v.) geography of Europe and history of England; (vi.) Latin —elementary; and (vii.) two languages selected by the candidate from the following, namely, Latin, Greek (ancient), French, German, Spanish, and Italian. A candidate is not obliged to take up algebra and geometry, but if he does he need only take up one language.

(*i*) Law Society's Regulations, 1905, rr. 4, 6.

(*j*) *Ibid.*, r. 7. The following is the list of towns at which examinations may be held, namely:—Birmingham, Bristol, Cambridge, Cardiff, Carlisle, Carmarthen, Chester, Durham, Exeter, Lancaster, Leeds, Lincoln, Liverpool, Manchester, Newcastle-on-Tyne, Oxford, Plymouth, Salisbury, Shrewsbury, Swansea, Worcester and York (*ibid.*). Candidates for examination must give to the Secretary of the Law Society thirty days' written notice of their desire to be examined, stating the language in which they desire to be examined, the town in which they wish to be examined, their ages, residences, and places or modes of education (*ibid.*, r. 9).

(*k*) *Ibid.*, r. 28. As to registration of articles, see p. 713, *ante*.

(*l*) Namely:—Bachelors of Arts or Bachelors of Laws of the Universities of Oxford, Cambridge, Dublin, Durham, London (Solicitors Act, 1877 (40 & 41 Vict. c. 25), s. 10), the National University of Ireland and the Queen's University of Belfast (Irish Universities Act, 1908 (8 Edw. 7, c. 38), ss. 5, 12); Victoria University of Manchester (Victoria University Act, 1888 (51 & 52 Vict. c. 45), s. 1), University of Wales (University of Wales Act, 1902 (2 Edw. 7, c. 14), s. 1), University of Liverpool (University of Liverpool Act, 1904 (4 Edw. 7, c. 11), s. 1), and University of Leeds (Leeds University Act, 1904 (4 Edw. 7, c. 12), s. 1); Bachelors of Arts, Masters of Arts, Bachelors of Law or Doctors of Law in any of the

who have been called as barristers in England (*m*); (3) persons who have passed certain examinations specified by statute (*n*) or by judge's order (*o*); (4) persons who have received exemption under an order made by the Lord Chief Justice of England or the Master of the Rolls (*p*).

Intermediate examination.

1181. The intermediate examination is held in the months of January, March or April, June and October or November at the Hall of the Law Society, Chancery Lane, London (*q*). The subjects for examination are such elementary works on the laws of England as the Examination Committee may from time to time appoint (*r*), and elementary questions on trust accounts and book-keeping (*s*).

Exemptions

The following persons are exempt from the necessity of passing the law portion of the intermediate examination, namely:—(1) barristers of not less than five years' standing who have

Universities of Scotland (such degrees not being merely honorary) (Solicitors Act, 1877 (40 & 41 Vict. c. 25), s. 10).

(*m*) *Ibid.*

(*n*) *Ibid.* These examinations are:—the First Public Examination before Moderators at Oxford; the Previous Examination at Cambridge; Examination in Arts for the second year at Durham; the Oxford Local Examination; the Cambridge Non-Gremial Examination; the Examination of the Oxford and Cambridge Schools Examination Board; the Dublin or London Matriculation; the College of Preceptors Examination (First Class).

(*o*) These examinations are:—the Matriculation or Entrance Examination, and the School-leaving Examination (Senior Certificate) of the University of Birmingham; the Examination for the Senior Certificate of the Central Welsh Board; the Responsions Examination at St. David's College, Lampeter; and the Local Examination of the University of Durham (Senior Pass Certificate or Junior Certificate with at least Second-Class Honours (Judges' Order of the 8th February, 1905); the Responsions Examination at Oxford (Judges' Order of the 25th May, 1906); the School Certificate Examination of the Oxford and Cambridge Schools Examination Board (Judges' Order of the 3rd August, 1906); the Matriculation Examination of the Joint Board of the Universities of Manchester, Liverpool, Leeds, and Sheffield, and the Preliminary Examination in Jurisprudence at Oxford (Judges' Order of the 21st February, 1907); the Senior School Certificate of the Joint Board of the Universities of Manchester, Liverpool, Leeds, and Sheffield, and the Senior School Examination of the University of London (Judges' Order of the 28th July, 1910); the Matriculation Examination of the Universities of Bristol and Wales, and the Junior School Examination of the University of London (Judges' Order of the 25th April, 1911). The above orders are conditional that Latin must be one of the subjects taken, and all the subjects required to be taken by a candidate must be taken at one examination.

(*p*) Solicitors Act, 1877 (40 & 41 Vict. c. 25), s. 11. Such orders are only to be made in special circumstances (*ibid.*), and are now rarely made.

(*q*) Law Society's Regulations, 1905, rr. 12, 13. Candidates must notify the secretary of the society at least thirty days before the date fixed of their desire to be examined (*ibid.*). With this notice the articles of clerkship (duly stamped), and answers to questions as to due service and conduct, must be left (*ibid.*, r. 17). There is a fee of £6, with an additional £2 if he has not previously passed the preliminary examination, payable on sitting for the intermediate examination (Judges' Order, 1904). Successful candidates are divided into "first class" and "pass" lists (*ibid.*, r. 19).

(*r*) *Ibid.*, r. 14. The books chosen for the law portion of the examination are, generally, the four volumes of Stephen's Commentaries on the Laws of England.

(*s*) Application should be made to the Law Society for the latest particulars.

SECT. 3. Examinations.

procured themselves to be disbarred with a view to becoming solicitors, and have obtained from two of the Benchers of the Inn to which they belong a certificate of their being fit and proper persons to practise as solicitors (*t*); (2) certain colonial solicitors (*a*); (3) persons holding certain certificates (*b*).

Persons claiming to be entitled to exemption from the necessity of passing the law portion of the intermediate examination must produce to the Secretary of the Law Society, or to such other officer of that Society as the Council may direct, a *testamur*, certificate, judge's order, or other satisfactory evidence showing their right thereto (*c*).

If the Law Society refuses to grant a certificate of having passed the intermediate examination, an appeal from such decision lies within a month to the Master of the Rolls (*d*). No appeal lies to the King's Bench Division from a refusal by the Council to admit for examination (*e*).

Final examination.

1182. The final examination is held in the months of January, March or April, June, and October or November at the Hall of the Law Society, Chancery Lane, London (*f*).

The subjects for the final examination are (1) the law of real and personal property and the practice of conveyancing; (2) equity; (3) common law and bankruptcy; and (4) probate, divorce, and admiralty law; ecclesiastical and criminal law; and proceedings before justices of the peace (*g*). Forty-two days' notice before the date of the examination must be given to the Secretary of the Law Society, and at the same time candidates must leave with the Secretary their articles, a certificate of having passed the intermediate examination, and the answers to questions as to due service and conduct as prescribed by the Society (*h*). At the final examination candidates may also, on giving notice of their intention, compete for honours (*i*).

Exemptions.

The final examination must be passed by all persons desirous of

(*t*) Solicitors Act, 1877 (40 & 41 Vict. c. 25), s. 12. They may be exempted from the whole examination (*ibid.*).

(*a*) See p. 722, *post.*

(*b*) Namely, a certificate of having, before or after entering into articles, passed the examination required for the degree of Bachelor of Civil Law or Bachelor of Laws of the Universities of Oxford, Cambridge, London, Victoria University of Manchester, Dublin, Durham, Wales, Birmingham, Liverpool, Leeds, or Sheffield; or a certificate of having, before entering into articles, taken honours in the Final Honour School of Jurisprudence at Oxford, or in the Law Tripos at Cambridge (Law Society's Regulations, 5th November, 1909).

(*c*) Law Society's Regulations, 1905, r. 27.

(*d*) Solicitors Act, 1877 (40 & 41 Vict. c. 25), s. 9.

(*e*) *Re James* (1885), 33 W. R. 654.

(*f*) Law Society's Regulations, 1905, rr. 20, 21.

(*g*) *Ibid.*, r. 22.

(*h*) *Ibid.*, r. 23. The fee payable on giving notice for the final examination is £10, and for entry for honours £1. In the event of non-success or non-appearance by the candidate at the final examination for which he has given notice, on renewing his notice only half the above fee (namely, £5) is payable, but candidates who were exempt from passing the intermediate pay an additional £5 on giving notice for the final examination.

(*i*) *Ibid.*, r. 7. The examination for honours is a separate examination, held after the final examination (*ibid.*, r. 2). At the honours examination honorary distinctions and prizes are awarded if in the opinion of the Examination Committee the candidates are deserving of such.

being admitted as solicitors, with the following exceptions, namely:— (1) barristers, who, having been practising solicitors, have caused their names to be struck off the roll for the purpose of being called to the Bar, and having practised at the Bar desire to be readmitted on the roll of solicitors (*j*); and (2) certain colonial solicitors (*k*). SECT. 3. Examinations.

1183. If the Law Society refuses to grant a certificate of having passed the final examination, an appeal from such decision lies within a month to the Master of the Rolls (*l*). Appeal.

SECT. 4.—*Admission.*

1184. Application for admission as a solicitor is made to the Master of the Rolls (*m*), six weeks' notice at least being given to the Secretary of the Law Society of intention to seek admission. The notice must set forth the name and place of abode of the applicant and of the person or persons with whom he has served his articles, and must be in writing signed by the applicant (*n*). After the expiration of the period of notice the Master of the Rolls, upon production of the Law Society's certificate that the applicant has passed a final examination, may, by writing under his hand, admit the applicant to be a solicitor (*o*). Application.

1185. Three weeks before the day of the month named in notices for admission the Law Society must affix in its hall in a conspicuous place an alphabetical list of names of candidates for admission (*a*). Any person wishing to object to such admission must by writing under his hand give notice thereof to the Law Society, and must send therewith an affidavit setting forth the facts relied upon in support of such objection, and it is the Society's duty to bring such objection to the notice of the Master of the Rolls (*b*), who thereupon appoints a time for hearing the objection (*c*) and subsequently hears the same, the applicant, the objector, and the Society being heard personally or by counsel or solicitor (*d*). If the result of the hearing is that admission is refused, the Master of the Rolls so directs and his order must be filed with the Law Society (*e*). Screening of notices.

(*j*) Rules made by the Master of the Rolls, 1889 (under the Solicitors Act, 1888 (51 & 52 Vict. c. 65)), Part IV., rr. 1—4. Such persons desiring readmission must petition the Master of the Rolls on an affidavit of the facts. Six weeks' notice of intention to apply must be given to the Law Society and a copy of the petition sent to the Society.

(*k*) See p. 722, *post.*

(*l*) Solicitors Act, 1877 (40 & 41 Vict. c. 25), s. 9.

(*m*) Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 10. As to exemption from this requirement as to admission, see p. 710, *ante.*

(*n*) Rules made by the Master of the Rolls, 1889, Part III., r. 1.

(*o*) *Ibid.*, r. 3. The stamp duty payable upon admission is £25 (Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I., title "Admission"), and the fee to the Law Society is £5 (Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 11). As to change of name, see title NAME AND ARMS, CHANGE OF, Vol. XXI., p. 351; and as to the appointment of a solicitor as a notary, see title NOTARIES, Vol. XXI., pp. 495 *et seq.*

(*a*) Rules made by the Master of the Rolls, 1887, Part III, r. 2.

(*b*) *Ibid.*, r. 4.

(*c*) *Ibid.*, r. 5.

(*d*) *Ibid.*, r. 6.

(*e*) *Ibid.*, r. 7.

SECT. 4. Admission. Readmission.

1186. Any solicitor who has been struck off the rolls at his own request (*f*) is readmitted as a matter of course if there is no opposition by the Law Society (*g*).

SECT. 5.—*Practising Certificate.*

Necessity for certificate.

1187. A solicitor must, as a condition of being at liberty to practise, take out an annual certificate (*h*), and he cannot maintain an action for the recovery of his costs or disbursements in respect of any work done without a certificate (*i*), though if he has done the work and has in fact been paid, the money paid cannot be recovered back (*k*). Similarly, the successful party to any litigation cannot recover any costs or disbursements from the opposite party, if the solicitor acting for him was uncertificated (*l*), though the actual steps taken by the solicitor on his client's behalf are not invalid (*a*).

A solicitor to a public department who is by statute authorised to act in that capacity is exempt from the liability to take out an annual certificate (*b*).

Application for certificate.

1188. To obtain a certificate a declaration must be made by the applicant as to the fact and date of his admission, and as to the situation of his place or places of business (*c*). If the declaration is not true in any particular the applicant renders himself liable to a penalty of £50, and becomes incapable of maintaining an action for recovery of any fee, reward, or disbursement on account of or in relation to any proceeding done or taken by him in his capacity as a solicitor (*d*).

(*f*) As to striking off the rolls, see pp. 848 *et seq.*, *post*.

(*g*) *Ex parte Clarke* (1819), 2 B. & Ald. 314; *Ex parte Calland* (1818), 2 B. & Ald. 315, n; *Re Walshe* (1876), 10 I. R. C. L. 165; see *Re Pyke* (1865), 11 Jur. (N. S.) 504, 860.

(*h*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 21. A solicitor having a certificate may act as a house agent without taking out a licence; see title REVENUE, Vol. XXIV., pp. 659, 660.

(*i*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 26; Attorneys and Solicitors Act, 1874 (37 & 38 Vict. c. 68), s. 12; Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 43 (1); see also titles AGENCY, Vol. I., p. 151; COUNTY COURTS, Vol. VIII., p. 584. Such items will not be allowed on taxation, even though the petition for taxation contained a submission to pay (*Re Sweeting*, [1898] 1 Ch. 268, overruling *Re Jones* (1869), L. R. 9 Eq. 63; and see *Re Hope* (1872), 7 Ch. App. 766; —— v. *Sexton* (1832), 1 Dowl. 180). It is immaterial that the omission to take out a certificate was due to inadvertence and was subsequently remedied (*Kent* v. *Ward* (1894), 70 L. T. 612, C. A.; *Browne* v. *Barber*, [1913] 2 K. B. 523, C. A.).

(*k*) *Fullalove* v. *Parker* (1862), 12 C. B. (N. S.) 246. But the solicitor cannot retain his costs and disbursements out of moneys of the client in his hands (*Browne* v. *Barber*, *supra*).

(*l*) *Fowler* v. *Monmouthshire Canal Co.* (1879), 4 Q. B. D. 334, overruling *Reeder* v. *Bloom* (1825), 3 Bing. 9. The same principle applies, though the uncertificated solicitor really acting used the name of a certificated solicitor (*Irvin* v. *Sanger* (1888), 58 L. J. (Q. B.) 64).

(*a*) *Sparling* v. *Brereton* (1866), L. R. 2 Eq. 64.

(*b*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 43 (2); see p. 710, *ante*; title CONSTITUTIONAL LAW, Vol. VII., p. 77.

(*c*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 23; Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 19. For the form of declaration, see Solicitors Act, 1877 (40 & 41 Vict. c. 25), Sched. I., Form (B).

(*d*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 43 (1).

SECT. 5. Practising Certificate.

Issue of certificate.

1189. Practising certificates are of two kinds, London certificates and country certificates (*e*). They are issued by the Law Society as Registrar of Solicitors (*f*). They are stamped by the Commissioners of Inland Revenue at Somerset House, London (*g*). Particulars of all certificates stamped between the 15th November in each year and the following 2nd January are supplied by the Commissioners of Inland Revenue to the Law Society (*h*). Certificates stamped on or after the 15th November and before the 16th December are dated the 16th November, and take effect from that day; if stamped afterwards, they take effect on the day on which they are stamped (*i*). Any certificate stamped after the 1st January in any year must be produced to the Law Society for registration within a month of the payment of the duty; any certificate not so produced is only evidence of qualification to practise as from the date of its production, unless an order to the contrary is made by the Master of the Rolls or a judge (*k*). The Law List, being a list of solicitors published by the authority of the Commissioners of Inland Revenue, is *primâ facie* evidence that every solicitor whose name appears therein for the current year (*l*) is entitled to practise (*m*). A solicitor whose name does not appear in the list must prove his right to practise by producing an extract from the roll certified under the hand of the Secretary of the Law Society (*n*).

Renewal.

1190. If a solicitor who has obtained a practising certificate neglects for twelve months after its expiration to renew it (*o*), or if he is an undischarged bankrupt (*p*), the Law Society may, on application

(*e*) As to this distinction, see p. 844, *post*.

(*f*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 21. For the form of certificate, see Solicitors Act, 1877 (40 & 41 Vict. c. 25), Sched. I., Form (A). A fee of 5*s*. is payable to the Law Society (Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 20).

(*g*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 18. The stamp duty upon such certificate is, for solicitors practising in London for the first three years from the date of being admitted, enrolled, or beginning to carry on business, £4 10*s*., and thereafter £9, and if not practising within ten miles of the General Post Office, London, £3 for the first three years, and £6 thereafter (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 43 (3)), Sched. I., title "Certificate"). As to London agents of solicitors taking out country certificates, see pp. 844 *et seq.*, *post*.

(*h*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 21.

(*i*) *Ibid.*, s. 22.

(*k*) *Ibid.*, s. 21; compare *Re Smith* (1863), 33 Beav. 248.

(*l*) *R.* v. *Wenham* (1866), 10 Cox, C. C. 222. A misstatement in the Law List as to the date of admission of a solicitor whose name appears therein is not a libel (*Raven* v. *Stevens & Sons* (1886), 3 T. L. R. 67).

(*m*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 22.

(*n*) *Ibid.*; the stamped certificate is accepted in practice.

(*o*) Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 16. Six weeks' notice of intention to make the application must be given to the Law Society, unless such notice is dispensed with by the Law Society, or by the Master of the Rolls (*ibid.*). For instances of applications for renewal, see *Re Elton* (1868), 37 L. J. (CH.) 482; *Ex parte Gray* (1847), 12 Jur. 119. No action will lie against the Law Society for refusing to issue the certificate without proof of malice (*Newson* v. *Law Society* (1912), 57 Sol. Jo. 80, C. A., where the solicitor applied after the expiration of the period during which he was suspended from practice by order of the court).

(*p*) Solicitors Act, 1906 (6 Edw. 7, c. 24), s. 1, applying the Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 16. The Law Society is empowered to inspect without fee the file of proceedings in bankruptcy relating to any

SECT. 5. Practising Certificate.

being made for a renewal, refuse to renew it. An appeal lies to the Master of the Rolls against any such refusal (*q*). Any such appeal must be brought by petition, supported by affidavit of the facts; copies of the petition and affidavit must be served upon the Law Society two days after they have been lodged at the Central Office (*r*).

SECT. 6.—*Colonial Solicitors.*

Colonial solicitors.

1191. A solicitor of a superior court in a British possession named from time to time by Order in Council (*s*), who has been in practice before such court for not less than three years, may, on giving notice and proof of his qualifications, be admitted a solicitor of the Supreme Court on payment of the prescribed amount for stamp duty and fees (*t*). The Order in Council may, and in practice does, enable the solicitor to be admitted without examination and without service under articles. No colonial solicitor can be admitted to practise in England if he has already been admitted to practise in any other part of the United Kingdom, so long as he remains a solicitor there (*u*).

Part III.—Rights and Privileges of Solicitors.

SECT. 1.—*Right to Practise.*

In what courts.

1192. All persons admitted as solicitors are entitled on taking out an annual certificate and paying the proper duty upon their

solicitor against whom bankruptcy proceedings have been taken and to be supplied with office copies on payment of the usual charge.

(*q*) Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 16.

(*r*) Rules made by the Master of the Rolls, 1889.

(*s*) The regulations respecting the admission of solicitors in the British possession in question must secure that such solicitors possess proper qualifications and competency, and English solicitors must be given equally favourable terms of admission there (Colonial Solicitors Act, 1900 (63 & 64 Vict. c. 14), s. 1), and Orders in Council applying the Act to particular colonies or dependencies have been made as follows, namely:—New South Wales, 26th September, 1901; Ceylon, Straits Settlements, Queensland, Hong Kong and Natal, 4th November, 1901; South Australia, 4th November, 1901; Barbados, 24th April, 1902; Tasmania, 12th March, 1903; New Zealand, 7th March, 1904; Jamaica, 16th May, 1904; Madras, 24th October, 1904; Bombay, 27th March, 1905; Bengal, 7th August, 1905; Victoria, 7th August, 1905; Transvaal, 16th February, 1906; Cape of Good Hope, 26th March, 1907; see Stat. R. & O. Rev., Vol. XI., Solicitors, Colonies, pp. 9 *et seq.*

(*t*) Colonial Solicitors Act, 1900 (63 & 64 Vict. c. 14), s. 1. The Order in Council states that the admission of the applicant must be stamped with the stamp required to be impressed on the admission of English solicitors, *i.e.*, £25, and must be impressed with such further stamp as shall, together with the amount of stamps paid on articles of clerkship and admission in the colony (such amount being certified by a judge of the colony, in the form prescribed by the Order), be equal in amount to the sum payable on articles in England, *i.e.*, £80. The fee to the Law Society is £5.

(*u*) Colonial Solicitors Act, 1900 (63 & 64 Vict. c. 14), s. 6.

SECT. 1. Right to Practise.

certificate (*a*) to practise (1) in the High Court of Justice, the Court of Appeal, and the House of Lords (*b*); (2) in the Privy Council, on signing a declaration without fee (*c*); (3) in all ecclesiastical courts, and before all persons having authority in matters ecclesiastical, and in all matters relating to applications to obtain notarial faculties (*d*); (4) in any inferior court (including county courts and courts sitting in bankruptcy), on signing the roll of the particular court in which they propose to exercise such right (*e*). In the case of a county court no fee is payable (*f*). In the Mayor's Court, London, in additition to signing the roll, the solicitor must pay a fee of 5*s*. before practising; otherwise it is doubtful whether, in the event of success in the suit, he will be entitled to recover his costs against the losing party (*g*).

The right to practise in inferior courts may be enforced by mandamus (*h*) and, in the case of a county court, perhaps, by application to the High Court by motion supported by an affidavit of the facts, whereupon a summons may issue to the county court judge requiring him to show cause why the solicitor should not be permitted to practise in the county court in question (*i*).

SECT. 2.—*Right of Audience.*

1193. Solicitors have the right of audience (*k*) in the following cases, namely:—

(1) Before the Appeal Committee of the House of Lords, from which counsel are excluded (*l*); House of Lords.

(2) In bankruptcy matters in the High Court, including the examination and representation of witnesses before the registrar (*m*), High Court.

(*a*) See pp. 720, 721, *ante*.

(*b*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 87. As to these courts, see title COURTS, Vol. IX., pp. 22, 23, 52 *et seq.*, 62 *et seq.*

(*c*) Order in Council of the 31st March, 1870, r. 2; see title COURTS, Vol. IX., pp. 27 *et seq.*

(*d*) Solicitors Act, 1877 (40 & 41 Vict. c. 25), s. 17; see titles ECCLESIASTICAL LAW, Vol. XI., pp. 499 *et seq.*; NOTARIES, Vol. XXI., pp. 494 *et seq.*

(*e*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 27.

(*f*) County Court Rules, Ord. 54, r. 7.

(*g*) Glyn and Jackson's Mayor's Court Practice, 3rd ed., p. 4; see, generally, title MAYOR'S COURT, LONDON, Vol. XX., pp. 283 *et seq.*

(*h*) *Re Hope* (1872), 7 Ch. App. 766; *R.* v. *London Corporation* (1847), 13 Q. B. 1. As to mandamus generally, see title CROWN PRACTICE, Vol. X., pp. 77 *et seq.*

(*i*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 131; see *R.* v. *Greenwich County Court Registrar* (1885), 15 Q. B. D. 54, C. A.

(*k*) Compare title BARRISTERS, Vol. II., pp. 370 *et seq.* In matters of urgency a solicitor may be heard in the absence of counsel; see *Marsh* v. *Joseph*, [1897] 1 Ch. 213, C. A., *per* KEKEWICH, J., at p. 230; *Doxford & Sons, Ltd.* v. *Sea Shipping Co.* (1897), 14 T. L. R. 111; and compare *Butterworth* v. *Butterworth and Queenan* (1913), 57 Sol. Jo. 266.

(*l*) Directions for Agents in House of Lords, No. 20. As to the Appeal Committee, see title PARLIAMENT, Vol. XXI., p. 642; as to its functions, see *ibid.*, pp. 644, note (*q*), 647.

(*m*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 151; *Re Greys Brewery Co.* (1883), 25 Ch. D. 400; and see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 141, note (*t*).

SECT. 2. Right of Audience.

and also appeals in bankruptcy to the divisional courts from county courts, having and exercising jurisdiction in bankruptcy (*n*): their right of audience is, however, limited to the High Court, and does not extend to the Court of Appeal (*o*);

(3) In chambers in the High Court: their right of audience may be exercised personally or by any of their clerks (*p*) before the masters, taxing masters, and registrars of the Supreme Court (*q*), and also before the judge sitting in chambers (*r*);

(4) Before the official referees of the High Court (*s*);

Palatine courts.

(5) In chambers in the Court of Chancery of the County Palatine of Durham (*t*);

(6) In chambers in the Palatine Court of Lancaster (*u*);

County court.

(7) In all county courts, including under that denomination the City of London Court (*a*): the solicitor desiring to appear and conduct the case in court must be the solicitor acting generally in the action or matter; his managing clerk, although he is a duly qualified solicitor and has had the general management of the proceedings in the action for the client, is not entitled to address the court without the leave of the judge (*b*);

Other courts etc.

(8) Before ecclesiastical courts in certain cases (*c*);

(9) At quarter sessions, where barristers do not attend (*d*);

(10) At petty sessions: in proceedings for summary conviction before justices of the peace both prosecution and defence may be represented by a solicitor acting as advocate (*e*), but in preliminary

(*n*) *Re Barnett, Ex parte Reynolds* (1885), 15 Q. B. D. 169, C. A.

(*o*) *Re Elderton, Ex parte Russell*, [1887] W. N. 21, C. A.; see title BARRISTERS, Vol. II., p. 372.

(*p*) *Re Bethlehem and Bridewell Hospitals* (1885), 30 Ch. D. 541; and see title PRACTICE AND PROCEDURE, Vol. XXIII., pp. 126 *et seq.*

(*q*) R. S. C., Ord. 56, r. 7.

(*r*) See R. S. C., Ord. 55, r. 1A; Ord. 65, r. 27 (16).

(*s*) There is no provision made for this right either by statute or rule of court, but as it is not specifically excluded it is submitted that it exists. As to the official referees, see title COURTS, Vol. IX., p. 66.

(*t*) Information furnished by the registrar; as to this court, see title COURTS, Vol. IX., pp. 125, 126.

(*u*) Information furnished by the registrar; as to this court, see title COURTS, Vol. IX., pp. 120 *et seq.*

(*a*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 72, 185; see title COUNTY COURTS, Vol. VIII., p. 412.

(*b*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 72; *R.* v. *Oxfordshire County Court Judge*, [1894] 2 Q. B. 440; and see title COUNTY COURTS, Vol. VIII., p. 525, note (*q*).

(*c*) Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85), s. 11. As to Ecclesiastical Courts, see title ECCLESIASTICAL LAW, Vol. XI., pp. 499 *et seq.*

(*d*) *Bott's Case* (1889), 24 L. J. N. C. 28; and see titles BARRISTERS, Vol. II., p. 374; MAGISTRATES, Vol., XIX., p. 641.

(*e*) Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), ss. 10, 11; *R.* v. *Griffiths and Williams* (1886), 16 Cox, C. C. 46; see title MAGISTRATES, Vol. XIX., pp. 591, 596. Magistrates have no power to act upon a resolution passed by them prohibiting a solicitor who has been ordered to leave the court for making objectionable remarks from appearing before them until the remarks were withdrawn, and they are bound to hear him in any case in which he is professionally engaged (*R.* v. *Cork County Justices* (1913), 48 L. J. 389). As to the disability of a solicitor

inquiries before magistrates, otherwise than in summary conviction cases, the prisoner has no right to be represented by an advocate at all (*f*), although as a matter of courtesy it is the invariable rule to hear either barrister or solicitor as the accused may wish (*g*);

(11) In the Mayor's Court, London, the right of audience being limited to matters collateral heard in chambers and to the hearing of judgment summonses (*h*);

(12) In the Worcester Court of Pleas (*i*);

(13) Before the Registrar of the Land Registry (*j*);

(14) In arbitrations under the Workmen's Compensation Act, 1906 (*k*);

(15) Before revising barristers (*l*);

(16) Before the statutory committee of the Law Society (*m*);

(17) Before the Escheat Commissioners (*n*);

(18). Before the Railway and Canal Commissioners (*o*); and

(19) Before the Commissioners of Income Tax and House Duties (*p*).

Parliamentary commission.

1194. Solicitors are sometimes allowed to examine and cross-examine witnesses at an inquiry held under a parliamentary commission, but it does not appear that they have any right to do so (*q*).

to practise before justices of a particular county of which he or his partner is assigned to the commission of the peace, see title MAGISTRATES, Vol. XIX., pp. 550, 551; and compare title INTOXICATING LIQUORS, Vol. XVIII., p. 54.

(*f*) *Cox* v. *Coleridge* (1822), 1 B. & C. 37, 49; *R.* v. *Borron* (1820), 3 B. & Ald. 432, 439.

(*g*) See, generally, title MAGISTRATES, Vol. XIX., pp. 559 *et seq.*, 565 *et seq.*

(*h*) Glyn and Jackson's Mayor's Court Practice, 3rd ed., p. 4; see, generally, title MAYOR'S COURT, LONDON, Vol. XX., pp. 283 *et seq.*

(*i*) 29 L. J. 17; see title COURTS, Vol. IX., pp. 212, 213.

(*j*) Land Transfer Rules, 1903, r. 337 (Stat. R. & O. Rev., Vol. XII., Land (Registration), England, pp. 38, 39). As to the judicial functions of the registrar, see *ibid.*; title REAL PROPERTY AND CHATTELS REAL, Vol. XXIV., p. 316.

(*k*) 6 Edw. 7, c. 58; see Workmen's Compensation Rules, 1907, r. 33 (1) (Stat. R. & O., 1907, p. 53); see title MASTER AND SERVANT, Vol. XX., pp. 209 *et seq.*, 222.

(*l*) See title ELECTIONS, Vol XII., pp. 219 *et seq.*

(*m*) Rules made by the Master of the Rolls, 1889, Part I., r. 5; see p. 852, *post*; title BARRISTERS, Vol. II., p. 375; compare title MEDICINE AND PHARMACY, Vol. XX., pp. 323, 363.

(*n*) Escheat Procedure Rules, 1889, r. 6 (Stat. R. & O. Rev., Vol. IV., Escheat, England, p. 1); see title CROWN PRACTICE, Vol. X., pp. 35 *et seq.*

(*o*) Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 50.

(*p*) See Finance Act, 1898 (61 & 62 Vict. c. 10), s. 16, repealing the Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 57 (9); see titles INCOME TAX, Vol. XVI., p. 681; INHABITED HOUSE DUTY, Vol. XVII., p. 189. As to solicitors appearing before coroners, see title CORONERS, Vol. VIII., p. 258; and before courts-martial, see title ROYAL FORCES, Vol. XXV., pp. 13, 46.

(*q*) See *Belfast Riots Commission Case* (1886), 21 L. J. N. C. 556, *per* DAY, J.

SECT. 3. **Privileges.**

SECT. 3.—*Privileges.*

Disclosure.

1195. A solicitor (*r*) cannot be compelled, without the permission of his client, to disclose any confidential communications, whether verbal or in writing, which pass either directly or indirectly between his client and himself in his professional capacity in the course of his legitimate representation of the client (*s*). This privilege is the privilege of the client, and cannot be set up by the solicitor for his own benefit and against the client's interest (*t*).

Defamation.

1196. A solicitor acting as advocate is not liable to an action for libel or slander in respect of words written or spoken by him in the course of a judicial inquiry, however improper or even malicious his behaviour may have been, such words being absolutely privileged on grounds of public policy (*u*).

Exemptions from public offices.

1197. A duly qualified and practising solicitor is exempt from the necessity of performing any personal service which would interfere with his duties as an officer of the court (*v*). He is, therefore, not bound to take office under a municipal corporation (*w*), or to act as overseer of a parish (*x*), as a churchwarden (*y*), or as rent collector by manorial custom (*a*); nor is he bound to serve on a jury (*b*), or coroner's jury (*c*).

Freedom from arrest.

1198. A solicitor whilst engaged in his professional duties in going to or coming from the place of trial on behalf of a client is privileged from arrest on civil but not on criminal process (*d*).

(*r*) Compare title BARRISTERS, Vol. II., p. 389.

(*s*) For full statements of the law relating to legal professional privilege, see titles DISCOVERY, INSPECTION, AND INTERROGATORIES, Vol. XI., pp. 72 *et seq.*; EVIDENCE, Vol. XIII., pp. 571, 572, 581. As to the client's right to restrain his solicitor from making improper use of or disclosing information obtained by him in his professional capacity, see p. 735, *post*; title INJUNCTION, Vol. XVII., pp. 254, 255. As to the privilege of solicitors when acting as agents for parties to election petitions, see title ELECTIONS, Vol. XII., pp. 467, 468. A solicitor cannot refuse to disclose the address of a ward of court; see title INFANTS AND CHILDREN, Vol. XVII., p. 147.

(*t*) *Minet* v. *Morgan* (1873), 8 Ch. App. 361; *Lawrence* v. *Campbell* (1859), 4 Drew. 485, 490; *Greenough* v. *Gaskell* (1833), 1 My. & K. 98.

(*u*) *Munster* v. *Lamb* (1883), 11 Q. B. D. 588, 599; see title LIBEL AND SLANDER, Vol. XVIII., p. 678.

(*v*) *Gerard's Case* (1777), 2 Wm. Bl. 1123, and cases there cited. As to a solicitor as justice of the peace, see title MAGISTRATES, Vol. XIX., pp. 550, 551.

(*w*) *Norwich Corporation* v. *Berry* (1767), 1 Wm. Bl. 636.

(*x*) *Ex parte Jefferies* (1829), 6 Bing. 195.

(*y*) 2 Roll. Abr. 272.

(*a*) *Stone's Case* (1669), 1 Vent. 16.

(*b*) Juries Act, 1825 (6 Geo. 4, c. 50), s. 2; Juries Act, 1870 (33 & 34 Vict. c. 77), s. 9, and Schedule. The exemption extends to solicitors' managing clerks (*ibid.*); and see title JURIES, Vol. XVIII., p. 231.

(*c*) *Re Dutton*, [1892] 1 Q. B. 486.

(*d*) *Re Freston* (1883), 11 Q. B. D. 545, C. A.; *Re Douglas* (1842), 3 Q. B. 825. See, further, titles CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., p. 294; EVIDENCE, Vol. XIII., pp. 585, note (*o*), 586, note (*q*); SHERIFFS AND BAILIFFS, Vol. XXV., pp. 818, 819; PARLIAMENT, Vol. XXI., p. 781. This privilege does not extend to the solicitor's clerk

Appointments confined to solicitors.

1199. A solicitor is eligible for appointment to the following offices:—(1) master of the Supreme Court (Chancery Division), who must have practised for at least ten years before appointment (*e*); (2) first-class clerk in the Chancery registrar's office, who must have been admitted a solicitor or have served not less than five years under articles (*f*); (3) registrar or deputy-registrar of a county court, who must be a solicitor of at least five years' standing (*g*); (4) clerk to a stipendiary magistrate, who must be in actual practice (*h*); (5) registrar in the Salford Hundred Court (*i*); (6) commissioner for oaths, who must have been in continuous practice for not less than six years except where special circumstances are shown (*k*).

Appointments open to solicitors.

1200. Certain offices may be held by duly qualified solicitors, but barristers and other fit and proper persons are also eligible for appointment (*l*). These offices are:—(1) master of the Supreme Court (King's Bench Division), who, if a solicitor, must be of five years' standing (*m*); (2) official referee, who, if a solicitor, must be of ten years' standing (*n*); (3) chief clerk in the metropolitan police courts (*o*); (4) clerk of assize, who, if a solicitor, must have been in actual practice for three years (*p*); (5) clerk to justices (*q*), including borough justices (*r*); (6) clerk of the peace for a county (*s*), or for a borough (*t*); (7) clerk to the guardians of a union or rural district authority (*u*); (8) clerk to a vestry (*v*); (9) perpetual commissioner (*w*); (10) director of public

(*Phillips* v. *Pound* (1852), 7 Exch. 881). As to the privilege of a solicitor to be sued in the High Court, see *Day* v. *Ward* (1886), 17 Q. B. D. 703.

(*e*) Court of Chancery Act, 1852 (15 & 16 Vict. c. 80), ss. 17, 20; see title COURTS, Vol. IX., p. 68.

(*f*) Court of Chancery Act, 1841 (5 Vict. c. 5), ss. 41, 42.

(*g*) County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 25, 31, 32. As to his disqualification from practising in a county court, see title COUNTY COURTS, Vol. VIII., p. 423.

(*h*) Stipendiary Magistrates Act, 1863 (26 & 27 Vict. c. 97), s. 6; compare title MAGISTRATES, Vol. XIX., pp. 547, 612, 616, 617.

(*i*) Salford Hundred Court of Record Act, 1868 (31 & 32 Vict. c. cxxx.), s. 22.

(*k*) Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10), s. 1 (1); R. S. C., Ord. 38, rr. 16, 17; *Northumberland* (*Duke*) v. *Todd* (1878), 7 Ch. D. 777. As to the holder of the commission being entitled to act under it so long as he continues to practise as a solicitor, see *Ward* v. *Gamgee* (1891), 40 W. R. 39; *Shrapnell* v. *Gamgee* (1891), 8 T. L. R. 9.

(*l*) Compare title BARRISTERS, Vol. II., pp. 381 *et seq.*

(*m*) Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), s. 10; see title COURTS, Vol. IX., p. 67.

(*n*) See title COURTS, Vol. IX., p. 66.

(*o*) Metropolitan Police Courts Acts, 1839 (2 & 3 Vict. c. 71), s. 5; 1840 (3 & 4 Vict. c. 84), s. 7.

(*p*) Clerks of Assize, etc. Act, 1869 (32 & 33 Vict. c. 89), s. 3.

(*q*) Justices Clerks Act, 1877 (40 & 41 Vict. c. 43), s. 7 (2).

(*r*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 159 (1), (2).

(*s*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 83.

(*t*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 124.

(*u*) Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 20—24; and see as to unqualified persons appearing before justices, the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 68.

(*v*) Vestries Act, 1850 (13 & 14 Vict. c. 57), s. 6.

(*w*) Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 26.

SECT. 3. Privileges.

prosecutions, who, if a solicitor, must be of ten years' standing (*x*); (11) assistant director of public prosecutions, who, if a solicitor, must be of seven years' standing (*y*); (12) taxing master (*z*); (13) district registrar of the Supreme Court, who, if a solicitor, must be of not less than five years' standing (*a*); (14) judge of inferior courts of record and his deputy or assessor (*b*); (15) registrar or assistant or deputy registrar in the Admiralty Division, who, if a solicitor, must be of ten years' standing (*c*); (16) examiner in the Admiralty Division (*d*); (17) registrar in the Probate and Divorce Division (*e*); (18) assistant registrar under the Land Transfer Act, 1875 (*f*), who, if a solicitor, must be of five years' standing (*g*); (19) district registrar under the Land Transfer Act, 1875 (*f*), who, if a solicitor, must be of ten years' standing, and assistant district registrar, who must be of five years' standing (*h*); (20) registrar or deputy-registrar of the Yorkshire District Land Registry, who, if a solicitor, must be of seven years' standing and in actual practice at the time of his appointment (*i*); (21) registrar or official receiver in bankruptcy (*k*); (22) town clerk of a borough (*l*); (23) under-sheriff (*m*); (24) deputy coroner in a borough (*n*).

Part IV.—Solicitor and Client.

SECT. 1.—*Retainer.*

SUB-SECT. 1.—*What Constitutes a Retainer.*

Principles governing retainer.

1201. The contract between a solicitor and his client arises when the client gives the solictor a retainer to act on his behalf, the rights

(*x*) Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22), s. 2.
(*y*) *Ibid.*, s. 4.
(*z*) Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), s. 11, Sched. II. No particular qualification is prescribed; see title COURTS, Vol. IX., p. 68.
(*a*) Judicature Acts, 1873 (36 & 37 Vict. c. 66), s. 60; 1875 (38 & 39 Vict. c. 77), s. 13; 1881 (44 & 45 Vict. c. 68), s. 22.
(*b*) Small Debts Act, 1845 (8 & 9 Vict. c. 127), ss. 9, 12; Borough and Local Courts of Record Act, 1872 (35 & 36 Vict. c. 86), s. 12.
(*c*) Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 27.
(*d*) *Ibid.*, s. 28.
(*e*) Court of Probate Act, 1858 (21 & 22 Vict. c. 95), s. 20.
(*f*) 38 & 39 Vict. c. 87.
(*g*) *Ibid.*, s. 106.
(*h*) *Ibid.*, s. 119.
(*i*) Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), s. 37 (1), (3).
(*k*) If he is a solicitor, he is prohibited from acting either directly or indirectly by himself, his clerk, or partner in any proceeding in bankruptcy or in any prosecution of a debtor by order of the court (Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 116 (2)).
(*l*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 17, 18.
(*m*) Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 27 (1).
(*n*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 172. As to the qualifications of a coroner, see title CORONERS, Vol. VIII., pp. 218, 219, 226. As to a coroner practising as a solicitor, see Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 10.

and liabilities of the parties depending partly upon the terms of the retainer and partly upon the various statutory provisions dealing with the relations of solicitors and their clients *inter se* (*o*). By the giving and acceptance of the retainer the solicitor acquires his authority to act for and bind the client, and the client becomes bound both personally as between himself and his solicitor and as between his solicitor and third parties.

Form of retainer.

1202. A retainer need not be in writing (*p*), unless the business to which it relates cannot be performed within the period of one year from its date (*q*). It is, however, highly desirable for the sake of both solicitor and client that the retainer should be reduced into writing, so that its terms may be perfectly clear and beyond dispute (*r*). This is particularly the case where the original retainer has been revoked by writing, and a new retainer has been subsequently given (*s*); or where the solicitor commences legal proceedings on his client's behalf (*t*), since if the solicitor's authority is disputed he must prove it strictly (*a*). If, therefore, there is no evidence of retainer except the statement of the solicitor, which is contradicted by the client, the court will treat the solicitor as having acted without authority from the client (*b*). Where there is no written retainer, the court may imply the existence of a retainer from the conduct of the client in the particular case (*c*). Thus, where a fund has been received out of court by the client through an action (*d*), or where the client otherwise takes the benefit of an

Retainer by conduct.

(*o*) As to the relationship between solicitor and client as regards limitation of actions, see title LIMITATION OF ACTIONS, Vol. XIX., p. 166; as to the consequences where a solicitor acts without a retainer, see pp. 741, 742, 833, 835, *post*.

(*p*) *Owen* v. *Ord* (1828), 3 C. & P. 349; *Wiggins* v. *Peppin* (1837), 2 Beav. 403; *Bird* v. *Harris*, [1881] W. N. 5, C. A.; but see p. 731, *post*. As to the appointment of a solicitor to a corporation, see title CORPORATIONS, Vol. VIII., p. 381.

(*q*) Statute of Frauds (29 Car. 2, c. 3), s. 4; *Eley* v. *Positive Assurance Co.* (1875), 1 Ex. D. 20. As to the necessity for writing where the retainer is in the nature of a guarantee or where the work is done for two clients, but not for their joint benefit, see *Tomlinson* v. *Gell* (1837), 6 Ad. & El. 564; *Hellings* v. *Gregory* (1825), 1 C. & P. 627.

(*r*) *Owen* v. *Ord*, *supra*, *per* Lord TENTERDEN, C.J.

(*s*) *Re Hincks*, [1867] W. N. 291.

(*t*) *Wright* v. *Castle* (1817), 3 Mer. 12; *Re Gray*, *Gray* v. *Coles* (1891), 65 L. T. 743.

(*a*) *Gray* v. *Wainman* (1823), 7 Moore (C. P.), 467; *Moore* v. *Prance* (1851), 9 Hare, 299; *Blyth* v. *Fladgate*, *Morgan* v. *Blyth*, *Smith* v. *Blyth*, [1891] 1 Ch. 337.

(*b*) *Allen* v. *Bone* (1841), 4 Beav. 493, *per* Lord LANGDALE, M.R.; *Re Paine* (1912), 28 T. L. R. 201, following *Crossley* v. *Crowther* (1851), 9 Hare, 384; see also *Wiggins* v. *Peppin*, *supra*; *Atkinson* v. *Abbott* (1855), 25 L. T. (o. s.) 314; *Re Gray*, *Ex parte Incorporated Law Society* (1869), 20 L. T. 730; *Bird* v. *Harris*, *supra*; *Re Wooding*, *Ex parte Coates* (1834), 3 Deac. & Ch. 626; *Wilson* v. *Wilson* (1820), 1 Jac. & W. 457.

(*c*) See the cases cited in note (*d*), *infra*, notes (*e*)—(*h*), p. 730, *post*.

(*d*) *Blyth* v. *Fladgate*, *Morgan* v. *Blyth*, *Smith* v. *Blyth*, *supra*, *per* STIRLING, J., at p. 359; and see *Gray* v. *Wainman*, *supra*; *Moore* v. *Prance*, *supra*; *Fergus Navigation and Embankment Co.* v. *Kingdon* (1861), 4 L. T. 262, where the solicitor for a company acted on the instructions of one director only.

SECT. 1. Retainer.

action instituted by the solicitor without his authority (*e*), the solicitor concerned will be presumed to have had the client's instructions to act in the action, and the client cannot escape liability for his share of the costs incurred on the ground that the action was instituted or his name used without his authority. In the case of an intestate estate, however, in order to make the administrator liable for services rendered by the solicitor before letters of administration were granted, it must be shown not only that the services were for the benefit of the estate, but that they were rendered under a contract with someone who subsequently became authorised to bind the estate and ratified the contract (*f*). On the other hand, the mere fact that a person whose name is used as a co-plaintiff without his authority acquiesces in its use and does not take any active step to have his name expunged as plaintiff from the record is not, as regards the solicitor, equivalent to a retainer or an adoption of the solicitor, so as to render the person whose name is so used liable to the solicitor for his share of the costs (*g*). As regards third persons, however, acquiescence with knowledge is equivalent to a ratification of the solicitor's act (*h*).

Retainer by partner etc.

1203. As a general rule one person has no authority to retain a solicitor to act on another person's behalf (*i*). Such an authority may, however, be expressly conferred (*k*), or may be implied from the relations between the parties (*l*). Thus a partner, even although dormant and retiring from the firm before completion of the work charged for, may instruct a solicitor to sue a debtor to the firm and bind his firm for costs (*m*); and the managing partner of a business firm may employ a solicitor to defend an action against the firm for goods supplied in the ordinary course of business (*n*).

Joint and several retainers.

1204. Retainers by two or more persons may be either joint or several; in the former case each party is liable for the whole of the costs incurred for the benefit of himself or any of the other parties to it (*o*), whilst in the latter case each party is only liable for

(*e*) *Hall* v. *Laver* (1842), 1 Hare, 571.

(*f*) *Re Watson, Ex parte Phillips* (1886), 18 Q. B. D. 116, C. A.

(*g*) *Hall* v. *Laver, supra.*

(*h*) *Reynolds* v. *Howell* (1873), L. R. 8 Q. B. 398, 400; *Robson* v. *Eaton* (1785), 1 Term Rep. 62; and see *Bolden* v. *Nicholay* (1857), 3 Jur. (N. S.) 884.

(*i*) *Chivers* v. *Fenn* (1681), 2 Show. 161; *Roe* v. *Doe* (1736), Barnes, 39; *Wiggins* v. *Peppin* (1839), 2 Beav. 403; *Yonge* v. *Toynbee*, [1910] 1 K. B. 215, C. A. As to the right of justices to retain a solicitor to act in a licensing appeal, see title INTOXICATING LIQUORS, Vol. XVIII., p. 84.

(*k*) *Pickford* v. *Ewington* (1835), 4 Dowl. 453; *May* v. *Sherwin* (1883), 27 Sol. Jo. 278, C. A.

(*l*) As to the maxim *delegatus non potest delegare* and its exceptions, see title AGENCY, Vol. I., p. 169. As to the employment of London agents, see pp. 844 *et seq.*, *post;* and compare title PARTNERSHIP, Vol. XXII., pp. 37, 38, 76.

(*m*) *Court* v. *Berlin*, [1897] 2 Q. B. 396, C. A.

(*n*) *Tomlimson* v. *Broadsmith*, [1896] 1 Q. B. 386, C. A.

(*o*) *Burridge* v. *Bellew* (1875), 32 L. T. 807.

his proportion of the costs incurred on behalf of all (*p*). Where, however, a retainer joint in form is in fact joint and several, and the work done enures for the benefit of all, as for instance in a partition suit, each party to it will be liable for the whole costs incurred (*q*).

Retainer at salary.

1205. A retainer of a solicitor to act for a term certain at a salary or for a fixed sum is perfectly good; but it must be in writing (*a*). A retainer at a fixed salary only gives the solicitor the right to sue for and recover the salary; he cannot insist upon acting for the client or upon being furnished with work to do (*b*).

Retainer by infant.

1206. A retainer given by an infant has no legal effect (*c*) unless the services to be rendered under it are "necessaries" (*d*). Thus, the preparation or settlement of the terms of a proper marriage settlement may properly be undertaken on a retainer by an infant (*e*).

Retainer by married woman.

1207. A married woman may retain a solicitor in two capacities, namely:—(1) on her own behalf, with the intention of binding her separate estate (*f*); and (2) in a proper case for her benefit, but as agent for her husband (*g*), as, for instance, where she is a party to a divorce suit, either as petitioner or respondent (*h*), or where she is compelled to seek the assistance of the court against her husband (*i*).

(*p*) *Re Colquhoun, Ex parte Ford* (1854), 5 De G. M. & G. 35, C. A.; *Re Allen, Davies* v. *Chatwood* (1879), 11 Ch. D. 244.

(*q*) *Furlong* v. *Scallan* (1875), 9 I. R. Eq. 202.

(*a*) Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), ss. 4—8; Solicitors Remuneration Act, 1881 (44 & 45 Vict. c. 44), s. 8.

(*b*) *Emmens* v. *Elderton* (1853), 4 H. L. Cas. 624; *Galloway* v. *London Corporation* (1867), L. R. 4 Eq. 90; *Rees* v. *Williams* (1875), L. R. 10 Exch. 200; *Re Galland* (1885), 31 Ch. D. 296, C. A.; but see *Montforts* v. *Marsden*, [1895] 1 Ch. 11, C. A.

(*c*) *Oliver* v. *Woodroffe* (1839), 4 M. & W. 650; *Biddell* v. *Dowse* (1827), 6 B. & C. 255; *Walkden* v. *Hartley and Cavell* (1886), 81 L. T. Jo. 177. As to the liability of a next friend for costs incurred on behalf of an infant, see title INFANTS AND CHILDREN, Vol. XVII., pp. 135, 139; as to the liability of a guardian *ad litem*, see *ibid.*, p. 144. As to a solicitor acting in proceedings by the next friend of an infant, see *ibid.*, p. 134, note (*e*).

(*d*) See *ibid.*, p. 68.

(*e*) *Helps* v. *Clayton* (1864), 17 C. B. (N. S.) 553.

(*f*) See Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), ss. 1, 2; *Hood Barrs* v. *Cathcart*, [1894] 3 Ch. 376, C. A.; *Colyer* v. *Isaacs* (1897), 77 L. T. 19, C. A. As to when a charging order will be made against property restrained from anticipation, see *Re Keane, Lumley* v. *Desborough* (1871), L. R. 12 Eq. 115. As to the effect of a judicial separation, see Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), ss. 21, 25.

(*g*) See title HUSBAND AND WIFE, Vol. XVI., pp. 428 *et seq.*; compare *Clark* v. *Field*, [1885] W. N. 108, H. L.

(*h*) *Brown* v. *Ackroyd* (1856), 5 E. & B. 819; *Stocken* v. *Pattrick* (1873), 29 L. T. 507; see, further, title HUSBAND AND WIFE, Vol. XVI., pp. 429, 561, 582, 583. It has been held that, if the husband becomes bankrupt, the wife is personally liable to pay her own costs (*Pead* v. *Price* (1903), 19 T. L. R. 563), but it is submitted that this case was wrongly decided; see Yearly Practice of the Supreme Court, 1914, p. 1082.

(*i*) *Turner* v. *Rookes* (1839), 10 Ad. & El. 47; compare *Wilson* v. *Ford* (1868), L. R. 3 Exch. 63.

SECT. 1. Retainer.

Retainer by lunatic.

1208. A lunatic (*k*) cannot retain a solicitor (*l*), except in so far as the retainer of a solicitor may be necessary, as, for instance, in the case of a lunatic so found in connexion with the proceedings to establish the client's lunacy (*m*). Moreover, a retainer given by a person who was sane at the time of giving it, but who becomes insane before it is acted upon, confers no authority upon the solicitor to act in the client's name (*n*), since the solicitor's authority ceases as soon as the client becomes insane, and it is immaterial that the solicitor was unaware of the fact that his client had become insane (*n*).

Retainer by convict.

1209. A convict who is still under sentence cannot make a valid contract of retainer (*a*), unless he is lawfully at large under a ticket of leave (*b*).

Retainer by corporation.

1210. A corporation is entitled to retain a solicitor (*c*), but the retainer should, strictly speaking, be by writing under its common seal (*d*). In this case the corporation is liable to the solicitor for the costs and expenses incurred under the retainer (*e*). A retainer in fact, though not under seal, if acted upon, binds the corporation as regards third persons (*f*); it gives the solicitor a lien over the papers of the corporation in his possession (*g*), and, apparently,

(*k*) See title LUNATICS AND PERSONS OF UNSOUND MIND, Vol. XIX., pp. 396 *et seq.* As to when the retainer of a solicitor may be a necessary, see *ibid.*, p. 399. As to legal proceedings by dangerous lunatics, see *ibid.*, pp. 462 *et seq.*

(*l*) Compare *Pomery* v. *Pomery*, [1909] W. N. 158. A retainer is valid though lunacy proceedings are pending (*Re Armstrong* (*George*) *& Sons*, [1896] 1 Ch. 536, where the court stayed the action till the lunacy proceedings were terminated); and compare title LUNATICS AND PERSONS OF UNSOUND MIND, Vol. XIX., pp. 462 *et seq.*

(*m*) *Wentworth* v. *Tubb* (1843), 2 Y. & C. Ch. Cas. 537.

(*n*) *Yonge* v. *Toynbee*, [1910] 1 K. B. 215, C. A., following *Collen* v. *Wright* (1857), 8 E. & B. 647, Ex Ch., and overruling on this point *Smout* v. *Ilbery* (1842), 10 M. & W. 1, *Imperial Loan Co.* v. *Stone*, [1892] 1 Q. B. 599, C. A., *Fore Street Warehouse Co.* v. *Durrant* (1883), 10 Q. B. D. 471, 474, and *Drew* v. *Nunn* (1879), 4 Q. B. D. 661; see title LUNATICS AND PERSONS OF UNSOUND MIND, Vol. XIX., p. 464.

(*a*) Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 8. The retainer of a solicitor to appeal against the conviction is not affected; see Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), ss. 10 (which enables a solicitor to be assigned to an appellant who has not sufficient means to obtain legal aid), 15 (5); Criminal Appeal Rules, 1908, rr. 4 (a), 11 (c), 39 (a), (c) (Stat. R. & O., 1908, p. 239). As to the right of a solicitor to obtain an interview with a convict client, see title PRISONS, Vol. XXIII., p. 265.

(*b*) Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 30.

(*c*) *Lewis* v. *Rochester Corporation* (1860), 9 C. B. (N. S.) 401; *A.-G.* v. *Brecon Corporation* (1878), 10 Ch. D. 204. As to the taxation of a solicitor's bills chargeable to a council, see title LOCAL GOVERNMENT, Vol. XIX., pp. 288, 289.

(*d*) *Arnold* v. *Poole Corporation* (1842), 4 Man. & G. 860; see title CORPORATIONS, Vol. VIII., p. 381. The retainer is presumed to be under seal till the contrary is shown (*Thames Haven Rail. Co.* v. *Hall* (1843), 5 Man. & G. 274, where the objection was taken too late).

(*e*) *Lewis* v. *Rochester Corporation*, *supra*.

(*f*) *Faviell* v. *Eastern Counties Rail. Co.* (1848), 2 Exch. 344.

(*g*) *Newington Local Board* v. *Eldridge* (1879), 12 Ch. D. 349, C. A.

renders the corporation liable to him for his costs (*h*). If the corporation is not bound by the retainer, the individual members of the corporation who actively join in the appointment may be personally liable (*i*). In the case of a company incorporated by statute, the constitution of the company may authorise the appointment of a solicitor by a contract not under seal (*k*).

Proposed company.

1211. Where a solicitor is employed to take the necessary steps to form a company and to procure its incorporation, the question arises whether, after the incorporation of the company, the solicitor is entitled to be paid for his services by the company, or whether he must look to the promoters of the company by whom he was originally employed. In the case of companies formed under private Acts of Parliament, provision is usually made by the Act incorporating the company for the costs, charges and expenses incident to obtaining the Act and forming the company being paid out of the company's assets when formed. Such a provision, being intended to benefit the promoters, does not entitle a solicitor employed under a retainer from the promoters to obtain payment of his costs directly from the company (*l*). To enable him to do so, he must establish either that the company has, subsequent to its formation, entered into a new contract with himself to pay him (*m*), or, perhaps, that he has no claim against the promoters, being in fact a promoter himself and having only his company to look to for payment (*a*). Where, however, the undertaking is abandoned, the solicitor is entitled to claim against the parliamentary deposit as a creditor (*b*).

(*h*) *Newington Local Board* v. *Eldridge* (1879), 12 Ch. D. 349, C. A., *per* BRETT, L.J., at p. 360; see title CORPORATIONS, Vol. VIII., p. 384. This is subject to any express statutory requirement as to the seal, as, for instance, Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 174; see title CORPORATIONS, Vol. VIII., p. 386. In *Newington Local Board* v. *Eldridge*, *supra*, this point was not taken.

(*i*) *Robinson* v. *Price* (1886), 21 L. J. 46, where churchwardens were held to be personally liable.

(*k*) *R.* v. *Cumberland Justices* (1847), 12 Jur. 1025.

(*l*) *Wyatt* v. *Metropolitan Board of Works* (1862), 11 C. B. (N. S.) 744, distinguishing *Tilson* v. *Warwick Gas Light Co.* (1825), 4 B. & C. 962, and *Carden* v. *General Cemetery Co.* (1839), 5 Bing. (N. C.) 253; *Re Kent Tramways Co.* (1879), 12 Ch. D. 312, C. A.; *Re Skegness and St. Leonard's Tramways Co., Ex parte Hanly* (1888), 41 Ch. D. 215, C. A.; and see *Re Manchester, Middleton, and District Tramways Co.*, [1893] 2 Ch. 638, 644—652. It has been suggested that, to prevent circuity of action, the solicitor might claim directly against the company (*Re Manchester, Middleton, and District Tramways Co., supra, per* KEKEWICH, J., at p. 651; compare *Terrell* v. *Hutton* (1854), 4 H. L. Cas. 1091).

(*m*) *Nichols* v. *Regent's Canal Co.* (1894), 63 L. J. (Q. B.) 641; *Terrell* v. *Hutton*, *supra*.

(*a*) *Re Brampton and Longtown Rail. Co., Shaw's Claim* (1875), 10 Ch. App. 177; *Re Skegness and St. Leonard's Tramways Co., Ex parte Hanly, supra, per* BOWEN, L.J., at p. 241; compare *Savin* v. *Hoylake Rail. Co.* (1865), L. R. 1 Exch. 9. It is difficult to see how this can happen in the case of a solicitor, who necessarily acts on instructions, and who, therefore, looks to the person instructing him for his costs; see *Re Skegness and St. Leonard's Tramways Co., supra, per* LINDLEY, L.J., at p. 241, followed in *Re Manchester, Middleton, and District Tramways Co., supra, per* KEKEWICH, J., at p. 650.

(*b*) Parliamentary Deposits and Bonds Act, 1892 (55 & 56 Vict. c. 27),

SECT. 1.

Retainer.

Company under Companies (Consolidation) Act, 1908.

1212. In the case of companies registered under the Companies (Consolidation) Act, 1908 (*c*), a solicitor who has been retained by the promoters before the company is registered, and who has become entitled to costs under such retainer, must look for his remuneration to those who gave or signed his retainer, as the company cannot ratify acts done in its name before it was incorporated (*d*). To make the company liable, the solicitor relying upon the retainer must establish the existence of a new contract between himself and the company (*e*). This he may do by showing that after incorporation the company has adopted the contract under which he was retained and which was made by the promoters or by a trustee for the intended company, and has thereby become liable by novation (*f*).

Retainer by clubs etc.

1213. Unincorporated bodies (*g*) cannot, although purporting to act in a corporate capacity, enter into a contract of retainer upon which they may be sued as an entity by the solicitor; the members of the committee or other persons who retain the solicitor are alone responsible for his charges, and he can only look directly to them (*h*).

Retainer by trustees etc.

1214. Trustees and executors can jointly retain and appoint a solicitor to represent the estate in regard to which they act. The retainer should be given by all the trustees or executors, since a retainer by one does not bind the rest, in the absence of express authority (*i*), unless the rest ratify or adopt the retainer by their acts or by acquiescence and thus become liable to the solicitor upon it (*j*). A direction in a will to employ a particular solicitor does not

s. 1 (2), abolishing the distinction between meritorious and non-meritorious services creating debts for which payment may be made out of a parliamentary deposit, as applied in *Re Manchester, Middleton, and District Tramways Co.*, [1893] 2 Ch. 638; *Ex parte Bradford and District Tramways Co.*, [1893] 3 Ch. 463; compare *Re Tilleard* (1863), 3 De G. J. & Sm. 519, C. A. As to the parliamentary deposit, see title PARLIAMENT, Vol. XXI., pp. 735 *et seq.*

(*c*) 8 Edw. 7, c. 69; see title COMPANIES, Vol. V., p. 56.

(*d*) *Kelner* v. *Baxter* (1866), L. R. 2 C. P. 174; *Scott* v. *Ebury* (*Lord*) (1867), L. R. 2 C. P. 255; *Melhado* v. *Porto Alegre Rail. Co.* (1874), L. R. 9 C. P. 503; *Bagot Pneumatic Tyre Co.* v. *Clipper Pneumatic Tyre Co.*, [1902] 1 Ch. 146, C. A.; *Re Empress Engineering Co.* (1880), 16 Ch. D. 125, C. A.; *Re Northumberland Avenue Hotel Co.* (1886), 33 Ch. D. 16, C. A.; *Re Rotherham Alum and Chemical Co.* (1883), 25 Ch. D. 103, C. A.; *Re Dale and Plant, Ltd.* (1889), 61 L. T. 206.

(*e*) *Re Hereford and South Wales Waggon and Engineering Co.* (1876), 2 Ch. D. 621, C. A.; and see *Re Patent Ivory Manufacturing Co.*, *Howard* v. *Patent Ivory Manufacturing Co.* (1888), 38 Ch. D. 156.

(*f*) *Nichols* v. *Regent's Canal Co.* (1894), 63 L. J. (Q. B.) 641; reversed 71 L. T. 836, C. A.; see also title COMPANIES, Vol. V., p. 246.

(*g*) Such as clubs, learned societies and the like; compare title CLUBS, Vol. IV., pp. 420 *et seq.*

(*h*) *Flemyng* v. *Hector* (1836), 2 M. & W. 172; *Jones* v. *Hope*, [1880] W. N. 69. As to the position of a solicitor acting for a building society, see title BUILDING SOCIETIES, Vol. III., p. 337.

(*i*) *Wiggins* v. *Peppin* (1839), 2 Beav. 403; *Luke* v. *South Kensington Hotel Co.* (1879), 11 Ch. D. 121, C. A.; *Brazier* v. *Camp* (1894), 9 R. 852, C. A. A solicitor employed to receive trust money is liable if he pays the money to one trustee only, who subsequently misappropriates it (*Lee* v. *Sankey* (1873), L. R. 15 Eq. 204).

(*j*) *Cotterell* v. *Stratton* (1872), 8 Ch. App. 295; *Stott* v. *Milne* (1884), 25 Ch. D. 710.

bind the executors or trustees to employ him any longer than they like (*k*).

Trustee in bankruptcy.

1215. A trustee in bankruptcy, including an official receiver when acting as trustee (*l*), may, with the consent of the committee of inspection, if any, and otherwise with the sanction of the Board of Trade, employ a solicitor to act for the estate (*m*). The solicitor's appointment must be made by virtue of a written sanction obtained before the work is done, except in cases of urgency, when it must be shown that no undue delay took place in obtaining the sanction (*n*).

Liquidator.

The same rule applies to the employment of a solicitor by the liquidator of a company (*a*), whether the winding-up is compulsory (*b*) or voluntary (*c*).

Acting for opposing interests.

1216. By accepting a retainer the solicitor becomes bound to act towards his client with absolute loyalty and good faith (*d*). Where, therefore, he accepts a subsequent retainer from a person having interests adverse to those of his former client, he must not make use of any knowledge derived from his connexion with his former client for the purpose of assisting his new client against his former client (*e*); and if he attempts to do so, he may be restrained by injunction (*f*). There is, however, no general rule prohibiting a solicitor who has acted in a particular matter for one of the parties from acting subsequently in the same matter for the opposite party; and the court will not interfere unless there is reasonable ground for anticipating that the former client will be prejudiced (*g*). The client, if damnified by the solicitor's breach of confidence, has also a right of action in damages against the solicitor as for a breach of the implied contract of inviolable secrecy (*h*).

(*k*) *Foster* v. *Elsley* (1881), 19 Ch. D. 518. The solicitor has no direct claim on the trust estate for his costs (*Staniar* v. *Evans*, *Evans* v. *Staniar* (1886), 34 Ch. D. 470).

(*l*) *Re Duncan*, *Ex parte Duncan*, [1892] 1 Q. B. 331; *Re York*, *Atkinson* v. *Powell* (1887), 36 Ch. D. 233.

(*m*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 22 (9), 57 (3). There is no such office as "solicitor to the trustee" (*Re London Metallurgical Co.*, [1897] 2 Ch. 262, *per* VAUGHAN WILLIAMS, J., at p. 269); and the solicitor has no independent right to be paid costs out of the estate (*Re Pooley*, *Ex parte Harper* (1882), 20 Ch. D. 685, C. A.).

(*n*) Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 15 (3); and see *Re Pryor*, *Ex parte Board of Trade* (1888), 59 L. T. 256. As to what costs will be allowed, see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 105 (costs), 107 (taxation), 127, note (*g*).

(*a*) There is no such office as "solicitor to the liquidator" (*Re London Metallurgical Co.*, *supra*).

(*b*) Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 151 (1) (c).

(*c*) *Ibid.*, s. 186 (iv.).

(*d*) See title AGENCY, Vol. I., p. 184.

(*e*) This duty does not cease with the death of the client (*Biggs* v. *Head* (1887), Sau. & Sc. 835).

(*f*) *Rakusen* v. *Ellis*, *Munday and Clarke*, [1912] 1 Ch. 831, explaining *Cholmondeley* (*Earl*) v. *Clinton* (*Lord*) (1815), 19 Ves. 261, and not following *Little* v. *Kingswood Collieries Co.* (1882), 20 Ch. D. 733, C. A.; *Johnson* v. *Marriott* (1833), 4 Tyr. 78; *Grissell* v. *Peto* (1832), 9 Bing. 1; *Barber* v. *Stone* (1881), 50 L. J. (Q. B.) 297; compare *Ashburton* (*Lord*) v. *Pape*, [1913] 2 Ch. 469, C. A., *per* SWINFEN EADY, L.J., at p. 474.

(*g*) *Rakusen* v. *Ellis*, *Munday and Clarke*, *supra*; compare *Robinson* v. *Mullett* (1817), 4 Price, 353.

(*h*) *Lawrence* v. *Harrison* (1654), Sty. 426; *Barber* v. *Stone*, *supra*.

SECT. 1. Retainer.

Where no conflict of interests.

In proceedings of a purely friendly or formal description, where there is no real conflict of interests, a solicitor may properly represent different parties; but as soon as any conflict of interests arises, it is the solicitor's duty to cease to represent any party whose interests conflict with those of his other client. Thus, where a solicitor has been representing trustees and infants and the question of compromising the infant's claim arises, the solicitor should arrange for the infant to be separately represented (*i*). The same principle applies in bankruptcy proceedings as between the trustee and a creditor (*k*), and in lunacy as between the committee of the lunatic's estate and adverse claimants (*l*). On the other hand, the common employment of the same solicitor by vendor and purchaser, lessor and lessee, mortgagor and mortgagee, trustee and *cestui que trust*, is quite legitimate, and, so far as the first three cases are concerned, is recognised by statute (*m*).

Secret profits.

1217. In accordance with the same principle, a solicitor must not, without the knowledge of his client, make any profit or receive any benefit, other than his professional remuneration, from the transaction which he is retained to carry through (*a*). In particular, the acceptance of a secret commission from the other party to the transaction is forbidden (*b*), and any solicitor who receives a commission from the other party must account for it to his client, unless he has his client's permission to keep it (*c*). Thus, a solicitor who is instructed to effect a policy of fire insurance on behalf of his client, usually arranges with the insurers to effect the policy on agency terms, and receives from them an agency commission: this commission must be accounted for to his client, in the absence of any agreement between the solicitor and his client to the contrary (*d*).

As to the position of a solicitor accepting a commission from the other side without the knowledge of his client, see *Re Haslam and Hier-Evans*, [1902] 1 Ch. 765, C. A.; *Tyrrell* v. *Bank of London* (1862), 10 H. L. Cas. 26; and compare title AGENCY, Vol. I., p. 189.

(*i*) *Howe* v. *Robinson* (1890), *Times*, 7th July, *per* KAY, J.; and compare title RECEIVERS, Vol. XXIV., p. 363.

(*k*) *Ex parte Arrowsmith* (1807), 14 Ves. 209; *Re York, Atkinson* v. *Powell* (1887), 36 Ch. D. 233, 241; *Barber* v. *Stone* (1881), 50 L. J. (Q. B.) 297.

(*l*) *Re Wilson* (1877), 21 Sol. Jo. 770, C. A.; *Re Ferrior* (*a Lunatic*), *Carrow* v. *Ferrior, Dunn* v. *Ferrior* (1867), 3 Ch. App. 175; *Re Strachan* (*H. W.*), *an alleged Lunatic*, [1895] 1 Ch. 439, C. A.; and as to the position of an under-sheriff who is a solicitor, see title INTERPLEADER, Vol. XVII., p. 590.

(*m*) Rules applicable to Part II. of Sched. I. of Solicitors Remuneration Order, 1881, r. 2; General Order 3 relating to Sched. I., Part I., of the same Rules (Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 3). As to the effect of notice to a solicitor insurance agent acting in the matter of a mortgage of a policy, see titles CHOSES IN ACTION, Vol. IV., p. 385; INSURANCE, Vol. XVII., p. 560.

(*a*) *Tyrrell* v. *Bank of London, supra; Learoyd* v. *Alston*, [1913] A. C. 529; see title AGENCY, Vol. I., pp. 189 *et seq.* As to the solicitor as secret vendor of his own property or secret purchaser of his client's property, see p. 749, *post*.

(*b*) *Re a Solicitor, Ex parte Law Society* (1909), 26 T. L. R. 22; see title AGENCY, Vol. I., p. 190.

(*c*) See title AGENCY, Vol. I., p. 190.

(*d*) *Workman and Army and Navy Auxiliary Co-operative Supply, Ltd.*

SUB-SECT. 2.—*Duration of Retainer.*

Termination of retainer.

1218. Except where the solicitor is retained for a fixed period, the retainer continues, as a general rule, until the completion of the business for which the solicitor was retained (*e*). The retainer may, however, come to an end at an earlier date on the relation of solicitor and client ceasing to exist between the parties (*f*). Thus, the retainer is ended by the death (*g*), insanity (*h*), or bankruptcy (*i*) of either the client or the solicitor. The client may at any time discharge the solicitor (*j*): in particular this takes place when, in the course of an action, the client gives notice to change his solicitor (*k*). The solicitor may equally discharge himself at any time, either expressly or impliedly (*l*). There is an implied discharge where the solicitor refuses to continue until he is furnished with the requisite funds (*m*), or until a dispute as to his costs is settled (*n*); or where he puts it out of his power to continue by assigning his business to another solicitor (*o*), or, in the case of a firm being retained, by a dissolution of partnership (*p*); or where he is incapacitated from continuing by imprisonment (*q*) or misconduct (*r*).

Retainer to conduct action.

1219. A retainer to conduct an action continues in force, in the ordinary course of events, until the final conclusion (*s*) of the cause or matter to which the retainer relates, whether in the High Court

v. *London and Lancashire Fire Insurance Co.* (1903), 19 T. L. R. 360, *per* KEKEWICH, J., at p. 362. But the solicitor cannot be attached for failure to comply with an order to pay over any such commission (*Re Berwick (Lord), Berwick (Lord)* v. *Lane* (1900), 81 L. T. 797, C. A.).

(*e*) See p. 731, *ante*. Thus, an agreement that the solicitor is to get his costs out of the fund in the suit implies a condition that his retainer is to continue until there is a fund in court available for costs (*Hollings* v. *Booth* (1860), 2 F. & F. 220).

(*f*) As to the effect of the premature determination of the retainer on the solicitor's right to costs, see pp. 739, 740, *post*.

(*g*) As to the effect of the death of either party, see p. 739, *post*.

(*h*) *Yonge* v. *Toynbee*, [1910] 1 K. B. 215, C. A., overruling *Smout* v. *Ilbery* (1842), 10 M. & W. 11, and *Salton* v. *New Beeston Cycle Co.*, [1900] 1 Ch. 43, and approving *Collen* v. *Wright* (1857), 8 E. & B. 647, Ex. Ch.

(*i*) As to the effect of the bankruptcy of either party, see p. 740, *post*.

(*j*) There is no such thing as a standing relation of a solicitor to a client (*Saffron Walden Second Benefit Building Society* v. *Rayner* (1880), 14 Ch. D. 406, C. A.); compare title COMPANIES, Vol. V., p. 246.

(*k*) *Webster* v. *Le Hunt* (1861), 9 W. R. 804; R. S. C., Ord. 7, r. 3; see pp. 742, 743, *post*. As to the solicitor's lien in this case, see p. 818, *post*.

(*l*) If the solicitor's name is on the record, the client's consent appears to be necessary, since the solicitor cannot himself apply to have his name removed from the record without his client's consent (*Re Seymour* (1888), 34 Sol. Jo. 361, not following *Re Ward, Mills, Witham & Lambert, De Mora* v. *Concha*, [1887] W. N. 194); see p. 743, *post*. As to the effect of the solicitor discharging himself upon his right to costs, see p. 739, *post*; as to its effect upon his lien, see p. 818, *post*.

(*m*) *Robins* v. *Goldingham* (1872), L. R. 13 Eq. 440.

(*n*) *Wilson* v. *Emmett* (1854), 19 Beav. 233.

(*o*) *Colegrave* v. *Manley* (1823), Turn. & R. 400.

(*p*) *Griffiths* v. *Griffiths* (1843), 2 Hare, 587; *Rawlinson* v. *Moss* (1861), 30 L. J. (CH.) 797.

(*q*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 31; *Scott* v. *Fleming* (1845), 9 Jur. 1085; *Re Smith* (1861), 9 W. R. 396.

(*r*) *Bennett* v. *Baxter* (1840), 10 Sim. 417; *Re Smith* (1841), 4 Beav. 309.

(*s*) As to what constitutes final conclusion, see *Harris* v. *Quine* (1869), L. R. 4 Q. B. 653; *De la Pole (Lady)* v. *Dick* (1885), 29 Ch. D. 351, C. A.; *Sandford* v. *Porter and Waine*, [1912] 2 I. R. 551, C. A.

SECT. 1. Retainer.

Entire contract.

or the Court of Appeal (*t*), though in any other court the retainer comes to an end when the litigation in that court is finished (*a*). Such a retainer is *primâ facie* an entire contract (*b*). It is, therefore, the duty of the solicitor, if properly instructed and provided with funds out of pocket, to act for his client throughout the litigation (*c*), and he is not entitled to his costs unless and until the whole of the work to be done under the retainer has been completed (*d*).

Natural breaks.

Where, however, the retainer relates to business of a complicated nature, in which the proceedings are likely to be protracted as involving a number of parties, or as comprehending a variety of really independent matters, the retainer is not necessarily entire (*e*). The proceedings may be capable of being divided into stages, and, at the end of each stage, there may be a natural break which entitles the court to treat it as the conclusion of a particular transaction, though it is not the final conclusion of the whole business (*f*). Administration actions (*g*) and proceedings for the winding up of bankrupt estates (*h*) are capable of being thus treated (*i*). In such cases the retainer cannot be regarded as entire, since it comprises a series of services which, though nominally in relation to one matter, is in reality in relation to a succession of matters (*k*). The solicitor, therefore, is not bound to wait for his remuneration until the final conclusion of the whole business which he was retained to conduct; he may, if he chooses, from time to time at any reasonable break in the proceedings claim payment for the services rendered up to that date (*l*).

Special contract.

A solicitor may at any time make a special arrangement as to his remuneration (*m*), providing for payment on account of costs as the action proceeds; in this case no question as to the retainer being entire arises (*n*).

Quantum meruit.

1220. Even when the retainer is entire, the fact that the solicitor

(*t*) R. S. C., Ord. 7, r. 3; *Bagley* v. *Mapie & Co., Ltd.* (1911), 27 T. L. R. 284. Formerly the retainer ended on final judgment being signed; see *Lawrence* v. *Harrison* (1654), Sty. 426; *De la Pole* (*Lady*) v. *Dick* (1885), 29 Ch. D. 351, C. A.; *Callow* v. *Young* (1886), 55 L. T. 543.

(*a*) *R.* v. *Oxfordshire Justices*, [1893] 2 Q. B. 149, C. A.; see title MAGISTRATES, Vol. XIX., p. 644, note (*k*).

(*b*) *Court* v. *Berlin*, [1897] 2 Q. B. 396, C. A.; *Underwood, Son, and Piper* v. *Lewis*, [1894] 2 Q. B. 306, C. A.; *Re Romer and Haslam*, [1893] 2 Q. B. 286, C. A.

(*c*) *Pool* v. *Pool* (1889), 58 L. J. (P.) 67.

(*d*) *Cresswell* v. *Byron* (1807), 14 Ves. 271; *Harris* v. *Osbourn* (1834), 2 Cr. & M. 629, 632; followed in *Whitehead* v. *Lord* (1852), 7 Exch. 691.

(*e*) *Re Romer and Haslam*, *supra*, *per* BOWEN, L.J., at p. 298, approving *Re Hall and Barker* (1878), 9 Ch. D. 538; see also *Re Nelson, Son, and Hastings* (1885), 30 Ch. D. 1, C. A.

(*f*) *Re Romer and Haslam*, *supra*, *per* Lord ESHER, M.R., at p. 293.

(*g*) *Re Hall and Barker*, *supra*, *per* JESSEL, M.R., at p. 543.

(*h*) *Ibid.*

(*i*) *Re Romer and Haslam*, *supra*, where it was suggested, but not decided, that in a protracted arbitration there might be a break between the award and its remission to the arbitrators for reconsideration.

(*k*) *Re Hall and Barker*, *supra*, *per* JESSEL, M.R., at p. 545.

(*l*) *Ibid.*; *Re Romer and Haslam*, *supra*.

(*m*) See pp. 770, 771, *post*.

(*n*) *Harrington* v. *Binns* (1863), 3 F. & F. 942; *Webster* v. *Le Hunt* (1861), 9 W. R. 804; *Wadsworth* v. *Marshall* (1832), 2 Cr. & J. 665.

ceases to act for the client before the final conclusion of the matter in which he was retained does not necessarily preclude him from recovering remuneration in respect of the work actually done (*o*). The solicitor is entitled to recover such remuneration where he is discharged by the client (*p*), or where he discharges himself for good cause, as, for instance, where his client refuses to supply him with the requisite funds for the prosecution of the action (*q*), or where the client conducts himself improperly (*r*), or where he discovers that the client has no cause of action (*s*). He must, however, give reasonable notice of his withdrawal from the case to his client (*t*).

Retainer in non-litigious matters.

1221. A retainer to act for a client in non-litigious matters, such as, for instance, a sale or purchase of real property, or the negotiation and completion of a mortgage, would appear to be an entire contract, because in the absence of notice of intention to charge under Schedule II. (*u*) the solicitor's remuneration is a fixed percentage upon the purchase or mortgage money, and the business is not susceptible of "natural breaks"; it would, therefore, be unreasonable for the solicitor to deliver a bill after delivering or perusing the abstract of title and to refuse to go on until he was paid a proportion of the scale charge.

Death or insanity of either party.

1222. The death of the client before completion of the business covered by the retainer discharges the solicitor from continuing to act (*v*); he may at once withdraw from the case and deliver his bill in respect of the costs already incurred to the legal personal representatives, who are responsible for its payment in due course (*x*). If, however, the executors continue proceedings in an action, the court will imply a contract by them making them personally liable for the whole of the costs (*y*). If the solicitor dies during the course of an action or before a business entered upon is completed, it is doubtful whether his legal personal representative is entitled to recover anything for costs incurred (*a*). The same principles apply

(*o*) As to his lien in such a case, see p. 818, *post*.

(*p*) *Hawkes* v. *Cottrell* (1858), 3 H. & N. 243.

(*q*) *Rowson* v. *Earle* (1829), Mood. & M. 538; *Becke* v. *Cattell* (1841), 3 Man. & G. 480; *Vansandau* v. *Browne* (1832), 9 Bing. 402; *Wadsworth* v. *Marshall* (1832), 2 Cr. & J. 665.

(*r*) *Underwood, Son, and Piper* v. *Lewis* (No. 2) (1894), *Times*, 24th July; *Bryan* v. *Twigg* (1834), 3 L. J. (CH.) 114.

(*s*) *Lawrence* v. *Potts* (1834), 6 C. & P. 428.

(*t*) *Hoby* v. *Built* (1832), 3 B. & Ad. 350; *Whitehead* v. *Lord* (1852), 7 Exch. 691; *Nicholls* v. *Wilson* (1843), 11 M. & W. 106; *Harris* v. *Osbourn* (1834), 2 Cr. & M. 629. As to the position of the solicitor whose name appears on the record, see note (*l*), p. 737, *ante*, note (*e*), p. 743, *post*.

(*u*) See pp. 761, 765 *et seq.*, *post*.

(*v*) But see *Chalié* v. *Gwynne* (1846), 9 Beav. 319, where, in the circumstances, it was held to be his duty to the court to appear after service upon him of notice of motion, there having been considerable delay in the prosecution of the proceedings.

(*x*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37; *Whitehead* v. *Lord*, *supra*; *Harris* v. *Osbourn*, *supra*. As to the time of payment, see pp. 774 *et seq.*, 812 *et seq.*, *post*.

(*y*) *Re Bentinck, Bentinck* v. *Bentinck* (1893), 37 Sol. Jo. 233.

(*a*) See *Underwood, Son, and Piper* v. *Lewis*, [1894] 2 Q. B. 306, C. A., *per* Lord ESHER, M.R., at p. 313. As to *quantum meruit*, see, generally, title CONTRACT, Vol. VII., pp. 440, 441.

SECT. 1. Retainer.

where the client (*b*), or, it is submitted, his solicitor (*c*), becomes insane.

Bankruptcy of either party.

1223. Where the client becomes bankrupt an existing retainer comes to an end, unless the trustee in bankruptcy continues to employ the solicitor (*d*). The bankruptcy of the solicitor, in its turn, entitles the client to treat the retainer as at an end (*e*). In this case the trustee in bankruptcy becomes entitled to the proportion of costs incurred up to the date of the bankruptcy and still remaining unpaid, and he is the proper person to receive and give a discharge for them (*f*). Where, however, work is done by the solicitor whilst undischarged and fees are earned during that period, he can give a good discharge for such fees until the trustee intervenes and intercepts them, and this applies whether the employer knows of the bankruptcy or not (*g*).

How far special agreement affected.

1224. Where a special agreement has been made by a client with his solicitor, and the solicitor dies or becomes incapable of acting before the agreement is wholly performed, the court may, on the application of any party to the agreement, either enforce or set it aside, and may order the costs in respect of the work done under it to be ascertained by taxation (*h*). If a client who has entered into such an agreement changes his solicitor before its termination, as he is entitled to do, the solicitor is deemed to have become incapable to act and the above consequences follow (*i*).

SUB-SECT. 3.—*Ownership of Documents.*

Property in papers.

1225. Where a solicitor is employed by the client to do business for him, any documents which come into existence in the course of this business, whether contentious or non-contentious, belong, as between the client and the solicitor, absolutely to the client (*k*), except so far as they consist of copies of letters in the solicitor's letter books or entries in his diaries or bill or other books (*l*). In the case of a firm, no agreement between the partners can alter the client's right of property in such documents (*m*) ; subject to this right, the partnership deed may quite properly provide that the papers relating to any particular client's business are to go to some particular member of the firm.

(*b*) *Yonge* v. *Toynbee*, [1910] 1 K. B. 215, C. A.

(*c*) See title AGENCY, Vol. I., p. 234.

(*d*) *Re Moss* (1866), L. R. 2 Eq. 345 ; compare *Becke* v. *Penn* (1835), 7 C. & P. 397.

(*e*) *Re Moss, supra.*

(*f*) See title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 117 *et seq.*

(*g*) *Cohen* v. *Mitchell* (1890), 25 Q. B. D. 262, C. A. ; *Jameson* v. *Brick and Stone Co., Ltd.* (1878), 4 Q. B. D. 208, C. A. ; *Herbert* v. *Sayer* (1844), 5 Q. B. 965.

(*h*) Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 13.

(*i*) *Ibid.*, s. 14.

(*k*) *Whittaker* v. *Howe* (1840), 3 Beav. 383 ; see *Davidson* v. *Napier* (1827), 1 Sim. 297 ; *Ashburton* (*Lord*) v. *Pape*, [1913] 2 Ch. 469, C. A. (copies of client's letters to solicitor improperly obtained by third person). As to the client's right to an order for delivery of papers, see pp. 840, 841, *post.*

(*l*) These remain the property of the solicitor (*Re Wheatcroft* (1877), 6 Ch. D. 97).

(*m*) *Whittaker* v. *Howe, supra.*

SECT. 2.—*Authority of Solicitor to Bind his Client.*

SECT. 2. Authority of Solicitor to Bind his Client.

SUB-SECT. 1.—*In General.*

1226. The solicitor's authority to bind his client arises from his retainer and is confined within the express terms of it so far as such terms are expressed. Apart from this, the limits of the solicitor's authority depend upon whether the work to be done is contentious or non-contentious.

Limits of authority.

A general retainer, whether relating to contentious or non-contentious business, does not in the absence of special instructions authorise the solicitor to make long journeys or to go abroad at his client's expense; but if whilst in a locality where work can usefully be done for such client he does work which, on his return, is adopted and utilised by the client, the solicitor is entitled to charge a fair remuneration in respect of the time actually so occupied (*a*).

General retainer.

A solicitor has no authority to pledge his client's credit to counsel for fees, whether in respect of contentious or non-contentious business (*b*).

SUB-SECT. 2.—*Contentious Business.*

1227. A special authority is essential to entitle a solicitor either to commence an action in his client's name (*c*) or to appear for and represent him as defendant in an action (*d*), or to take part, on his behalf, in any proceedings (*e*).

Special authority necessary.

This authority is not retrospective so as to apply to acts done by the solicitor before the action was brought; if, therefore, a solicitor who afterwards appears for a client in a suit has before action brought written a letter making an admission, such admission cannot be taken advantage of in the subsequent action without further proof that the client authorised the communication (*f*).

1228. If a solicitor purports to act for a client in taking or continuing legal proceedings without in fact having any authority to do so, any proceedings taken by him in the name of the person whom he purports to represent will, on motion, be summarily

Effect of acting without authority.

(*a*) *Re Snell* (*a Solicitor*) (1877), 5 Ch. D. 815, 834, 835, C. A.; see also title INTERPLEADER, Vol. XVII., p. 599, note (*f*).

(*b*) *Mostyn* v. *Mostyn* (1870), 5 Ch. App. 457.

(*c*) *Wright* v. *Castle* (1817), 3 Mer. 12; *Lord* v. *Kellett* (1833), 2 My. & K. 1; *Atkinson* v. *Abbott* (1855), 3 Drew. 251; *Tabram* v. *Horn* (1827), 1 Man. & Ry. (K. B.) 228; *Wray* v. *Kemp* (1884), 26 Ch. D. 169; *Re National Old Age Pensions Trust, Stevens* v. *Taverner* (1912), 57 Sol. Jo. 114; *James* v. *Ricknell* (1887), 20 Q. B. D. 164 (interpleader proceedings); compare *Bewley* v. *Seymour* (1850), 14 Jur. 213; *Crook* v. *Wright* (1825), Ry. & M. 278. As to commencement of proceedings before the Railway and Canal Commission, see title RAILWAYS AND CANALS, Vol. XXIII., p. 757.

(*d*) *Re Gray, Gray* v. *Coles* (1891), 65 L. T. 743; *Dent* v. *Hallifax* (1809), 1 Taunt. 493; *Wright* v. *Castle, supra; Spencer* v. *Newton* (1837), 6 Ad. & El. 630, n.; *Drake* v. *Lewin* (1834), 4 Tyr. 730; *Heinrich* v. *Sutton* (1871), 6 Ch. App. 220; *Salton* v. *New Beeston Cycle Co.*, [1900] 1 Ch. 43.

(*e*) *Bird* v. *Harris* (1880), 43 L. T. 434; compare *Wheatley* v. *Bastow* (1855), 7 De G. M. & G. 261, C. A.

(*f*) *Wagstaff* v. *Wilson* (1832), 4 B. & Ad. 339; *Daniels* v. *Trefusis* (1913), 136 L. T. Jo. 253.

SECT. 2. **Authority of Solicitor to Bind his Client.**

stayed (*g*). It is immaterial whether the solicitor purports to act on behalf of a defendant by defending proceedings in his name without authority (*h*), or on behalf of a plaintiff by issuing a writ in his name without authority (*i*).

Death or lunacy of client.

Moreover, the solicitor's authority to represent his client must exist in fact at the time when every step in an action under a retainer is taken. Thus, the death or lunacy (*k*) of the client puts an end to the solicitor's authority to represent his client. If, therefore, he continues to act afterwards, any proceedings taken by him will be struck out, and he will be ordered to pay his supposed client's costs as between solicitor and client, and also, as upon a breach of warranty of authority, the costs as between party and party of his opponent (*l*). His *bonâ fide* belief that he had authority does not help him (*m*). If, in these circumstances, costs are paid by the opposite party to the solicitor on the assumption that he had authority, they may be recovered back as money had and received (*n*).

The solicitor may, further, be attached or committed (*o*) for taking proceedings in the name of a person without authority, and in gross cases, where there is fraud, he may be struck off the roll (*a*).

Solicitor on record.

1229. As soon as a solicitor is duly instructed to represent his client in an action, it becomes his duty to put his name upon the record as solicitor for the party whom he represents (*b*). After he has done this all documents in the action which are not by law required to be served personally (*c*) are duly served by being left at the solicitor's address for service as shown on the writ, præcipe of appearance, or notice of change of solicitors as filed by him (*d*). So long as his name appears on the record as representing the client,

(*g*) *Fricker* v. *Van Grutten*, [1896] 2 Ch. 649, C. A.; *Newbiggin-by-the-Sea Gas Co.* v. *Armstrong* (1879), 13 Ch. D. 310, C. A.

(*h*) *Bayley* v. *Buckland* (1847), 5 Dow. & L. 115; *Re Lloyd, Allen* v. *Lloyd* (1879), 12 Ch. D. 447; *Camps* v. *Marshall* (1873), 8 Ch. App. 462; *Simmons* v. *Liberal Opinion, Ltd.*, [1911] 1 K. B. 966, C. A. (where appearance was entered for a non-existing corporation); *Porter* v. *Fraser* (1912), 29 T. L. R. 91.

(*i*) *Geilinger* v. *Gibbs*, [1897] 1 Ch. 479; *Schjott* v. *Schjott* (1881), 19 Ch. D. 94, C. A.; *Scott* v. *Hitchcock* (1904), 20 T. L. R. 759.

(*k*) But this does not apply where the client is disabled from attending to business by an attack of paralysis or any other physical incapacity (*Steel* v. *Cobb* (1863), 11 W. R. 298).

(*l*) See pp. 833, 835, *post*.

(*m*) *Yonge* v. *Toynbee*, [1910] 1 K. B. 215, C. A., overruling *Smout* v. *Ilbery* (1842), 10 M. & W. 1, and *Salton* v. *New Beeston Cycle Co.*, [1900] 1 Ch. 43, and approving *Collen* v. *Wright* (1857), 8 E. & B. 647, Ex. Ch.

(*n*) *Dupen* v. *Keeling* (1829), 4 C. & P. 102.

(*o*) *Ex parte Stuckey* (1791), 2 Cox, Eq. Cas. 283.

(*a*) *Re Collins, Wheatley* v. *Bastow* (1855), 7 De G. M. & G. 558, 561, C. A.; *Re Gray, Ex parte Incorporated Law Society* (1869), 20 L. T. 730; see also title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., p. 294, notes (*e*), (*i*)—(*l*); see also *Scott* v. *Hitchcock* (1904), 20 T. L. R. 759, where the court found that the plaintiff was a mere puppet of the solicitor.

(*b*) See *Mason* v. *Grigg*, [1909] 2 K. B. 341, C. A.; *Hunt* v. *Fineburg* (1889), 22 Q. B. D. 259, C. A.

(*c*) A solicitor is not bound to produce his client for the purpose of enabling him to be personally served (*Shaw* v. *Neale* (1858), 6 H. L. Cas. 581).

(*d*) R. S. C., Ord. 12, r. 10; Ord. 67, r. 2. A company's solicitor duly appointed for the purpose can accept service of a petition to wind up the

he must be taken as between himself and the opposite party to represent the client, unless the client not only discharges him but substitutes another solicitor on the record (*e*).

The solicitor may, therefore, give notice of discontinuance on his client's behalf, and such notice may effectively be given by a letter intimating that he is instructed to proceed no further (*f*). His authority to represent his client is not terminated by the trial of the action, but continues until the final conclusion of the cause or matter, whether in the High Court or the Court of Appeal (*g*); it therefore continues so long as any order made in the action is not worked out or so long as anything remains for working out the judgment (*h*). Thus, payment to the solicitor of the amount of the debt (*i*) or costs ordered to be paid (*j*) is valid as against the client.

Acts covered by authority.

1230. Except where his authority has been expressly limited by the terms of his retainer, he is entitled to do all such things in connexion with the conduct of the action as he *bonâ fide* believes to be in his client's interest (*k*). Thus he may, without express instructions, agree to refer the action (*l*); he may also compromise the action (*m*),

company in spite of the provision in the Companies Acts as to service at the registered office (*Re Regent United Service Stores* (1878), 8 Ch. D. 75, C. A.); and compare title INTERPLEADER, Vol. XVII., p. 600; as to the effect of service of a notice on a solicitor in non-contentious business, see *Saffron Walden Second Benefit Building Society* v. *Rayner* (1880), 14 Ch. D. 406, C. A.; and p. 746, *post*.

(*e*) See *De la Pole* (*Lady*) v. *Dick* (1885), 29 Ch. D. 351, C. A., *per* COTTON, L.J., at p. 357. A failure to give notice of the change to the opposite party does not preclude the client from recovering costs incurred after the change (*Morris* v. *Bailey* (1893), 5 R. 313). The solicitor cannot himself apply to have his name removed from the record without his client's consent (*Re Seymour* (1888), 34 Sol. Jo. 361, not following *Re Ward, Mills, Witham & Lambert, De Mora* v. *Concha*, [1887] W. N. 194). As to the effect of admissions by a solicitor before or in the course of an action, see title EVIDENCE, Vol. XIII., p. 462.

(*f*) *The Pommerania* (1879), 4 P. D. 195; *Spincer* v. *Watts* (1889), 23 Q. B. D. 350, C. A.

(*g*) R. S. C., Ord. 7, r. 3; see pp. 737, 738, *ante*

(*h*) *Callow* v. *Young* (1886), 55 L. T. 543, *per* CHITTY, J., at p. 544; *Bagley* v. *Maple & Co., Ltd.* (1911), 27 T. L. R. 284, following *De la Pole* (*Lady*) v. *Dick*, *supra*; *Sandford* v. *Porter and Waine*, [1912] 2 I. R. 551, C. A.; see *Re Ward, Mills, Witham & Lambert, De Mora* v. *Concha*, *supra*, where service on solicitors who had obtained an order *ex parte* removing their names from the record, and had not given notice to an opposite party, was held good service. The retainer does not, however, extend to interpleader proceedings (*James* v. *Ricknell* (1887), 20 Q. B. D. 164, doubted in *Bagley* v. *Maple & Co., Ltd.*, *supra*). As to determination of authority, see *Macbeath* v. *Cooke* (1828), 1 Moo. & P. 513.

(*i*) *Yates* v. *Freckleton* (1781), 2 Doug. (K. B.) 623, where it was held that payment to an agent of the solicitor was not sufficient.

(*j*) *Mason* v. *Whitehorne* (1838), 6 Scott, 375.

(*k*) This authority does not extend to engaging in interpleader proceedings; see title INTERPLEADER, Vol. XVII., p. 599, note (*f*). Where a solicitor puts in a fraudulent defence in his client's name, but without his authority, the client is not bound by it (*Williams* v. *Preston* (1882), 20 Ch. D. 672, C. A.).

(*l*) *Faviell* v. *Eastern Counties Rail. Co.* (1848), 2 Exch. 344.

(*m*) He cannot, without express instructions, compromise before action brought, if retained to bring an action (*Macaulay* v. *Polley*, [1897] 2 Q. B. 122, C. A.).

SECT. 2. **Authority of Solicitor to Bind his Client.**

provided that he does so *bonâ fide* and not contrary to his client's express instructions (*n*). Moreover, where the client by his conduct induces his solicitor to believe that he is authorised to make a certain compromise in an action which the solicitor is conducting on behalf of the client, and the solicitor, reasonably relying on that conduct and believing that he has the authority of the client, makes the compromise, the client is bound whether he intended to give that authority or not, and whether he in fact understood or did not understand the terms of the compromise (*o*).

Acts falling outside authority.

1231. A solicitor cannot bind his client by signing a document which, pursuant to a rule of court, must be signed by the client personally, as, for instance, in the case of a consent to add a co-plaintiff in an action (*p*), even though the solicitor's signature may actually be appended to the document in the presence of the client (*q*). Nor can he bind his client, in the absence of express authority to do so, by employing a shorthand writer to take a note of the evidence, and the solicitor is personally liable for the costs of a note taken without the client's authority (*r*).

SUB-SECT. 3.—*Non-contentious Business.*

Production of deed.

1232. Where a solicitor (*s*) produces a deed having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, if the deed is executed or the indorsed receipt is signed by the person entitled to give a receipt for the consideration, the deed is sufficient authority to the person liable to pay for making payment to the solicitor without the production of any separate authority from the person executing the deed (*a*).

Party whom solicitor represents.

The solicitor must, however, be actually acting for the person shown by the deed to be the person to whom the money is paid. Thus, a solicitor acting for a mortgagee cannot validly receive and

(*n*) *Prestwich* v. *Poley* (1865), 18 C. B. (N. S.) 806; *Latuch* v. *Pasherant* (1796), 1 Salk. 86; *Fray* v. *Voules* (1859), 1 E. & E. 839. As to the authority to compromise generally, see title BARRISTERS, Vol. II., pp. 398 *et seq.*; as to admissions by a solicitor, see *Re Wood, Ex parte Wenham* (1872), 21 W. R. 104; *Swinfen* v. *Swinfen* (1857), 24 Beav. 549; *Butler* v. *Knight* (1867), L. R. 2 Exch. 109; compare *Sill* v. *Thomas* (1839), 8 C. & P. 762; *Griffiths* v. *Williams* (1787), 1 Term Rep. 710 (London agent); *Carruthers* v. *Newen* (1903), 19 T. L. R. 247 (agent in Liverpool for a London firm).

(*o*) *Little* v. *Spreadbury*, [1910] 2 K. B. 658, *per* BRAY, J., at p. 664; *Chambers* v. *Mason* (1858), 5 C. B. (N. S.) 59.

(*p*) R. S. C., Ord. 16, r. 11; and compare titles INTERPLEADER, Vol. XVII., p. 595; INTOXICATING LIQUORS, Vol. XVIII., p. 80.

(*q*) *Fricker* v. *Van Grutten*, [1896] 2 Ch. 649, C. A.; and see title JUDGMENTS AND ORDERS, Vol. XVIII., p. 188.

(*r*) *Cocks* v. *Bruce, Searl and Good* (1904), 21 T. L. R. 62.

(*s*) As to the meaning of "solicitor" in this provision, see *King* v. *Smith*, [1900] 2 Ch. 425, 432.

(*a*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 56; compare the similar authority of a stockbroker; see title STOCK EXCHANGE, Vol. XXVII., p. 222. But the person liable may insist on paying the client direct: he is not bound to make payment to the solicitor (*Re Bellamy and Metropolitan Board of Works* (1883), 24 Ch. D. 387, C. A.).

SECT. 2. Authority of Solicitor to Bind his Client.

give a discharge for money due to the mortgagor (*b*). Similarly, a deed forged by the solicitor confers no authority on the solicitor. Where, therefore, the mortgagee's solicitor forges a reconveyance of the mortgage and delivers it to the mortgagor along with the title deeds in exchange for the amount of the mortgage debt, the payment to the solicitor does not bind the client (*c*). In this case it is immaterial that the solicitor has been in the habit of making investments for his client and keeping the deeds; the mortgagor is not discharged from the mortgage debt, and must redeliver the deeds to the mortgagee (*d*).

Trustee.

1233. A trustee may, in the same way as a person beneficially and personally interested, authorise, or concur in authorising, a solicitor to receive and give a discharge for money on behalf of the trust without being guilty of a breach of trust (*e*).

A solicitor may also be validly appointed by a trustee to receive and give a discharge for any money payable to the trustee under a policy of assurance by production of the policy with a receipt signed by the trustee upon it (*f*).

Sale by court.

1234. A solicitor having the conduct of a sale by the court has authority to receive the purchase-money for the purpose of payment into court (*g*).

Payment by cheque etc.

1235. A solicitor, unless specifically authorised to do so, is not justified in accepting a payment by cheque or other negotiable instrument, since payment, to be within the solicitor's general or statutory authority, must be made in cash (*h*). Where the solicitor accepts payments by cheque, he is protected if the cheque is duly met (*i*); but if it is dishonoured, he is liable to make good the loss personally (*k*). Nor is he authorised to accept payment by means of a settlement in account; such a settlement in account will not bind his client (*l*). Thus, where, in winding up an estate, a solicitor has authority from the executors to receive from stockbrokers the purchase-money of stock forming part of the estate, and instead of actually receiving the money he is given credit by the brokers in account with other transactions in exchange for the transfer duly

(*b*) *Day* v. *Woolwich Equitable Building Society* (1888), 40 Ch. D. 491; *Re Hetling and Merton's Contract*, [1893] 3 Ch. 269, C. A.; *King* v. *Smith*, [1900] 2 Ch. 425, 432; and see *Thorne* v. *Heard and Marsh*, [1895] A. C. 495; compare titles LIMITATION OF ACTIONS, Vol. XIX., p. 150; MORTGAGE, Vol. XXI., p. 193.

(*c*) *Jared* v. *Walker* (1902), 18 T. L. R. 569; see also *Jared* v. *Clements*, [1903] 1 Ch. 428, C. A.

(*d*) *Ibid.*

(*e*) Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 17 (1).

(*f*) *Ibid.*, s. 17 (2).

(*g*) *Biggs* v. *Bree* (1881), 51 L. J. (CH.) 64; *Brown* v. *Farebrother* (1888), 58 L. J. (CH.) 3. He has no implied authority to receive payment of money ordered to be paid to his client by a receiver (*Ind, Coope & Co.* v. *Kidd* (1894), 10 R. 258).

(*h*) *Blumberg* v. *Life Interests and Reversionary Securities Corporation*, [1898] 1 Ch. 27, C. A.

(*i*) *Bridges* v. *Garrett* (1870), L. R. 5 C. P. 451, Ex. Ch.; *Pearson* v. *Scott* (1878), 9 Ch. D. 198.

(*k*) *Papé* v. *Westacott*, [1894] 1 Q. B. 272, C. A.

(*l*) *Pearson* v. *Scott, supra*; see title AGENCY, Vol. I., p. 210.

SECT. 2. Authority of Solicitor to Bind his Client.

executed by the executors, the brokers will not be discharged from their liability to pay the executors, any rule of the Stock Exchange to the contrary notwithstanding (*m*).

Receipt by partner.

1236. Where one of the partners in a firm of solicitors which has been in the habit of acting for a client in receiving from him securities and negotiating loans upon them carries through any such transaction and receives any money on behalf of the client, the receipt of the money by the partner binds the firm, since it is within the apparent scope of any partner's authority to conduct the client's business; if, therefore, the partner misappropriates the money so received, his partners are liable to make the amount good to the client (*n*).

Deposit on sale.

1237. A solicitor acting for a vendor in a sale of property either by private treaty or by auction, who receives a deposit in the ordinary way and without any statement in the contract that it is paid to him as stakeholder, holds it in law merely as agent for the vendor and not as stakeholder (*o*). He must, therefore, pay it over to his client on demand (*p*); but where he is acting for both parties he is a stakeholder (*q*).

Notice to solicitor.

1238. A solicitor acting generally for trustees has no authority to receive notice of incumbrance on a share in an estate, so as to render the trustees liable for negligence on the ground that they have dealt with such share subsequently without regard to the incumbrance, provided they have not personally had notice of it; on the other hand, the solicitor is not guilty of a breach of warranty of authority if he *bonâ fide* believed that he had such authority and accepted the notice (*r*). Where, however, a solicitor is authorised by executors to advertise for creditors, notice of any claim sent in to the solicitor is good notice to the executors (*s*).

SECT. 3.—*Transactions between Solicitor and Client.*

SUB-SECT. 1.—*In General.*

General principles.

1239. The law looks with a very jealous eye upon all transactions in the way of gifts, sales, or mortgages from a client to his solicitor (*a*); if there is any sign that the solicitor has taken an

(*m*) *Pearson* v. *Scott* (1878), 9 Ch. D. 198; *Baring* v. *Corrie* (1818), 2 B. & Ald. 137.

(*n*) *Rhodes* v. *Moules*, [1895] 1 Ch. 236, C. A., *per* Lord HERSCHELL, L.C., at pp. 243—246; compare *Lloyd* v. *Grace, Smith & Co.*, [1912] A. C. 716 (managing clerk).

(*o*) See title SALE OF LAND, Vol. XXV., p. 320.

(*p*) *Edgell* v. *Day* (1865), L. R. 1 C. P. 80; *Bamford* v. *Shuttleworth* (1840), 11 Ad. & El. 926; *Norfolk* (*Duke*) v. *Worthy* (1808), 1 Camp. 337; *Ellis* v. *Goulton*, [1893] 1 Q. B. 350, 352, 353, C. A.

(*q*) *Edgell* v. *Day*, *supra*, *per* ERLE, C.J., at p. 85.

(*r*) *Saffron Walden Second Benefit Building Society* v. *Rayner* (1880), 14 Ch. D. 406, C. A.; *Arden* v. *Arden* (1885), 29 Ch. D. 702, 709.

(*s*) *Re Frewen*, *Frewen* v. *Frewen*, [1889] W. N. 109. As to notice generally, see titles EQUITY, Vol. XIII., p. 87; MORTGAGE, Vol. XXI., p. 342.

(*a*) See, generally, titles GIFTS, Vol. XV., pp. 397 *et seq.*; MORTGAGE, Vol. XXI., pp. 65 *et seq.*; SALE OF LAND, Vol. XXV., pp. 285 *et seq.*

unfair advantage over his client or over-reached him, the courts will, at the instance of the client or of those representing him, set aside the transaction (*b*).

SUB-SECT. 2.—*Gifts.*

Gifts.

1240. A gift from a client to his solicitor is presumed to have been made by the client whilst under the undue influence of the solicitor (*c*). The mere position of the parties (*d*) whilst the relationship of solicitor and client exists, and until such time as the binding force of the relationship may be taken to have ceased to exist, renders the solicitor practically incapable of keeping a gift of any real and substantial intrinsic value (*e*); trifling gifts are not within the rule, unless *mala fides* can be proved (*f*). Gifts or benefits to the solicitor's son (*g*), or wife (*h*), even though she may be a niece of the client (*i*), will equally be set aside (*k*). The same principle applies where the solicitor is consulted, not strictly as a solicitor, but as a friend of the person consulting him. Thus, where a person interested under a settlement consults a solicitor as to a proposed alteration in the deed which may detrimentally affect his interests, it is the solicitor's duty to explain the effect of the alteration in such a way that the whole transaction with all its disadvantages, as well as advantages, will be present to the mind of the person who will be called upon to concur in the alteration; if, therefore, a son or other relative of the solicitor takes a benefit under the deed as altered, the transaction will be set aside (*l*).

Where the gift made is of an income-bearing character, such as houses let at a rental or stocks and shares which have earned dividends during the time that the gift remained unimpeached, the solicitor ordered to make restitution will have to account for

(*b*) *Savery* v. *King* (1856), 5 H. L. Cas. 627; *Re Haslam and Hier-Evans*, [1902] 1 Ch. 765, C. A., *per* STIRLING, L.J., at p. 769; *O'Brien* v. *Lewis* (1863), 9 Jur. (N. S.) 321, 528; *Mearns* v. *Knapp* (1889), 37 W. R. 585 (an agreement by a person with no knowledge of business to pay £40 for costs on the purchase of a business for £50). As to secret commissions taken by a solicitor, see p. 736, *ante*.

(*c*) See titles EQUITY, Vol. XIII., p. 19; FRAUDULENT AND VOIDABLE CONVEYANCES, Vol. XV., pp. 104, 108; GIFTS, Vol. XV., p. 420.

(*d*) The rule in regard to gifts made by a client to his solicitor beyond what is fair remuneration for work done by him is far more stringent than in the case of sales or purchases (*Tomson* v. *Judge* (1855), 3 Drew. 306).

(*e*) *Liles* v. *Terry*, [1895] 2 Q. B. 679, C. A.; *Hatch* v. *Hatch* (1804), 9 Ves. 292; *Welles* v. *Middleton* (1784), 1 Cox, Eq. Cas. 112; *Re Holmes' Estate, Woodward* v. *Humpage, Bevan's Case* (1861), 3 Giff. 337; *O'Brien* v. *Lewis, supra; Harris* v. *Tremenheere* (1808), 15 Ves. 34; *Gardener* v. *Ennor, Humby* v. *Moody* (1866), 35 Beav. 549; *Garrett* v. *Wilkinson* (1848), 2 De G. & Sm. 244; and compare title LUNATICS AND PERSONS OF UNSOUND MIND, Vol. XIX., p. 405.

(*f*) *Rhodes* v. *Bate* (1866), 1 Ch. App. 252.

(*g*) *Willis* v. *Barron*, [1902] A. C. 271, 277.

(*h*) *Goddard* v. *Carlisle* (1821), 9 Price, 169.

(*i*) *Liles* v. *Terry, supra*.

(*k*) See title FRAUDULENT AND VOIDABLE CONVEYANCES, Vol. XV., p. 108.

(*l*) *Willis* v. *Barron, supra*, at p. 277.

SECT. 3. Transactions between Solicitor and Client.

and pay over to the donor any benefits received by him by virtue of the gift (*m*).

When gift valid.

1241. To entitle the solicitor to retain the gift, he must show either (1) that it was made at a time when not only the relationship had ceased, but the influence might rationally be supposed to have ceased also (*n*); or, if it was made whilst the relationship subsisted, (2) that his influence did not operate with regard to it, and that the client had separate and competent advice from another solicitor who was fully informed of all the circumstances (*o*); or (3) that it was affirmed by the client after the relationship had ceased (*p*). A gift made during the relationship is voidable only (*q*), and acquiescence may be sufficient proof that the gift has been affirmed, provided that the solicitor is able to satisfy the court (1) that the client's conduct amounted to an unequivocal act of acquiescence (*r*); (2) that the act of acquiescence took place after the relationship had entirely ceased (*s*); and (3) that the client was fully aware of his right to avoid the gift (*t*). The Statute of Limitations (*u*) does not operate to shift the burden of proof from the shoulders of the solicitor to those of the client seeking to impeach the gift, and he must therefore be careful to preserve all the necessary evidence to enable him to support it (*v*).

SUB-SECT. 3.—*Purchases and Sales.*

Purchase and sale.

1242. Transactions of purchase or sale between solicitor and client must be characterised by the most absolute good faith if they are to be upheld (*w*). A purchase of property by the client from the

(*m*) *Adams* v. *Sunder* (1864), 10 L. T. 49, C. A., where the account was directed to be taken on the footing of a wilful default.

(*n*) *Holman* v. *Loynes* (1854), 4 De G. M. & G. 270, 283, C. A.; but see *Molony* v. *L'Estrange* (1829), Beat. 406, where the court refused to order the personal representatives of the solicitor to refund past payments of an annuity; see title FRAUDULENT AND VOIDABLE CONVEYANCES, Vol. XV., p. 108.

(*o*) *Wright* v. *Carter*, [1903] 1 Ch. 27, C. A.; *Hatch* v. *Hatch* (1804), 9 Ves. 292; *Mitchell* v. *Homfray* (1881), 8 Q. B. D. 587, C. A.; *Liles* v. *Terry*, [1895] 2 Q. B. 679, C. A.; *Powell* v. *Powell*, [1900] 1 Ch. 243; see also *Allcard* v. *Skinner* (1887), 36 Ch. D. 145, C. A.; *Parfitt* v. *Lawless* (1872), L. R. 2 P. & D. 462; *Morgan* v. *Minett* (1877), 6 Ch. D. 638; *Tyass* v. *Alsop, Mann & Co.* (1889), 5 T. L. R. 242.

(*p*) See title GIFTS, Vol. XV., p. 420.

(*q*) See titles FRAUDULENT AND VOIDABLE CONVEYANCES, Vol. XV., pp. 113 *et seq.*; GIFTS, Vol. XV., pp. 419 *et seq.*

(*r*) *Stump* v. *Gaby* (1852), 2 De G. M. & G. 623; *Bellew* v. *Russel* (1809), 1 Ball & B. 96.

(*s*) *Gregory* v. *Gregory* (1815), Coop. G. 201; *Ward* v. *Sharp* (1884), 53 L. J. (CH.) 313; *Browne* v. *McClintock* (1873), L. R. 6 H. L. 456.

(*t*) *Tyass* v. *Alsop, Mann & Co.*, *supra*; *Mitchell* v. *Homfray*, *supra*; *Allcard* v. *Skinner*, *supra*; *Molony* v. *L'Estrange*, *supra*, at p. 413; compare *De Bussche* v. *Alt* (1878), 8 Ch. D. 286, 313, C. A. (a case of profit made by an agent at his principal's expense); and title AGENCY, Vol. I., pp. 189, 190. As to the effect of a partial acquiescence, see *Waters* v. *Thorn* (1856), 22 Beav. 547.

(*u*) 21 Jac. 1, c. 16.

(*v*) *Gresley* v. *Mousley* (1859), 4 De G. & J. 78, C. A.

(*w*) *McPherson* v. *Watt* (1877), 3 App. Cas. 254, *per* Lord O'HAGAN, at p. 266; and see *Fry* v. *Lane*, *Re Fry*, *Whittet* v. *Bush* (1888), 40 Ch. D. 312

solicitor cannot therefore be upheld if the client pays more than its fair market value (*a*), or if the solicitor conceals the fact that the property which the client is purchasing is his own (*b*). A sale by the client to the solicitor will equally be set aside by the court where the solicitor purchases the property at an undervalue (*c*) or, in the case of property which, to the knowledge of the solicitor, is likely to increase in value, where the solicitor does not point this out to his client (*d*), or where the solicitor conceals the fact that he is the actual purchaser, the conveyance being taken in the name of a third person (*e*). Other circumstances to be taken into consideration are the fact that the client is in difficulties (*f*); or the non-payment of the purchase-money, the client having only the personal security of the solicitor (*g*); or the omission from the contract of terms showing a profit to the solicitor (*h*); or the haste with which the sale is completed (*i*). The same principle applies to the case of a purchase by the solicitor from the trustee of a bankrupt client, where he makes use of knowledge acquired whilst acting for the client; he cannot be allowed to retain, as against the trustee, an advantage obtained by him in a purchase by means of the knowledge which he has gained whilst acting as solicitor to the bankrupt (*k*).

Proof of *bona fides*.

1243. To uphold the sale, the solicitor must be prepared to show that he has acted with the most complete loyalty and fairness;

(solicitor to mortgagee buying the equity of redemption from an ignorant mortgagor in straitened circumstances); *Ward* v. *Carttar* (1865), L. R. 1 Eq. 29 (solicitor paying off a mortgage and taking possession of his client's property); title FRAUDULENT AND VOIDABLE CONVEYANCES, Vol. XV., pp. 108, 109; see also title ACTION, Vol. I., p. 55; *Tyrrell* v. *Bank of London* (1862), 6 L. T. 1, H. L.; *Aitkin* v. *Campbell's Trustees*, [1909] S. C. 1217.

(*a*) *Mitchinson* v. *Spencer* (1902), 86 L. T. 618.

(*b*) *Rothschild* v. *Brookman* (1831), 5 Bli. (N. S.) 165, H. L.; *Gillett* v. *Peppercorne* (1840), 3 Beav. 78; *Driscoll* v. *Bromley* (1837), 1 Jur. 238, 306.

(*c*) *Wright* v. *Carter*, [1903] 1 Ch. 27, C. A., *per* STIRLING, L.J., at p. 60; see *Cane* v. *Allen* (*Lord*) (1814), 2 Dow, 289, H. L.; *Savery* v. *King* (1856), 5 H. L. Cas. 627.

(*d*) *Pisani* v. *A.-G. for Gibraltar* (1874), L. R. 5 P. C. 516; *McPherson* v. *Watt* (1877). 3 App. Cas. 254; *Gibson* v. *Jeyes* (1801), 6 Ves. 266; *Wood* v. *Downes* (1811), 18 Ves. 120; *Denton* v. *Donner* (1856), 23 Beav. 285; *Uppington* v. *Bullen* (1842), 2 Dr. & War. 184; *Gresley* v. *Mousley* (1859), 4 De G. & J. 78, C. A.; *Widgery* v. *Tepper* (1877), 5 Ch. D. 516; *Tonkin* v. *Hughes* (1885), 1 T. L. R. 468. In this case it is advisable that the client should be separately advised by another solicitor (*Pisani* v. *A.-G. for Gibraltar*, *supra*; *Allison* v. *Clayhills* (1907), 97 L. T. 709 (lease with option to purchase); but the other solicitor must himself know sufficient to make his advice serviceable (*Barnard* v. *Hunter* (1856), 2 Jur. (N. S.) 1213; *Moxon* v. *Payne* (1873), 8 Ch. App. 881).

(*e*) *McPherson* v. *Watt*, *supra* (where it was held to be immaterial that the solicitor acted gratuitously); *Lewis* v. *Hillman* (1852), 3 H. L. Cas. 607.

(*f*) *Gresley* v. *Mousley*, *supra*; *Holman* v. *Loynes* (1854), 4 De G. M. & G. 270.

(*g*) *Waters* v. *Thorn* (1856), 22 Beav. 547. The fact that the conveyance contains or is indorsed with a receipt for the purchase-money is not sufficient to prove payment (*Gresley* v. *Mousley*, *supra*).

(*h*) *Tonkin* v. *Hughes*, *supra*.

(*i*) *Lyddon* v. *Moss* (1859), 4 De G. & J. 104, C. A.

(*k*) *Luddy's Trustee* v. *Peard* (1886), 33 Ch. D. 500, *per* KAY, J., at p. 519.

SECT. 3. Transactions between Solicitor and Client.

that his advice has been free from all taint of self-interest; that he has not misrepresented anything or concealed anything; that he has given an adequate price; and that his client has had the advantage of the best professional assistance which, if he had been engaged in a transaction with a third party, he could possibly have afforded (*l*). Where the solicitor has otherwise dealt fairly with his client, the transaction will not be set aside merely because the consideration is costs already incurred (*m*), or because the solicitor happens at a later date to resell the property at a profit (*n*). Moreover, the transaction is not liable to be set aside where the solicitor succeeds in proving that the relationship of solicitor and client did not exist between himself and the other contracting party in respect of the transaction in question (*a*).

Sale by court.

1244. A solicitor (*b*) who, under an order of the court (*c*), has the conduct of a sale by auction, or who represents any of the parties to the action in which the order is made (*d*), cannot bid for the property without the leave of the court (*e*), and, except in special circumstances (*f*), without the consent of the parties interested (*g*). In applying for leave to bid, it is the duty of the solicitor to be honest and straightforward in all statements relevant to the duty which the court has to perform in approving the transaction, whether such statements are made voluntarily, or in answer to questions, or arise out of the terms of any proposal or preliminary agreement (*h*). In the absence of any request for information, he is not bound to lay before the court all the information in his possession: if, however, he purports to give the court information on any particular subject with a view to guide its discretion and obtain its approval, he is bound to lay before it all the material information which he possesses on that particular subject (*i*). The

(*l*) *McPherson* v. *Watt* (1877), 3 App. Cas. 254, *per* Lord O'HAGAN, at p. 286; *Savery* v. *King* (1856), 5 H. L. Cas. 627; see the cases cited at pp. 748, 749, *ante*.

(*m*) *Montesquieu* v. *Sandys* (1811), 18 Ves. 302; contrast *Uppington* v. *Bullen* (1842), 2 Dr. & War. 184.

(*n*) *Spencer* v. *Topham* (1856), 22 Beav. 573, 577.

(*a*) *Cane* v. *Allen* (*Lord*) (1814), 2 Dow, 289, H. L.; *Edwards* v. *Williams* (1863), 32 L. J. (CH.) 763, C. A. As to purchases by the mortgagee, see title MORTGAGE, Vol. XXI., p. 257.

(*b*) Including his partner (*Price* v. *Moxon* (1754), cited 2 Ves. 54).

(*c*) As to sales by order of the court, see R. S. C., Ord. 51; title SALE OF LAND, Vol. XXV., pp. 313 *et seq.* The same principle applies to the purchase of a bankrupt's property by the solicitor of the trustee (*Ex parte James* (1803), 8 Ves. 337); see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 120.

(*d*) *Elworthy* v. *Billing* (1841), 10 Sim. 98; *Coaks* v. *Boswell* (1886), 11 App. Cas. 232; contrast *Guest* v. *Smythe* (1870), 5 Ch. App. 551.

(*e*) As to when the court will give leave to a solicitor to bid, see *Atkins* v. *Delmege* (1847), 12 I. Eq. R. 1; *Popham* v. *Exham* (1860), 10 I. Ch. R. 440; *Price* v. *Moxon, supra*; *Martinson* v. *Clowes* (1882), 21 Ch. D. 857; *Coaks* v. *Boswell, supra, per* Lord SELBORNE, at p. 241; *Ex parte James, supra*.

(*f*) *Re Sedgwick, Ex parte Watts* (1846), De G. 265.

(*g*) *Tennant* v. *Trenchard* (1869), 4 Ch. App. 537, 545.

(*h*) *Coaks* v. *Boswell, supra, per* Lord SELBORNE, at p. 236.

(*i*) *Ibid., per* Lord FITZGERALD, at p. 244.

leave to bid puts an end to the solicitor's disability to purchase on account of his mere position of solicitor on the record for any of the parties; if, therefore, the auction fails he may under the same leave bid for and purchase the property by private treaty (*k*).

SECT. 3. Transactions between Solicitor and Client.

SUB-SECT. 4.—*Mortgages.*

Mortgage to solicitor.

1245. A solicitor is not prohibited from taking security from his client for money advanced, or for costs already due (*l*), or to become due (*m*). The validity of any mortgage given by the client is governed by the same principles as govern the validity of a sale by the client. The transaction must be in every way a fair transaction, and the solicitor must not reserve for himself any unusual advantage by the form of the mortgage deed (*n*) unless fully explained to the client (*a*). Thus, the rate of interest charged must not be excessive (*b*); the ordinary right of redemption must not be fettered or restricted (*c*). Powers to consolidate (*d*), or to sell immediately on default (*e*), except when the mortgage is given to secure an existing debt for which the solicitor is pressing (*f*), should not be reserved without adequate explanation. Even the ordinary power of sale gives the solicitor the right to retain no more than the amount of his advance (*g*). Moreover, a mortgage may be set aside on the ground of fraud (*h*) or pressure and undue influence (*i*).

Mortgage to client.

1246. The same principles apply where a solicitor borrows from his client. In the preparation of any mortgage or security on behalf of the client, great care should be taken that there is no departure

(*k*) *Coaks* v. *Boswell* (1886), 11 App. Cas. 232, *per* Lord SELBORNE, at pp. 235—242; *Turner* v. *Harvey* (1821), Jac. 169, 178; *Brownlie* v. *Campbell* (1880), 5 App. Cas. 925, 950; *Redgrave* v. *Hurd* (1881), 20 Ch. D. 1, 13, C. A.; *Pooley* v. *Quilter* (1858), 2 De G. & J. 327, C. A.; *Walters* v. *Morgan* (1860), 3 De G. F. & J. 718; *Brooke* v. *Mostyn* (*Lord*) (1864), 2 De G. J. & Sm. 373, C. A.

(*l*) *Nelson* v. *Booth* (1857), 5 W. R. 722. As to the effect of taking security for costs, see p. 811, *post.*

(*m*) Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 16; Remuneration Order, 1882 (Stat. R. & O. Rev., Vol. XI., Solicitor, England, p. 1), clause 7. As to the position of a solicitor paying off his client's mortgage and receiving the rents, see titles LIMITATION OF ACTIONS, Vol. XIX., p. 150; MORTGAGE, Vol. XXI., p. 193.

(*n*) *Cockburn* v. *Edwards* (1881), 18 Ch. D. 449; *Eyre* v. *Hughes* (1876), 2 Ch. D. 148; compare *Hiles* v. *Moore* (1848), 17 L. J. (CH.) 385; *Prees* v. *Coke* (1871), 6 Ch. App. 645.

(*a*) *Jones* v. *Linton* (1881), 44 L. T. 601; *Cockburn* v. *Edwards*, *supra.*

(*b*) *Jones* v. *Linton*, *supra.*

(*c*) *Cowdry* v. *Day* (1859), 1 Giff. 316; *Biggs* v. *Hoddinott*, *Hoddinott* v. *Biggs*, [1898] 2 Ch. 307, C. A.

(*d*) *Climpson* v. *Coles* (1889), 23 Q. B. D. 465, 467.

(*e*) *Cockburn* v. *Edwards*, *supra*; *Cradock* v. *Rogers*, [1885] W. N. 134, C. A. Except, perhaps, in the case of a second mortgage (*ibid.*).

(*f*) *Pooley's Trustee* v. *Whetham* (1886), 33 Ch. D. 111, C. A.; compare *Johnson* v. *Fesemeyer* (1858), 3 De G. & J. 13.

(*g*) *Macleod* v. *Jones* (1883), 24 Ch. D. 289, C. A.; *Nelson* v. *Booth*, *supra*; see title MORTGAGE, Vol. XXI., pp. 177, 253. Costs improperly obtained under a threat of selling are recoverable as money paid under duress (*Close* v. *Phipps*, (1844), 7 Man. & G. 586); see title MORTGAGE, Vol. XXI., p. 246, note (*s*).

(*h*) *Ward* v. *Sharp* (1884), 53 L. J. (CH.) 313.

(*i*) *Walmesley* v. *Booth* (1741), 2 Atk. 27, 29.

SECT. 3. Transactions between Solicitor and Client.

from the usual form in favour of the solicitor (*k*). The solicitor's real position at the time should also be communicated to the client (*l*).

SUB-SECT. 5.—*Wills.*

Wills.

1247. A solicitor is allowed to take benefits under wills made by him for his clients (*m*). He must, however, be able to show (1) that the testator was capable of making a will; (2) that the testator knew and approved of its contents; and (3) that there was nothing in the way of undue advantage taken or influence exercised by the solicitor (*n*). In every case honesty and prudence suggest that the client shall be sent to another solicitor acting quite independently from the solicitor who is to receive the benefit, and that such independent solicitor should preserve a complete record of the instructions given to him by the client and of the advice given when such instructions were taken (*o*). Where a solicitor prepares a will under which he is sole executor, this is by itself sufficient to induce the court to appoint a receiver if a suit is pending as to the validity or meaning of the will (*p*).

SUB-SECT. 6.—*Solicitor as Trustee.*

Profit costs not chargeable.

1248. A solicitor-trustee acting on behalf of a trust estate is not, in the absence of a clause giving him that power in the will or settlement under which he is trustee, entitled to charge or recover anything from the trust estate for profit costs (*q*). Even where costs due in respect of work done by him on behalf of the trust estate have been paid to him, he must account to the trust estate for such portion of them as represents profit (*r*). This principle applies to the case of a solicitor-trustee (*s*) who employs an independent solicitor, including a London agent (*a*), to do work on behalf of his trust estate on agency terms, as regards any profit which the solicitor-trustee may make by reason of such bargain. Where, however, the solicitor is acting for a *cestui que trust* in an action he is allowed to keep his profit charges, although the costs are paid out of the trust estate (*b*).

(*k*) Compare *Pooley's Trustee* v. *Whetham* (1886), 38 Ch. D. 111, C. A.

(*l*) *Re a Solicitor, Ex parte Incorporated Law Society* (1893), 63 L. J. (Q. B.) 313.

(*m*) *Parfitt* v. *Lawless* (1872), L. R. 2 P. & D. 462; *Hindson* v. *Weatherill* (1854), 5 De G. M. & G. 301, C. A.; *Walker* v. *Smith* (1861), 29 Beav. 394.

(*n*) *Barry* v. *Butlin* (1838), 2 Moo. P. C. C. 480; *Fulton* v. *Andrew* (1875), L. R. 7 H. L. 448, 471; see *Re Birchall, Wilson* v. *Birchall* (1881), 44 L. T. 243.

(*o*) *Wright* v. *Carter*, [1903] 1 Ch. 27, C. A. As to independent advice generally, see note (*d*), p. 749, *ante*.

(*p*) *Hamilton* v. *Girdleston*, [1876] W. N. 202; *Lovesy* v. *Smith* (1880), 15 Ch. D. 655; *Rhodes* v. *Bate* (1866), 1 Ch. App. 252.

(*q*) See titles EQUITY, Vol. XIII., pp. 158, 159; EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 321, note (*n*); TRUSTS AND TRUSTEES.

(*r*) *Broughton* v. *Broughton* (1855), 5 De G. M. & G. 160; *Re Corsellis, Lawton* v. *Elwes* (1887), 34 Ch. D. 675, C. A.

(*s*) *Re Taylor* (1854), 18 Beav. 165; *Vipont* v. *Butler* (1893), 28 L. J. 293.

(*a*) *Burge* v. *Bruton* (1843), 2 Hare, 373.

(*b*) *Re Barber, Burgess* v. *Vinnicome* (1886), 34 Ch. D. 77. This is not so in the case of non-contentious business (*ibid.*).

SECT. 3. Transactions between Solicitor and Client.

1249. The instrument creating a trust may, however, give the solicitor, in spite of the fact that he is a trustee, the right to charge and receive payment of his profit costs (*c*). The extent of this right depends upon the language of the particular instrument under which the solicitor acts. The words used may be wide enough to entitle the solicitor to charge for all business done by him on behalf of the trust estate, whether such business falls within the usual course of a solicitor's business or not (*d*). On the other hand, the instrument may empower him to make only the usual professional charges; in this case the allowance will be strictly limited to that kind of work which a solicitor would in the ordinary course of business be necessarily employed by a client to do for him (*e*). The solicitor, in preparing the instrument under which he is to act, ought not to insert the provision enabling him to charge for non-professional business, in the absence of express instructions to that effect from his client (*f*).

Express provision.

1250. A solicitor who is appointed a trustee in bankruptcy is entitled, in fixing the amount of remuneration to be paid to him for his services, to take into account the professional services which he may have to render to the debtor's estate; but his remuneration must be a percentage to be fixed by an ordinary resolution of the creditors or by the committee of inspection (*g*). A resolution to pay him by way of remuneration his proper professional charges as a solicitor for attendance and work done and expenses incurred by him in or about the proceedings in the bankruptcy is *ultra vires* and void (*h*).

Trustee in bankruptcy.

SECT. 4.—*Obligations of Solicitor towards his Client.*

SUB-SECT. 1.—*Possession of Legal Skill and Knowledge.*

1251. A solicitor (*i*) holds himself out to his clients (*k*) as possessing adequate skill, knowledge, and learning for the purpose

Liability for negligence.

(*c*) See title TRUSTS AND TRUSTEES. The solicitor cannot, in the case of a will, charge profit costs if the estate is insolvent, since the provision enabling him to do so is in effect a legacy of profit costs (*Re White, Pennell* v. *Franklin*, [1898] 2 Ch. 217, C. A.). He is, however, entitled to out-of-pocket costs (*Re Shuttleworth, Lilley* v. *Moore* (1911), 55 Sol. Jo. 366).

(*d*) *Re Ames, Ames* v. *Taylor* (1883), 25 Ch. D. 72; see also *Ellison* v. *Airey* (1748), 1 Ves. Sen. 111; *Willis* v. *Kibble* (1839), 1 Beav. 559.

(*e*) *Re Chapple, Newton* v. *Chapman* (1884), 27 Ch. D. 587, *per* KAY, J., at p. 687; *Re Fish, Bennett* v. *Bennett*, [1893] 2 Ch. 413, C. A.; *Re Chalinder and Herington*, [1907] 1 Ch. 58; and see *Re Webb, Lambert* v. *Still*, [1894] 1 Ch. 73, 77, C. A.

(*f*) *Re Chapple, Newton* v. *Chapman, supra.*

(*g*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 72 (1); and see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 127.

(*h*) *Re Wayman, Ex parte Official Receiver* (1889), 24 Q. B. D. 68.

(*i*) He need not have taken out his certificate (*Brown* v. *Tolley* (1874), 31 L. T. 485).

(*k*) It is immaterial whether the solicitor is paid or acts gratuitously (*Donaldson* v. *Haldane* (1840), 7 Cl. & Fin. 762, H.L.). But the relation of solicitor and client must exist (*Fish* v. *Kelly* (1864), 17 C. B. (N. S.) 194; *Robertson* v. *Fleming* (1861), 4 Macq. 167, H. L.; compare *Learoyd* v. *Alston*, [1913] A. C. 529, where the solicitor acted for both husband and wife, though, in the circumstances, he was held not to have been

SECT. 4. Obligations of Solicitor towards his Client.

of properly conducting all business that he undertakes, whether contentious or non-contentious (*l*). If, therefore, he causes loss or damage to his client owing to want of such knowledge as he ought to possess or the want of such care as he ought to exercise, he is guilty of negligence giving rise to an action for damages by his client (*m*). Where an action is brought by the client against his solicitor for negligence, the client must prove two things, namely, (1) that there was want of skill or care, and (2) that owing to such want of skill or care he has suffered damage (*a*). It is for the judge to say whether upon the evidence there is any case made out to go to the jury on the question of negligence (*b*); and for the jury to say whether the negligence proved is sufficient to make the defendant liable (*c*). The measure of damages is the full amount of the pecuniary loss which the client has sustained (*d*), and in addition the solicitor forfeits the right to receive costs in respect of the work rendered useless to his client by reason of his negligence (*e*).

guilty of negligence towards the wife. The solicitor may, however, be made liable for negligence to a person not his client as an officer of the court (*Batten* v. *Wedgwood Coal and Iron Co.* (1886), 31 Ch. D. 346); compare *Re Burton, Ex parte Scallan, Ex parte Jones* (1827), 1 Mol. 63. As to his liability for misrepresentation, see *Pasley* v. *Freeman* (1789), 3 Term Rep. 51; *Arnot* v. *Biscoe* (1748), 1 Ves. Sen. 95; *Clark* v. *Hoskins* (1867), 15 W. R. 1161; *M'Elroy* v. *Murphy* (1874), 22 W. R. 501.

(*l*) *Hart* v. *Frame* (1839), 6 Cl. & Fin, 193, H. L.; *Lanphier* v. *Phipos* (1854), 8 C. & P. 475; *Parker* v. *Rolls* (1854), 14 C. B. 691; *Harmer* v. *Cornelius* (1858), 5 C. B. (N. S.) 236; *Bulkley* v. *Wilford* (1834), 2 Cl. & Fin. 102, 181, H. L.; and see titles AGENCY, Vol. I., pp 185, 186; NEGLIGENCE, Vol. XXI., pp. 367 *et seq.* As to the protection afforded by counsel's advice, see p. 758, *post;* title BARRISTERS, Vol. II., pp. 401 *et seq.*

(*m*) *Hart* v. *Frame, supra; Donaldson* v. *Haldane* (1840), 7 Cl. & Fin. 762, H. L.; *Parker* v. *Rolls* (1854), 14 C. B. 691; *Elkington* v. *Holland* (1842), 9 M. & W. 659; see *Townley* v. *Jones* (1860), 8 C. B. (N. S.) 289, where a solicitor was ordered to pay, out of his own pocket, the costs of the day thrown away for having failed to instruct counsel in time. A solicitor cannot, by special agreement with his client, contract out of liability for negligence (Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 7). As the right of action is based upon an implied contract, an action lies after the solicitor's death against his representatives (*Davies* v. *Wood* (1903), 88 L. T. 19; *contra, Young* v. *Wallingford* (1883), 52 L. J. (CH.) 590). As to when the court will order the solicitor to pay costs, see pp. 832 *et seq., post.*

(*a*) *Hatch* v. *Lewis* (1861), 7 H. & N. 367; compare *Bettyes* v. *Maynard* (1883), 49 L. T. 389, C. A.; and see, generally, title NEGLIGENCE, Vol. XXI., pp. 367 *et seq.* As to the duty of a professional man to acquaint himself with recent judicial decisions, see title BUILDING CONTRACTS, ENGINEERS, AND ARCHITECTS, Vol. III., p. 296, note (*t*).

(*b*) *Metropolitan Rail. Co.* v. *Jackson* (1877), 3 App. Cas. 193, *per* Lord BLACKBURN, at p. 207; *Giblin* v. *McMullen* (1868), L. R. 2 P. C. 317.

(*c*) *Hunter* v. *Caldwell* (1847), 10 Q. B. 69. A solicitor-trustee of a will should not appoint his son co-trustee (*Re Norris, Allen* v. *Norris* (1884), 27 Ch. D. 333).

(*d*) *Whiteman* v. *Hawkins* (1878), 4 C. P. D. 13; compare *Baker* v. *Loader* (1872), L. R. 16 Eq. 49. The cause of action, however, arises when the negligence is committed, not when the loss is sustained (*Smith* v. *Fox* (1848), 6 Hare, 386). The solicitor may rely on the Statute of Limitations (21 Jac. 1, c. 16) (*Dooby* v. *Watson* (1888), 39 Ch. D. 178); and see title DAMAGES, Vol. X., p. 346.

(*e*) *Lewis* v. *Samuel* (1846), 8 Q. B. 685; *Pasmore* v. *Birnie* (1817), 2 Stark. 59; *Re Massey and Carey* (1884), 26 Ch. D. 459, C. A.; *Otley* v. *Gilbert* (1845), 8 Beav. 602; see p. 798, *post.*

SECT. 4. Obligations of Solicitor towards his Client.

1252. A solicitor is not guilty of negligence if he has merely acted upon his client's instructions in the reasonable belief that they were correct (*f*), or if he has fully explained the position to his client and is nevertheless instructed to proceed (*g*); nor merely because he has committed an error in judgment, whether on matters of discretion (*h*) or of law (*i*), such as, for instance, on points of new occurrence or of doubtful construction (*k*). Where the facts would otherwise establish a case of negligence, the solicitor may escape liability on the ground that he acted upon counsel's advice (*l*). For this purpose he must show that the counsel whom he consulted was, in his judgment, a competent person (*m*), that the facts of the case were fully laid before counsel (*n*), and that he himself merely carried out what counsel had advised (*o*). Counsel's advice is, however, no protection to the solicitor where, in the circumstances of the case, the solicitor ought to have the knowledge himself (*p*), or where the question is one of practical procedure (*q*), not involving any special difficulty (*r*).

Facts not constituting negligence.

Effect of counsel's advice.

1253. In matters which are contentious the solicitor is liable for the consequences of his ignorance or non-observance of the rules of practice; for his want of care in the preparation of the action for trial or his failure to attend thereon with his witnesses; and for the mismanagement of so much of the conduct of an action as is usually allotted to his department of the profession (*s*). Thus, a solicitor is liable for negligence where, before bringing the action, he fails to make proper investigation into the cause of action (*t*), or, knowing

Negligence in contentious matters.

(*f*) *Lewis* v. *Collard* (1853), 14 C. B. 208; compare *Pitman* v. *Francis* (1884), Cab. & El. 355.

(*g*) *Lee* v. *Dixon* (1863), 3 F. & F. 744.

(*h*) *Hill* v. *Finney* (1865), 4 F. & F. 616, 625, n.; *Faithfull* v. *Kesteven* (1910), 103 L. T. 56, C. A.

(*i*) *Hart* v. *Frame* (1839), 6 Cl. & Fin. 193, H. L.; *Purves* v. *Landell* (1845), 12 Cl. & Fin. 91, H. L.; *Shilcock* v. *Passman* (1836), 7 C. & P. 289.

(*k*) *Godefroy* v. *Dalton* (1830), 6 Bing. 460; *Kemp* v. *Burt* (1833), 4 B. & Ad. 424; *Re Sadd* (1865), 34 Beav. 650; *Stevenson* v. *Rowand* (1830), 2 Dow & Cl. 104, 119, H. L.

(*l*) See title BARRISTERS, Vol. II., pp. 401, 402. Counsel is not, in such a case, liable for negligence; see *ibid.*, p. 394; title NEGLIGENCE, Vol. XXI., p. 370.

(*m*) Compare *Chapman* v. *Chapman* (1870), L. R. 9 Eq. 276 (surveyors).

(*n*) *Hawkins* v. *Harwood* (1849), 4 Exch. 503; *Ireson* v. *Pearman* (1825), 3 B. & C. 799; compare *Clarke* v. *Couchman* (1885), 20 L. J. N. C. 318.

(*o*) *Godefroy* v. *Dalton, supra*; *Potts* v. *Sparrow* (1834), 6 C. & P. 749; *Andrew* v. *Hawley* (1857), 26 L. J. (EX.) 323; compare *Re Clark* (1851), 1 De G. M. & G. 43, C. A.

(*p*) *Godefroy* v. *Dalton, supra*; *Bryan* v. *Twigg* (1834), 3 L. J. (CH.) 114; compare *Re Clark, supra.*

(*q*) *Russell* v. *Palmer* (1767), 2 Wils. 325; *Baikie* v. *Chandless* (1811), 3 Camp. 17; compare *Compton* v. *Chandless* (1802), cited 3 Camp. 19.

(*r*) *Laidler* v. *Elliott* (1825), 3 B. & C. 738; see title BARRISTERS, Vol. II., p. 402.

(*s*) *Godefroy* v. *Dalton, supra, per* TINDAL, C.J., at p. 469. For the rules of practice, see title PRACTICE AND PROCEDURE, Vol. XXIII., pp. 89 *et seq.*; and compare title PLEADING, Vol. XXII., pp. 421, 424. As to a solicitor's liability when acting in divorce proceedings, see title HUSBAND AND WIFE, Vol. XVI., pp. 549, 554.

(*t*) *Gill* v. *Lougher* (1830), 1 Cr. & J. 170; *Ottley* v. *Gilbey* (1845), 8 Beav. 602.

SECT. 4. Obligations of Solicitor towards his Client.

that the client has done some act which will preclude him from recovering, neglects to point this out (*u*); where he advises the client to enter into litigation though success is improbable and though counsel's advice is against the action being brought (*a*); where he proceeds under a wrong statute or section of a statute (*b*); where (*c*) he fails to issue or renew a writ in time to save the Statute of Limitations (*d*); where he brings an action in the wrong court, as, for instance, where he sues in the High Court, though, owing to the amount claimed, the action ought to have been brought in a county court (*e*), or where he sues in an inferior court, though he knows that the cause of action arose out of its jurisdiction (*f*); where he fails to inform the trustee of a bankrupt that if he brings an action without the consent of the creditors he will be liable to pay costs out of his own pocket (*g*); where he fails to prepare the case properly for trial (*h*); where, on the trial of an action, he neglects without reasonable excuse to instruct counsel to appear on his client's behalf (*i*), or, if he has the right of audience, where he fails to attend to conduct the case (*k*), or conducts it improperly (*l*); where he fails to see that a material witness whom his client has undertaken to call is in court when wanted whereby his client loses his action (*m*); where, there being a good defence to an action, he allows judgment to go by default (*n*); where in a proper case he fails to issue execution (*o*); where he does not communicate an offer of compromise to his client (*p*); where he advises a hopeless appeal which could not benefit the client (*q*); or where he neglects to register a *lis pendens* (*r*).

Negligence in non-contentious matters.

1254. In non-contentious matters it is the solicitor's duty to carry them out according to the regular method prescribed by statute, rule, or custom. Thus, he is guilty of negligence where

(*u*) *Jacks* v. *Bell* (1828), 3 C. & P. 316.
(*a*) *Re Clark* (1851), 1 De G. M. & G. 43, C. A.
(*b*) *Hart* v. *Frame* (1839), 6 Cl. & Fin. 193, H. L.
(*c*) *Hunter* v. *Caldwell* (1847), 10 Q. B. 69.
(*d*) 21 Jac. 1, c. 16.
(*e*) *Lee* v. *Dixon* (1863), 3 F. & F. 744; contrast *Barker* v. *Fleetwood Improvement Commissioners* (1890), 62 L. T. 831.
(*f*) *Williams* v. *Gibbs* (1836), 5 Ad. & El. 208; compare *Cox* v. *Leech* (1857), 1 C. B. (N. S.) 617.
(*g*) *Allison* v. *Rayner* (1827), 7 B. & C. 441, 443.
(*h*) *Manley* v. *Palache* (1895), 73 L. T. 98, P. C.
(*i*) *Hawkins* v. *Harwood* (1849), 4 Exch. 503; *De Rousigny* v. *Peale* (1811), 3 Taunt. 484; compare *Townley* v. *Jones* (1860), 8 C. B. (N. S.) 289.
(*k*) *Swannell* v. *Ellis* (1823), 1 Bing. 347 (arbitration); and see *Courtney* v. *Stock* (1842), 2 Dr. & War. 251.
(*l*) *Montriou* v. *Jefferys* (1825), 2 C. & P. 113.
(*m*) *Reece* v. *Rigby* (1821), 4 B. & Ald. 202; compare *Hatch* v. *Lewis* (1861), 2 F. & F. 467, 472; and contrast *Price* v. *Bullen* (1824), 3 L. J. (O. S.) (K. B.) 39.
(*n*) *Godefroy* v. *Jay* (1831), 7 Bing. 413.
(*o*) *Harrington* v. *Binns* (1863), 3 F. & F. 942; *Ridley* v. *Tiplady* (1855), 20 Beav. 44; *Fray* v. *Foster* (1860), 1 F. & F. 681; compare *Bevins* v. *Hulme* (1846), 15 M. & W. 88.
(*p*) *Sill* v. *Thomas* (1839), 8 C. & P. 762.
(*q*) *Harbin* v. *Masterman*, [1896] 1 Ch. 351, C. A.
(*r*) *Plant* v. *Pearman* (1872), 41 L. J. (Q. B.) 169.

he fails to explain adequately to the client any document which is to be executed by the client, such as a deed or will (*s*), or bill of sale (*t*); where, in acting for the settlor under a voluntary settlement, he fails to see that all usual clauses, such as, for instance, an ultimate power of appointment in the settlor's favour after the specific trusts have been worked out, are inserted (*u*), and to point out to his client the statutory provisions relating to voluntary conveyances (*a*), or to preserve strict evidence of the settlor's ability to pay his then existing debts without the aid of the settled property (*b*); where, in acting for a mortgagee, he fails to require production of the deeds relating to the property, and his client in order to sell under his mortgage has to pay off a prior equitable mortgagee (*c*), or where, having reason to be doubtful of the solvency of the mortgagor, he fails to make the usual and proper searches in bankruptcy (*d*), or where he fails to give the proper notices to secure priority for a charge taken on his client's behalf (*e*), or where he advises an investment without seeing that the security is adequate in amount as well as sufficient and proper in point of form (*f*); where, in acting for a vendor, he allows an unusual covenant to be inserted in the conveyance, and neglects to explain its effect (*g*); where, in acting for a purchaser of leasehold property, he fails to investigate the vendor's title (*h*), or to require production of the head lease (*i*), or the last receipt for ground rent (*j*); or where, in drawing up an

(*s*) *Morrell* v. *Morrell* (1882), 7 P. D. 68, 73; *Henshall* v. *Fereday* (1873), 27 L. T. 743; *Horan* v. *MacMahon* (1886), 17 L. R. Ir. 641, C. A.; see title FAMILY ARRANGEMENTS, Vol. XIV., p. 551, note (*i*). It is his duty to see his client before preparing a will for him (*Clery* v. *Barry* (1887), 21 L. R. Ir. 152, C. A.; compare *Aylwin* v. *Aylwin*, [1902] P. 203).

(*t*) *Re Haynes, Ex parte National Mercantile Bank* (1880), 15 Ch. D. 42, 52, C. A.

(*u*) *James* v. *Couchman* (1885), 29 Ch. D. 212.

(*a*) Namely, stat. (1571) 13 Eliz. c. 5; Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 4, 29; see titles BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 275 *et seq.*; FRAUDULENT AND VOIDABLE CONVEYANCES, Vol. XV., pp. 77 *et seq.*; and compare title MISTAKE, Vol. XXI., pp. 12, 16.

(*b*) *Re Butterworth, Ex parte Russell* (1882), 19 Ch. D. 588, 597, C. A.

(*c*) *Whiteman* v. *Hawkins* (1878), 4 C. P. D. 13; compare *Wilson* v. *Tucker* (1822), 3 Stark. 154; and see *Agra Bank, Ltd.* v. *Barry* (1874), L. R. 7 H. L. 135.

(*d*) *Cooper* v. *Stephenson* (1852), 16 Jur. 424.

(*e*) *Watts* v. *Porter* (1854), 3 E. & B. 743; *Stevenson* v. *Rowand* (1832), 2 Dow & Cl. 104, H. L.; *Donaldson* v. *Haldane* (1840), 7 Cl. & Fin. 762, H. L.; *Bean* v. *Wade* (1885), Cab. & El. 519. It is his duty to register the mortgage, if registration is necessary (*Re Patent Bread Machinery Co., Ex parte Valpy and Chaplin* (1872), 7 Ch. App. 289).

(*f*) *Stokes* v. *Prance*, [1898] 1 Ch. 212; *Langdon* v. *Godfrey* (1865), 4 F. & F. 445; contrast *Brumbridge* v. *Massey* (1858), 28 L. J. (EX.) 59; *Scholes* v. *Brook* (1891), 63 L. T. 837; *Learoyd* v. *Alston*, [1913] A. C. 529. As to the formalities necessary on the execution of a warrant of attorney, see title MORTGAGE, Vol. XXI., p. 90.

(*g*) *Stannard* v. *Ullithorne* (1834), 10 Bing. 491.

(*h*) *Allen* v. *Clark* (1863), 7 L. T. 781; *De Montmorency* v. *Devereux* (1840), 7 Cl. & Fin. 188, H. L.; see, however, *British Mutual Investment Co.* v. *Cobbold* (1875), L. R. 19 Eq. 627; compare title NEGLIGENCE, Vol. XXI., p. 486.

(*i*) *Allen* v. *Clark*, *supra*.

(*j*) *Waine* v. *Kempster* (1859), 1 F. & F. 695.

SECT. 4. **Obligations of Solicitor towards his Client.**

agreement on behalf of his client, he fails to insert a necessary stipulation (*k*), or, if a seal is essential to its validity, neglects to make it under seal (*l*). A solicitor is also liable to his client in an action of detinue if he loses or mislays his deeds (*m*).

SUB-SECT. 2.—*Personal Attention and Protection of Client's Interests.*

Delegation of authority.

1255. A solicitor undertaking any kind of business on behalf of a client is bound to give to it that amount of personal attention which it reasonably requires; if, therefore, he hands it over to an agent to carry through for him, he is responsible for the acts and defaults of the agent (*n*). Thus, he is liable for any want of care, knowledge or honesty in his partner (*o*), his clerk (*p*), or his London agent (*q*). He is not, however, responsible for agents employed by him on the client's behalf to do other than legal work, such as, for instance, a stockbroker, accountant, or surveyor, unless knowledge of such agent's incompetence can be proved against him (*a*). It is also his duty to give proper instructions to any agent whom he may employ to conduct the client's business. Thus, if a firm of solicitors allows one of the partners in the firm to act as advocate in a case in which the firm is retained, and owing to such member being insufficiently acquainted with the facts the client suffers, the firm is guilty of a want of diligence and will be liable in damages to the client (*b*). If the solicitor instructs counsel, he is bound to prepare or to give counsel verbally adequate instructions to enable him properly to lay the case before the court (*c*), but here his liability under this head ceases; if he has properly instructed counsel, who fails to attend, he is not responsible for counsel's default (*d*).

SUB-SECT. 3.—*Liability for Acts of Partners.*

Authority of partners.

1256. Each partner in the firm acting within the scope of his apparent authority as a partner binds his co-partners, unless the

(*k*) A solicitor, however, who has made a mistake in the preparation of a document will not be ordered to pay the costs of a suit for its rectification, although he may be sued for negligence (*Clark* v. *Girdwood* (1877), 7 Ch. D. 9, C. A.). As to relief in such a case, see title MISTAKE, Vol. XXI., p. 12.

(*l*) *Parker* v. *Rolls* (1854), 14 C. B. 691.

(*m*) *Wilmot* v. *Elkington* (1833), 1 Nev. & M. (K. B.) 749 · *Reeve* v. *Palmer* (1858), 5 C. B. (N. S.) 84.

(*n*) See title AGENCY, Vol. I., p. 193.

(*o*) See the text, *infra*.

(*p*) *Floyd* v. *Nangle* (1747), 3 Atk. 568; *Curlewis* v. *Broad* (1862), 1 H. & C. 322 (process server); *Lloyd* v. *Grace, Smith & Co.*, [1912], A. C. 716.

(*q*) *Re Ward, Simmons* v. *Rose, Weeks* v. *Ward* (1862), 31 Beav. 1, 11; see p. 845, *post*.

(*a*) *Carruthers* v. *Hodgson* (1896), 100 L. T. Jo. 395; *Mercer* v. *King* (1859), 1 F. & F. 490; *Chapman* v. *Chapman* (1870), L. R. 9 Eq. 276; see title CONTRACT, Vol. VII., pp. 356, note (*c*), 358, note (*m*). If he pays his client's money into a bank and mixes it with his own, he is liable to make it good if the bank fails, even though he acted *bonâ fide* (*Robinson* v. *Ward* (1825), 2 C. & P. 59).

(*b*) *Clarke* v. *Couchman* (1885), 20 L. J. N. C. 318.

(*c*) *R.* v. *Tew* (1752), Say. 50; *De Rousigny* v. *Peale* (1811), 3 Taunt. 484; *Dauntley* v. *Hyde* (1841), 6 Jur. 133.

(*d*) *Lowry* v. *Guilford* (1832), 5 C. & P. 234; see title BARRISTERS, Vol. II., p. 401.

partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner (*e*). Thus, each partner *primâ facie* binds the firm when in the ordinary course of business he gives an undertaking (*f*), or is guilty of negligence (*g*), fraud (*h*), or misconduct (*i*). Where, however, one partner pledges the credit of the firm for a purpose apparently not connected with its business as a firm of solicitors, the firm is not bound unless such partner was specially authorised by the others to do so (*k*). Thus, in the absence of special authority to the partner so purporting to contract, the firm is not liable upon a promissory note (*l*), a bill of exchange (*m*), nor a post-dated cheque (*n*), nor upon an undertaking to pay a debt and costs on behalf of a client (*o*); nor is the firm liable for the fraud of a partner acting in his private capacity, such as mortgagor (*p*) or administrator (*q*), or trustee (*r*), nor for the misconduct of a partner in allowing a stranger to make use of the firm name (*s*).

Misappropriation.

Similarly, where a partner receives moneys or securities from or on behalf of a client, and misappropriates them, the firm is liable, provided that they came to the hands of the partner in the ordinary course of business (*t*). Solicitors are not, however, as such, scriveners (*u*); if, therefore, a partner, without the knowledge of his co-partners, receives money or securities for safe custody or on deposit until an investment can be found, the firm is not liable (*a*): to render the firm liable, it must be shown that the

(*e*) Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 5.
(*f*) *Alliance Bank* v. *Tucker* (1867), 17 L. T. 13.
(*g*) *Rew* v. *Lane* (1856), 5 W. R. 110.
(*h*) *Sawyer* v. *Goodwin* (1867), 36 L. J. (CH.) 578; *Brydges* v. *Branfill* (1841), 12 Sim. 369; compare p. 758, *post*.
(*i*) *Norton* v. *Cooper, Re Manby and Hawksford, Ex parte Bittlestone* (1856), 3 Sm. & G. 375.
(*k*) Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 7; *Cleather* v. *Twisden* (1884), 28 Ch. D. 340, C. A.
(*l*) *Hedley* v. *Bainbridge* (1842), 3 Q. B. 316; *Levy* v. *Pyne* (1842), Car & M. 453; *Smith* v. *Coleman* (1843), 7 Jur. 1053.
(*m*) *Garland* v. *Jacomb* (1873), L. R. 8 Exch. 216, Ex. Ch.
(*n*) *Forster* v. *Mackreth* (1867), L. R. 2 Exch. 163; see title PARTNERSHIP, Vol. XXII., p. 26, note (*c*).
(*o*) *Hasleham* v. *Young* (1844), 5 Q. B. 833.
(*p*) *Hughes* v. *Twisden* (1886), 55 L. J. (CH.) 481.
(*q*) *Chilton* v. *Cooke* (1879), *Times*, 2nd July, C. A.
(*r*) *Palmer* v. *S.* (1907), 51 Sol. Jo. 653.
(*s*) *Marsh* v. *Joseph*, [1897] 1 Ch. 213, C. A.
(*t*) *Moore* v. *Smith* (1851), 14 Beav. 393; *Atkinson* v. *Mackreth* (1866), L. R. 2 Eq. 570; *Biggs* v. *Bree* (1882), 51 L. J. (CH.) 263, C. A.; *Dundonald* (*Earl*) v. *Masterman* (1869), L. R. 7 Eq. 504; *Tendring Hundred Waterworks Co.* v. *Jones*, [1903] 2 Ch. 615; compare *Hackney* v. *Knight* (1891), 7 T. L. R. 254 (managing clerk); *Lloyd* v. *Grace, Smith & Co.*, [1912] A. C. 716 (managing clerk); and see, further, title PARTNERSHIP, Vol. XXII., pp. 30, 31, 35, 92.
(*u*) *Harman* v. *Johnson* (1853), 2 E. & B. 61; *Plumer* v. *Gregory* (1874), L. R. 18 Eq. 621; compare note (*e*), p. 766, *post*.
(*a*) *Sims* v. *Brutton* (1850), 5 Exch. 802; *Harman* v. *Johnson, supra*; *Bourdillon* v. *Roche* (1858), 27 L. J. (CH.) 681; *Re Lawrence, Crowdy and Bowlby, Ex parte Burdon* (1854), 2 Sm. & G. 367; compare *Hills* v. *Reeves* (1882), 31 W. R. 209, C. A.

SECT. 4. Obligations of Solicitor towards his Client.

receipt of the money or securities was authorised (*b*) or ratified (*c*) by his co-partners, or that they consented to his having a general authority to act without their knowing what he did (*d*). On the other hand, the firm is liable when the money is received for the purpose of being invested in a specific security (*e*).

Dealings with trust property.

1257. It is not within the scope of the implied authority of a solicitor carrying on business in partnership to constitute himself a constructive trustee, and thereby to subject his partner to liability in that character, the partner being ignorant of the dealings by which the constructive trust is established (*f*). If, however, one member of a firm is acting as solicitor for trustees in mortgage transactions where the trustees are mortgagees, and a security is accepted which the solicitor ought to have known was not a trustee security, all the members of the firm, including the representatives of a partner who has died since the transaction, may be held liable for negligence in their capacity as solicitors to make good any loss to the trust estate either at the suit of the trustees or the beneficiaries, and it is immaterial that the partners concerned may have had no personal knowledge of the transaction (*g*).

Part V.—Remuneration of Solicitors; Costs.

SECT. 1.—*Amount Fixed by Law.*

SUB-SECT. 1.—*In General.*

Non-contentious and contentious business.

1258. The remuneration of a solicitor for professional work done by him for a client is governed, (1) as regards non-contentious business, strictly by statute (*h*); and (2) as regards contentious business, by rules of the House of Lords, Privy Council, Supreme Court, County Court, and Court of Bankruptcy (*i*).

SUB-SECT. 2.—*Non-contentious Business.*

Conveyancing business.

1259. Conveyancing business properly so called (*k*) is governed by the general order made pursuant to the Solicitors Remuneration

(*b*) *Blair* v. *Bromley* (1847), 2 Ph. 354; *St. Aubyn* v. *Smart* (1868), 3 Ch. App. 646; *Slack* v. *Parker* (1886), 54 L. T. 212.

(*c*) *Cleather* v. *Twisden* (1884), 28 Ch. D. 340, C. A.; distinguished in *Rhodes* v. *Moules*, [1895] 1 Ch. 236, C. A.

(*d*) *Cleather* v. *Twisden*, *supra*, *per* BOWEN, L.J., at p. 350.

(*e*) *Blair* v. *Bromley*, *supra*, followed in *Moore* v. *Knight*, [1891] 1 Ch. 547; *Harman* v. *Johnson* (1853), 2 E. & B. 61; *Plumer* v. *Gregory* (1874), L. R. 18 Eq. 621; *Hughes* v. *Twisden* (1886), 55 L. J. (CH.) 481; *Eager* v. *Barnes* (1862), 31 Beav. 579; *Willet* v. *Chambers* (1778), 2 Cowp. 814.

(*f*) *Mara* v. *Browne*, [1896] 1 Ch. 199, C. A.; see, further, title PARTNERSHIP, Vol. XXII., p. 31.

(*g*) *Blyth* v. *Fladgate*, *Morgan* v. *Blyth*, *Smith* v. *Blyth*, [1891] 1 Ch. 337; *Rae* v. *Meek* (1889), 14 App. Cas. 558; *Brinsden* v. *Williams*, [1894] 3 Ch. 185.

(*h*) See the text, *infra*.

(*i*) See pp. 767 *et seq.*, *post*.

(*k*) The scale applies as well to conveyancing matters which are carried out in the course of an action as to those carried through entirely out of

SECT. 1. Amount Fixed by Law.

Act, 1881 (*a*). Provision is made for two distinct methods of remuneration, namely:—(1) under Schedule I. of the Order by an *ad valorem* charge (*b*) upon all transactions of purchase and sale, mortgages, and leases; and (2) under Schedule II. of the Order by a series of separate charges for all the different items of work done. Schedule I. applies in every case, unless the solicitor has elected to charge his client under Schedule II. (*c*). The solicitor's election is signified by notice, which, to be effective, must be in writing, and must be given before undertaking any business (*d*). If, therefore, the solicitor has done any preliminary work, such as, for instance, writing for particulars with regard to his client's admission to copyhold land (*e*), or preparing a draft agreement for sale or purchase of land (*f*), or conferring with the client as to a sale and as to title (*g*), it is too late for him to give notice of election, and he is bound by the scale.

Sales, purchases, and mortgages.

1260. In the case of sales, purchases, and mortgages (*h*), a solicitor

court; the only exception from the scope of the scale is "other business not being conveyancing business" (*Stanford* v. *Roberts* (1884), 26 Ch. D. 155). As to the cases in which, by usage, the remuneration is payable, not by his client, but by the other party to the transaction in which the solicitor is employed, see titles CUSTOM AND USAGES, Vol. X., pp. 283, 284; LANDLORD AND TENANT, Vol. XVIII., pp. 402, 403; MORTGAGE, Vol. XXI., pp. 123, 124; SALE OF LAND, Vol. XXV., pp. 336, 434, 435. As to costs of a solicitor appointed guardian *ad litem*, see title INFANTS AND CHILDREN, Vol. XVII., p. 144; as to the costs of compulsory sales under the Lands Clauses Acts, see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 112 *et seq.*

(*a*) 44 & 45 Vict. c. 44, ss. 1—7; Remuneration Order, 1882 (Stat. R. & O. Rev., Vol. XI., Solicitor, England, p. 1; Yearly Practice of the Supreme Court, 1914, p. 1471). The order does not apply to a sale of land out of the jurisdiction (*Re Greville's Settlement* (1888), 40 Ch. D. 441).

(*b*) This does not include disbursements, such as counsel's fees, stamps, or travelling expenses (Remuneration Order, 1882, clause 4). All drafts and copies made in the course of the business are the property of the client (*ibid.*, clause 3); see p. 740, *ante*.

(*c*) Remuneration Order, 1882, clause 6; *Re Peel's* (*Sir Robert*) *Settled Estates*, [1910] 1 Ch. 389 (sale of estate in lots). But the whole of the business must have been done (*Re Hickley and Steward* (1885), 54 L. J. (CH.) 608); see p. 767, *post*. The solicitor may elect though acting for a local authority (*Re Evans* (*a Solicitor*), [1905] 1 Ch. 290).

(*d*) Remuneration Order, 1882, clause 6; *Re Bridewell Hospital and Metropolitan Board of Works* (1887), 57 L. T. 155 (compulsory purchase). Sending in a bill of costs in the old form is not an election to charge by items (*Fleming* v. *Hardcastle* (1885), 52 L. T. 851; and see *Re Love, Hill* v. *Spurgeon* (1889), 58 L. J. (CH.) 272).

(*e*) *Re Allen* (1887), 34 Ch. D. 433, C. A.

(*f*) *Hester* v. *Hester* (1887), 34 Ch. D. 607, C. A.

(*g*) *Re Metcalfe, Metcalfe* v. *Blencowe* (1887), 57 L. J. (CH.) 82.

(*h*) Remuneration Order, 1882, clause 2 (a), Sched. I., Part. I. The scale applies to an equitable mortgage, even though it is not under seal and contains an agreement to execute a further legal mortgage, if the work contemplated by the scale has been done by the solicitor (*Re Baker*, [1912] 2 Ch. 405). This scale applies also to transfers of mortgage where title is investigated, unless the investigation is by the solicitor who investigated the title of the original mortgage or on any previous transfer (Remuneration Order, 1882, Sched. I., Part I., r. 10); see note (*n*), p. 762, *post*. A solicitor-mortgagee, whether solely or jointly interested, may charge the same costs as if he had been acting for a client, and

SECT. 1. Amount Fixed by Law.

is entitled to remuneration *ad valorem* (*i*) in respect of each of the following matters, namely: (1) for negotiating a sale or purchase of property by private contract, or a mortgage, payable to the solicitors acting for both vendor and purchaser, and to the solicitor acting for the mortgagee (*k*); (2) for conducting a sale of property by public auction (*l*); (3) for deducing or investigating the title to freehold, copyhold, or leasehold property, perusing (*m*), and completing the conveyance or mortgage, including the preparation of the contract or the conditions of sale (if any), or the mortgage, payable to the solicitors acting for both vendor and purchaser and to the solicitor acting for the mortgagee (*n*). If any other party joins in

may add the costs to his security (Mortgagees Legal Costs Act, 1895 (58 & 59 Vict. c. 25), ss. 2, 3; *Eyre* v. *Wynn-Mackenzie*, [1896] 1 Ch. 135, C. A.); see title MORTGAGE, Vol. XXI., pp. 124, 145, 156, 242, note (*e*). As to a solicitor paying off his client's mortgage, see title LIMITATION OF ACTIONS, Vol. XIX., p. 150. The Mortgagees Legal Costs Act, 1895 (58 & 59 Vict. c. 25), is not retrospective (*Day* v. *Kelland*, [1900] 2 Ch. 745, C. A.; *Cheese* v. *Keen* (1907), 24 T. L. R. 138; *Wellby* v. *Still*, [1895] 1 Ch. 524). As to the parties liable for the costs of sales and purchases, see title SALE OF LAND, Vol. XXV., pp. 336, 433 *et seq.*; as to the persons liable for costs of mortgages, see titles CUSTOM AND USAGES, Vol. X., p. 284; MORTGAGE, Vol. XXI., pp. 123, 124; as to the parties liable on transfers of mortgage, see title CUSTOM AND USAGES, Vol. X., p. 284.

(*i*) The amount of any incumbrances is to be included as part of the purchase-money, unless the mortgagee purchases (Remuneration Order, 1882, Sched. I., Part I., r. 9); see *Fortescue* v. *Mercantile Bank of London*, [1897] 2 Q. B. 236, C. A.; *Re Gallard, Ex parte Harris* (1888), 21 Q. B. D. 38 (bankrupt's estate). The minimum fee is £5, or when the transaction is under £100, £3 (Remuneration Order, 1882, Sched. I., Part I., r. 8). On the sale of an estate by auction in lots, the sale of each lot is a separate transaction (*Re Thomas, Evans* v. *Griffiths*, [1900] 1 Ch. 454; *Re Margetts*, [1896] 2 Ch. 263; but see *Cholditch* v. *Jones*, [1896] 1 Ch. 42; and compare *Re Onward Building Society, Ex parte Watson*, [1893] 1 Q. B. 16). As to a resale of part before completion, see *Re Read*, [1894] 3 Ch. 238. The rule has reference only to sales, purchases, and mortgages (*Re Hellard and Bewes*, [1896] 2 Ch. 229). On the sale of the assets of a bankrupt, the scale fee is chargeable, though the assets do not exceed £300. If there is a change of solicitors after an attempted sale, the taxation of the costs of sale must be by item charges under r. 2 (c) (*Re Dean, Ward* v. *Holmes* (1886), 32 Ch. D. 209; and see *Re Smith, Pinsent & Co.* (1890), 44 Ch. D. 303; *Re Martin* (*a Lunatic*) (1889), 41 Ch. D. 381, C. A.; *Re Parfitt* (1889), 23 Q. B. D. 40; and compare title MORTGAGE, pp. 231, 317, 318).

(*k*) The charge is £1 per cent. on the first £3,000, 10*s.* per cent. on each subsequent £100 up to £10,000, and 5*s.* per cent. for every subsequent £100 up to £100,000 (Remuneration Order, 1882, Sched. I., Part I).

(*l*) Where the property is sold, the charge is £1 per cent. on the first £1,000, 10*s.* per cent. on the second and third £1,000, 5*s.* per cent. on the next £7,000, and 2*s.* 6*d.* per cent. on each subsequent £100 up to £100,000; where the property is not sold, one-half of each of the last-mentioned percentages is allowed to the vendor's solicitor, based upon the reserve price (*ibid.*).

(*m*) In the case of perusal on behalf of parties having distinct interests the solicitor may charge £2 additional for each party after the first (*ibid.*, Sched. I., Part I., r. 4). As to what constitutes investigation, see *Ex parte London Corporation* (1887), 34 Ch. D. 452. Where several houses are included in one conveyance, but only one title is deduced, a scale fee cannot be charged in respect of each house (*Re Simmons' Contract*, [1908] 1 Ch. 452).

(*n*) The charge is £1 10*s.* per cent. on the first £1,000, £1 per cent. on

SECT. 1. Amount Fixed by Law.

the conveyance or mortgage, his solicitor's remuneration is governed by Schedule II. (*o*).

Sale accompanied by mortgage.

1261. Where upon a conveyance of property a mortgage is prepared at the same time and by the same solicitor, he is entitled to charge only a proportion of the full charge for investigating title in addition to his full charges upon the purchase-money, and his commission, if any, for negotiating (*p*); and where the same solicitor is concerned for both mortgagor and mortgagee he is entitled to the full charges in respect of acting for the mortgagee, but only half additional in respect of acting for the mortgagor (*q*).

Leases.

1262. In the case of leases and agreements for leases at rack-rents the solicitor's remuneration is regulated by the rent payable (*r*). The lessor's solicitor is entitled to remuneration for preparing, settling and completing the lease and counterpart (*s*), and the lessee's solicitor is entitled to remuneration for perusing the draft and completing (*t*). The scale includes remuneration for negotiations which lead up to and the preparation of the agreement which may precede an actual lease, and no charge can be made in addition in respect of this (*u*); but it does not include negotiations with persons other than the ultimate lessee (*a*).

Conveyances reserving rentcharges, building leases etc.

1263. In the case of conveyances in fee reserving a rentcharge,

the second and third £1,000, 10*s.* per cent. on the next £7,000, and 2*s.* 6*d.* per cent. on each subsequent £100 up to £100,000 (Remuneration Order, 1882, Sched. I., Part I.). In the case of transfers of mortgages and further charges when the title has already been investigated by the same solicitor, the remuneration is governed by *ibid.*, Sched. II. (*ibid.*, Sched. I., Part I., r. 10); see *Aylesford* (*Earl*) v. *Poulett* (*Earl*), [1891] 1 Ch. 248, C. A.; see also note (*h*), p. 761, *ante*.

(*o*) Remuneration Order, 1882, Sched. I., Part I., r. 5.

(*p*) Namely, one-half of the scale fee up to £5,000, and on any excess one-quarter (*ibid.*, Sched. II., Part I., r. 6); see *Re Glascodine* v. *Carlyle* (1885), 52 L. T. 781 C. A. As to a solicitor advancing money to a client on mortgage, see *Re Norris*, [1902] 1 Ch. 741; note (*g*), p. 766, *post*.

(*q*) Remuneration Order, 1882, Sched. I., Part I., r. 3; see *Wellby* v. *Still*, [1894] 3 Ch. 641.

(*r*) Remuneration Order, 1882, Sched. I., Part II., First Scale.

(*s*) The scale of remuneration is at the rate of £7 10*s.* per cent. where the rent does not exceed £100, with a minimum of £5; where the rent exceeds £100, but does not exceed £500, £7 10*s.* on the first and £2 10*s.* per cent. on each subsequent £100, and where it exceeds £500, £7 10*s.* on the first £100, £2 10*s.* per cent on the next £400, and £1 per cent. on each subsequent £100 (*ibid.*). The scale fee for the first £100 is a percentage, but after that sum it is only payable on each complete £100 of rent (*Re McGarel* (*a Lunatic*), [1897] 1 Ch. 400, C. A.). The scale does not apply to a sale carried out by way of underlease (*Re Webb, Still* v. *Webb*, [1897] 1 Ch. 144), or to renewals of leases under a covenant for renewal (*Re Baylis*, [1907] 2 Ch. 54).

(*t*) The lessee's solicitor's remuneration is half the amount payable to the lessor's solicitor (Remuneration Order, 1882, Sched. I., Part II., First Scale).

(*u*) *Savery* v. *Enfield Local Board*, [1893] A. C. 218; *Re Emanuel and Simmonds* (1886), 33 Ch. D. 40, C. A.; *Re Field* (1885), 29 Ch. D. 608, C. A.; *Re Horn and Francis*, [1896] 2 Ch. 797, where the lease was granted in consideration of a premium as well as rent.

(*a*) *Re Martin* (*a Lunatic*) (1889), 41 Ch. D. 381, C. A. As to the liability for costs on the grant of a lease, see title LANDLORD AND TENANT, Vol. XVIII., pp. 402, 403.

SECT. 1. Amount Fixed by Law.

building (*b*) and other long leases not at a rack-rent (*c*) (except mining leases) and agreements for the same (*d*) a different rate of remuneration is payable (*e*). The vendor's or lessor's solicitor is entitled to be remunerated for preparing, settling and completing the conveyance and duplicate and the lease and counterpart (*f*); and the purchaser's or lessee's solicitor is entitled to be remunerated for perusing the draft and completing (*g*).

Transactions relating to registered land.

1264. As regards the registration of land and transactions in the Land Registry (*h*), special provision has been made for regulating the remuneration of solicitors (*i*). Fees are payable (1) on the conversion of a possessory or qualified title (*j*) into an absolute or good leasehold title, when the solicitor has acted for the applicant on the occasion of a transfer for value, or charge, or transfer for value of a charge (*k*); (2) on every completed transfer, charge, exchange or

(*b*) A lease of a house for thirty-five years with a covenant to expend money in alterations is a "building lease" (*Re Kilkenny Corporation, Ex parte Shortal*, [1904] 1 I. R. 570); see also *Re Hogan's Estate*, [1894] 1 I. R. 503.

(*c*) A lease for 100 years in consideration of a money fine and an annual rental is a "long lease not at a rack-rent" (*Ex parte Conolly to Sheridan and Russell*, [1900] 1 I. R. 1, C. A.; but see *Re Robson* (1890), 45 Ch. D. 71; *Ex parte Ferguson & Co. to Buckley* (1888), 21 L. R. Ir. 392).

(*d*) Where an abstract is supplied it is to be separately charged for by item (*Cholditch* v. *Jones*, [1896] 1 Ch. 42; *Re Macgowan, Macgowan* v. *Murray*, [1891] 1 Ch. 105, C. A.; *Re Withall*, [1891] 3 Ch. 8, C. A.).

(*e*) The remuneration is a fixed sum of £5 in respect of a rental not exceeding £5, between £5 and £50, £5 plus 20 per cent. on any excess up to £50, and between £50 and £150, a further 10 per cent. on the excess beyond £50 and where the rent exceeds £150, a further 5 per cent. on any excess above that sum. Where the rent varies the remuneration is calculated on the largest amount (Remuneration Order, 1882, Sched. I., Part II., Second Scale). In the case of a conveyance or lease partly in consideration of rent and partly in consideration of a payment, in addition to the remuneration on the rent there is payable a sum equal to the remuneration on a purchase at a price equal to such payment (*ibid.*, Sched. I., Part II., r. 5). Fractions of £5 are counted as £5 (*ibid.*, Sched. I., Part II., r. 6).

(*f*) *Ibid.*, Sched. I., Part II., Second Scale. In estimating the costs properly payable by the lessee to the lessor's solicitor, the costs of the counterpart must be deducted from the scale fee when ascertained (*Re Negus*, [1895] 1 Ch. 73).

(*g*) The purchaser's or lessee's solicitor's remuneration is half the amount payable to the vendor's or lessor's solicitor (Remuneration Order, 1882, Sched. I., Part II., Second Scale). Where both parties are represented by the same solicitor the charges are to be half as much for the second party as for the first (*ibid.*, Sched. I., Part I., r. 2); where a mortgagee joins, his solicitor may charge £1 1*s.* (*ibid.*, Sched. I., Part I., r. 3); and where any other joins, his solicitor may charge for work done (*ibid.*, Sched. I., Part I., r. 4).

(*h*) See title REAL PROPERTY AND CHATTELS REAL, Vol. XXIV., pp. 301 *et seq.*

(*i*) Land Transfer Rules, 1903, 1907, 1908 (Stat. R. & O. Rev., Vol. VII., Land (Registration) England, pp. 33 *et seq.*; Stat. R. &. O., 1907, p. 341; Stat. R. & O. 1908, p. 435). The Remuneration Order, 1882, excepting *ibid.*, Sched. I., Part I., applies where no special provision is made (Land Transfer Rules, 1903, r. 336 (J)), or when the solicitor so elects (*ibid.*, r. 336 (I)). The remuneration prescribed does not include disbursements etc. (*ibid.*, r. 336 (F)).

(*j*) Except under the Land Transfer Rules, 1903, rr. 37, 42.

(*k*) Land Transfer Rules, 1908, r. 336 (B). For the scale of remuneration, see *ibid.*, Sched. II.

partition of registered land or of a registered charge (*l*). The solicitor's right to a registration fee and to a fee for conducting a sale by auction is preserved (*m*). Where the solicitor acts both for mortgagor and mortgagee, he is entitled to receive his full charges from the mortgagee in addition to a proportion of the ordinary charges payable by the mortgagor (*n*).

The charges for registering a memorial of the conveyance in a register county are included in the scale charge (*o*).

Special allowance.

1265. Where the solicitor, by special exertion, carries through any business in an exceptionally short space of time, he may be allowed additional remuneration according to the circumstances (*p*).

Item charges.

1266. Where Schedule I. of the Remuneration Order is inapplicable, the solicitor is entitled to remuneration item by item for the work actually done in accordance with the provisions of Schedule II. (*q*). Schedule I. is inapplicable, (1) where the solicitor has elected against it (*r*); (2) where the business transacted falls outside its scope, such as, for instance, the sale or purchase of an

(*l*) Land Transfer Rules, 1903, r. 336 (C). As to the scale where no title outside the register is investigated, see Land Transfer Rules, 1903, Sched. II., Part II.: where title outside the register is investigated, the Remuneration Order, 1882, except *ibid.*, Sched. I., Part I., applies. In the case of the transfer of registered freehold land wholly or partly in consideration of a rent, the remuneration is calculated on the value of the rent taken at twenty-five years' purchase, provided that where no title is investigated the remuneration must not exceed the charges of the solicitor of the grantee under the Remuneration Order, 1882, for perusal of the draft conveyance and for completion (Land Transfer Rules, 1908, r. 336 (D)).

(*m*) Land Transfer Rules, 1903, r. 336 (E).

(*n*) *Ibid.*, r. 336 (G). Where the solicitor acts on behalf of several parties having distinct interests, he is entitled to an additional fee of £2 2*s.* for each party after the first (*ibid.*, r. 336 (H)).

(*o*) *Grey* v. *Curtice*, [1899] 1 Ch. 121, C. A.

(*p*) Remuneration Order, 1882, clause 5.

(*q*) *Parker* v. *Blenkhorn*, *Newbould* v. *Bailward* (1888), 14 App. Cas. 1; *Re Reade*, *Salthouse* v. *Reade* (1889), 33 Sol. Jo. 219; *Stanford* v. *Roberts* (1884), 26 Ch. D. 155, followed in *Humphreys* v. *Jones* (1885), 31 Ch. D. 30, C. A. The Remuneration Order, 1882, Sched. II., provides for such sum as the taxing master may think proper being allowed for instructions; 2*s.* per folio for drawing; 8*d.* per folio for ingrossing; 4*d.* per folio for fair copying; 1*s.* per folio for perusing (this fee does not apply to perusal of abstracts of title, the fee being 6*s.* 8*d.* for every three brief sheets of eight folios (*Re Parker* (*R. A.*) (1885), 29 Ch. D. 199)); 10*s.* in ordinary cases for attendances, with power to the taxing master to increase or diminish it in extraordinary cases; for drawing abstracts of title 6*s.* 8*d.* per brief sheet of eight folios, and 3*s.* 4*d.* for fair copy per brief sheet; for journeys from home each day of seven hours £5 5*s.*, and under seven hours 15*s.* per hour. The taxing master has power to increase or diminish any of the above charges (*Re Reade*, *Salthouse* v. *Reade*, *supra*; *Re Rees*, *Rees* v. *Rees* (1887), 58 L. T. 68; *Re Mahon*, [1893] 1 Ch. 507, C. A.). He need not state his reasons for doing so unless he is called upon to answer objections (*Re Mahon*, *supra*). A second fair copy of abstract is not allowed except in special circumstances, as where counsel had defaced the copy laid before him with notes rendering it unfit to be submitted to the purchaser (*Rumsey* v. *Rumsey*, *Ex parte Rumsey* (1855), 21 Beav. 40).

(*r*) See p. 761, *ante*.

SECT. 1. Amount Fixed by Law.

easement (*s*), or of property, other than freehold (*t*), copyhold or leasehold (*a*), though a loan obtained on the security of partly real and partly personal property is within its scope (*b*); and (3) where, though the business transacted falls within the scope of Schedule I., the whole of the work covered by the scale charge has not been done, as, for instance, where the solicitor has not been required to investigate the title (*c*), or where a proposed sale proves abortive (*d*). In particular, a solicitor (*e*) is not entitled to a negotiation fee (*f*), unless he actually conducts the negotiations (*g*). He must arrange the sale, purchase, or loan, the sum of money to be paid or advanced, and the terms and conditions of the contract (*h*); it is not sufficient for him merely to bring the parties into communication (*i*) or to submit an offer to his client (*k*). Similarly, where property is sold by auction, the solicitor is not entitled to the conducting fee under the scale (*l*), if commission is paid direct by the client to the auctioneer (*m*) or if the sale is not in fact conducted by the solicitor (*n*). The solicitor must necessarily employ an auctioneer to take the bids (*o*); if, however, he allows the auctioneer

(*s*) *Re Sanders' Settlement*, [1896] 1 Ch. 480, C. A.; *Re Stewart* (1889), 41 Ch. D. 494.

(*t*) "Freehold" includes an advowson (*Re Earnshaw-Wall*, [1894] 3 Ch. 156), but not land situate out of England (*Re Greville's Settlement* (1888), 40 Ch. D. 441).

(*a*) See *Re Coe* (1894), 38 Sol. Jo. 421; and see title COPYHOLDS, Vol. VIII., p. 64.

(*b*) *Re Furber*, [1898] 2 Ch. 538. As to a solicitor-mortgagee, see *Re Robertson* (1887), 19 Q. B. D. 1.

(*c*) *Re Lacey & Son* (1883), 25 Ch. D. 301, C. A.; *Re Keeping and Gloag* (1888), 58 L. T. 679; *Re Harris, Powell and Goodale* (1887), 56 L. T. 477; *Wellby* v. *Still*, [1894] 3 Ch. 641; *Re Webster and Jones' Contract*, [1902] 2 Ch. 551, C. A.; *Ex parte Ferguson & Co. to Buckley* (1888), 21 L. R. Ir. 392; compare *Re Secretary of State for War and Denne* (1884), 33 W. R. 120; *Lomas* v. *Joseph* (1909), 53 Sol. Jo. 271 (lease).

(*d*) *Re Stead, Smith* v. *Stead*, [1913] 1 Ch. 240; compare *Re Bircham & Co.* (1895), 11 T. L. R. 547, C. A. (trust deed to secure debentures). If an abortive sale is afterwards followed by a completed sale, the Remuneration Order, 1882, Sched. I., Part I., applies (*Re Stead, Smith* v. *Stead, supra*).

(*e*) The principles under discussion have no application to the case where the solicitor acts, not as solicitor, but as scrivener (*Gradwell* v. *Aitchison* (1893), 10 T. L. R. 20); compare p. 759, *ante*.

(*f*) *Re Pybus* (1887), 35 Ch. D. 568; see p. 762, *ante*.

(*g*) *Re Reade, Salthouse* v. *Reade* (1889), 33 Sol. Jo. 219; *Re Withall*, [1891] 3 Ch. 8, C. A.; *Re Weddall* (1884), 29 Sol. Jo. 85. A solicitor-mortgagee may charge the negotiation fee, although he himself advances the money in question (*Re Norris*, [1902] 1 Ch. 741).

(*h*) *Re Macgowan, Macgowan* v. *Murray*, [1891] 1 Ch. 105, C. A.

(*i*) *Re Eley* (1887), 37 Ch. D. 40.

(*k*) *Re Reade, Salthouse* v. *Reade, supra*.

(*l*) See p. 762, *ante*.

(*m*) Remuneration Order, 1882, Sched. I., Part I., r. 11; *Re Romain*, [1903] 1 Ch. 702; *Re Peace and Ellis* (1887), 35 W. R. 61; *Drielsma* v. *Manifold*, [1894] 3 Ch. 100, C. A.

(*n*) *Re Wilson* (*a Lunatic*) (1885), 29 Ch. D. 790, C. A., explained in *Re Merchant Taylors' Co.* (1885), 30 Ch. D. 28, 37, C. A., and followed in *Wood* v. *Calvert* (1886), 34 W. R. 732; *Re Sykes, Sykes* v. *Sykes* (1887), 56 L. J. (CH.) 238; *Re Faulkner* (*a Solicitor*) (1887), 36 Ch. D. 566; *Burd* v. *Burd* (1889), 40 Ch. D. 628.

(*o*) *Re Wilson* (*a Lunatic*), *supra*; *Cholditch* v. *Jones*, [1896] 1 Ch. 42.

to do more (*p*), or if he employs a surveyor to divide up the property into lots (*q*), the scale becomes inapplicable, and the solicitor is entitled to remuneration under Schedule II. for such part of the work as is actually done by himself, such as, for instance, preparing advertisements (*r*).

SUB-SECT. 3.—*Contentious Business.*

House of Lords.

1267. In appeals to the House of Lords the House has an inherent jurisdiction as the highest Court of Appeal to award costs (*s*), and such costs are intended as an indemnity (*a*). The amount to be paid by the party ordered to pay costs must be ascertained by the taxing officer of the House of Lords, and by him certified to the Clerk of the Parliaments or Clerk Assistant, after which payment from the person liable to pay may be demanded; if such person has made a deposit of £200 on entering his appeal, regard must be had to such deposit (*b*). The amount of costs allowable by the taxing officer is fixed by a scale (*c*), which is always adopted and acted upon in such taxation (*d*).

Privy Council.

1268. In the Privy Council costs are allowed to a successful appellant (*e*), which costs are taxed by the registrar to the Judicial Committee and allowed on a fixed scale (*f*).

Supreme Court.

1269. In the Supreme Court (*g*) the amount of costs to which a

(*p*) *Re Wilson* (*a Lunatic*) (1885), 29 Ch. D. 790, C. A., as explained in *Re Merchant Taylors' Co.* (1885), 30 Ch. D. 28, 37, C. A.

(*q*) *Re Wilson* (*a Lunatic*), *supra*; *Wood* v. *Calvert* (1886), 34 W. R. 732.

(*r*) *Re Peace and Ellis* (1887), 35 W. R. 61; *Re Sykes, Sykes* v. *Sykes* (1887), 56 L. J. (CH.) 238; *Re Faulkner* (*a Solicitor*) (1887), 36 Ch. D. 566.

(*s*) *West Ham Union Guardians* v. *St. Matthew, Bethnal Green* (*Churchwardens etc.*), [1896] A. C. 477, *per* Lord MACNAGHTEN, at p. 489.

(*a*) *Bowes* v. *Shand* (1877), 2 App. Cas. 455, *per* Lord BLACKBURN, at p. 485.

(*b*) Standing Orders of the House of Lords (Judicial Business) (Yearly Practice of the Supreme Court, 1914, pp. 1827 *et seq.*), No. 10.

(*c*) In pauper cases in the House the fees of the House and counsel's fees are disallowed, and the solicitor is allowed three eighths of the charges in "Dives" appeals to cover his office expenses, including clerks etc., in addition to his costs out of pocket (Standing Orders of the House of Lords (Judicial Business), Appendix E, Directions as to Pauper Costs, when awarded).

(*d*) Johnson's Bills of Costs, 1897, p. 670 (the revised scale is sold at the House of Lords Office in print, the revision being to the 12th December, 1893).

(*e*) Order in Council of the 13th June, 1853 (Stat. R. & O. Rev. Vol. VI., Judicial Committee, p. 1).

(*f*) Order in Council of the 11th August, 1842, Schedule of Fees; Safford and Wheeler's Privy Council Practice, 1901, p. 144.

(*g*) Where the jurisdiction of any court is transferred to the High Court, rules as to costs prevailing in such court are given effect to in the High Court, but the taxing masters of the High Court may revise the allowance of fees so as to assimilate them to those there ruling and make the practice uniform (R. S. C., Ord. 65, r. 27 (37)). This means that the old rules of the Court of Chancery remain in force except in so far as they are altered by new rules (*Smith* v. *Day* (1881), 16 Ch. D. 726; *Pringle* v. *Gloag* (1879), 10 Ch. D. 676; *Newbiggin-by-the-Sea Gas Co.* v. *Armstrong* (1879), 13 Ch. D. 310, C. A.; *Thomas* v. *Palin* (1882), 21 Ch. D. 360, C. A.; *Harrison* v. *Wearing* (1879), 11 Ch. D. 206). As to the extent to which these regulations may go in fettering the discretion given by R. S. C., Ord. 65, r. 27, see Masters' Practice Notes, 1903; *Re Ermen*,

SECT. 1. **Amount Fixed by Law.**

solicitor is entitled is ascertained by taxation (*h*), the master being bound by the scales contained in the Rules of the Supreme Court, 1883, Appendix N (*i*). There are two scales of costs, the higher scale and the lower scale. Costs are payable, as a general rule, on the lower scale (*j*); but costs on the higher scale may be ordered on special grounds (*k*) arising out of the nature (*l*) and importance (*m*), or the difficulty (*n*), or the urgency (*o*) of the case (*p*). In respect of work and labour properly done, which is not specifically provided for, the same or similar fees may be allowed as formerly (*q*).

Discretion of taxing master.

Notwithstanding the scales, however, the taxing master has a very wide discretion in all matters of costs (*r*). He may allow all such costs, charges, and expenses as appear to him to have been

Tatham v. *Ermen*, [1903] 2 Ch. 156. As to costs in the Court of Appeal, see title PRACTICE AND PROCEDURE, Vol. XXIII., p. 207; as to costs in the county court, see title COUNTY COURTS, Vol. VIII., pp. 578 *et seq.*; and compare title MAYOR'S COURT, LONDON, Vol. XX., p. 297.

(*h*) As to the taxation of costs, see pp. 780 *et seq.*, *post*.

(*i*) Compare title PRACTICE AND PROCEDURE, Vol. XXIII., pp. 176 *et seq.* As to when a fixed sum is allowed for costs, see note (*j*), p. 799, *post*. It is outside the scope of this work to enumerate in detail the particular items mentioned in R. S. C., Appendix N, or to set out the sums allowed under either scale in respect of each item. For such matters reference should be made to the Yearly Practice of the Supreme Court. As to costs in divorce, see title HUSBAND AND WIFE, Vol. XVI., pp. 547 *et seq.*, and as to costs relating to an application for an injunction, see title INJUNCTION, Vol XVII., pp. 287 *et seq.*; and compare title PATENTS AND INVENTIONS, Vol. XXII., pp. 225 *et seq.*; as to the scale of costs applicable in lunacy proceedings, see title LUNATICS AND PERSONS OF UNSOUND MIND, Vol. XIX., p. 461; and as to the costs of an action relating to appointed and unappointed funds, see title POWERS, Vol. XXIII., pp. 45, 46.

(*j*) R. S. C., Ord. 65, r. 8.

(*k*) The same principles apply to the awarding of costs on the higher scale as between solicitor and client (*ibid.*, r. 10). As to when a solicitor may be ordered to pay costs, see pp. 832 *et seq.*, *post*. The Court of Appeal does not interfere unless the judge, in exercising his discretion, has acted on a wrong principle or has made a manifest slip (*Re Terrell* (1882), 22 Ch. D. 473, C. A.).

(*l*) *The Robin*, [1892] P. 95; *Moseley* v. *Victoria Rubber Co.* (1887), 57 L. T. 142.

(*m*) *Turton* v. *Turton* (1889), 42 Ch. D. 128, 149, C. A.; *Rivington* v. *Garden*, [1901] 1 Ch. 561, discussing *Davies* v. *Davies* (1887), 36 Ch. D. 359, C. A.; *Re Leeuw, Rein* v. *Wrathall* (1892), 93 L. T. Jo. 333; *Marriott* v. *Cobbett* (1894), 38 Sol. Jo. 620.

(*n*) *Fraser* v. *Province of Brescia Steam Tramways Co.* (1887), 56 L. T. 771; *Gadd and Mason* v. *Manchester Corporation* (1892), 9 R. P. C. 516, C. A.; *A.-G.* v. *Edwards*, [1891] 1 Ch. 194; *Williamson* v. *North Staffordshire Rail. Co.* (1886), 32 Ch. D. 399, C. A.; *Paine* v. *Chisholm*, [1891] 1 Q. B. 531, C. A.

(*o*) *Assets Development Co., Ltd.* v. *Close Brothers & Co.*, [1900] 2 Ch. 717.

(*p*) R. S. C., Ord. 65, r. 9.

(*q*) *Ibid.*, r. 27 (30); *Harrison* v. *Leutner* (1881), 16 Ch. D. 559; *Re Bowes, Strathmore (Earl)* v. *Vane*, [1900] 2 Ch. 251. As to the liability of a retired partner of a client firm, see title PARTNERSHIP, Vol. XXII., pp. 37, 38, 76; and see, further, as to payment of costs of a partnership action, *ibid.*, p. 91.

(*r*) *McIver & Co., Ltd.* v. *Tate Steamers, Ltd.*, [1902] 2 K. B. 184, C. A.; *Re Ermen, Tatham* v. *Ermen, supra*; *Manchester Corporation* v. *Sugden, Gresham Life Assurance Society* v. *Bishop*, [1903] 2 K. B. 171, C. A.; *Stewart & Co.* v. *Weber* (1903), 89 L. T. 559; *Cavendish* v. *Strutt*, [1904] 1 Ch. 524. As to the discretion of the court as to costs of an action for partition, see title PARTITION, Vol. XXI., pp. 854 *et seq.*, 864.

necessary or proper for the attainment of justice (*s*) or for defending the rights of any party (*t*); and for this purpose he may, in respect of any item, allow a sum in excess of the limit fixed by either scale (*u*). On the other hand, if the taxing master comes to the conclusion that any part of the costs has been incurred or increased by over-caution, negligence, or mistake, he may disallow them against an adverse party (*a*), although they may be properly allowable against the solicitor's own client (*b*). When the solicitor has done work for which no fee is provided by the scales, the taxing master may allow a fee, if he is of opinion that the work in question, having regard to the circumstances, was reasonable and proper (*c*), and if a fee was payable therefor by the former practice (*d*).

Bankruptcy costs.

1270. In bankruptcy all costs allowed must, before they can be passed in a trustee's accounts, be taxed by the prescribed officer (*e*). The items which are allowable for costs are fixed by scale, and depend upon (1) whether the case is a summary one, that is to say,

(*s*) *Bartlett* v. *Higgins*, [1901] 2 K. B. 230, C. A., approving *Delaroque* v. *S. S. Oxenholme & Co.*, [1883] W. N. 227, and disapproving *Ridley* v. *Sutton* (1863), 1 H. & C. 741; *Re Burroughs, Wellcome & Co.'s Trade Marks* (1904), 22 R. P. C. 164.

(*t*) R. S. C., Ord. 65, r. 27 (29).

(*u*) *McIver & Co., Ltd.* v. *Tate Steamers, Ltd.*, [1902] 2 K. B. 184, C. A; *Re Ermen, Tatham* v. *Ermen*, [1903] 2 Ch. 156. The taxing master cannot cut down the sum allowed by the scale (*Price* v. *Clinton*, [1906] 2 Ch. 487; *Walker* v. *Provincial Homes Investment Co.* (1910), 101 L. T. 871, C. A.).

(*a*) As to party and party costs, see *Richardson* v. *Richardson*, [1895] P. 346, C. A.; *Carson* v. *Pickersgill & Sons* (1885), 14 Q. B. D. 859, C. A.; *Picasso* v. *Maryport Harbour Trustees*, [1884] W. N. 85; *Smith* v. *Buller* (1875), L. R. 19 Eq. 473. As to disallowing costs on account of misconduct on the part of the solicitor, see pp. 795, 800, *post;* compare titles HUSBAND AND WIFE, Vol. XVI., p. 549; INJUNCTION, Vol. XVII., p. 296.

(*b*) R. S. C., Ord. 65, r. 27 (29); *Geen* v. *Herring*, [1905] 1 K. B. 152, C. A. (costs of joining unnecessary parties disallowed); *Simmons* v. *Storer* (1880), 14 Ch. D. 154 (if the master thinks the costs were improperly incurred he must disallow them); *Re Wright, Crossley & Co.* (1902), 86 L. T. 280, C. A.; see *Boswell* v. *Coaks* (1887), 36 Ch. D. 444, C. A. As against the client, unusual expenses will be disallowed, if incurred without his authority (*Re Harrison* (1886), 33 Ch. D. 52, C. A.; *Re Blyth and Fanshawe* (1882), 10 Q. B. D. 207, C. A.; distinguished in *Re Rowley* (1886), 30 Sol. Jo. 567; *Re Evans, Ex parte Brown* (1887), 35 W. R. 546); compare title PRACTICE AND PROCEDURE, Vol. XXIII., p. 184.

(*c*) *Harrison* v. *Leutner* (1881), 16 Ch. D. 559, C. A.

(*d*) R. S. C., Ord. 65, r. 27 (30); *Re Bowes, Strathmore (Earl)* v. *Vane*, [1900] 2 Ch. 251 (costs of translations of documents made in the solicitor's office); *Re de Rosaz, Rymer* v. *de Rosaz* (1883), 24 Ch. D. 684 (charges for perusal of lengthy exhibits); see also Masters' Practice Notes, 1902 (Yearly Practice of the Supreme Court, 1914, pp. 2147 *et seq.*). As to elements to be taken into consideration by the taxing master when exercising his discretion, see R. S. C., Ord. 65, r. 27 (38A); *Re Johnston, Mills* v. *Johnston*, [1904] 1 Ch. 132.

(*e*) Namely, the bankruptcy taxing master in the High Court and the registrar in the county court, who must tax them in person (Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 73 (4)). When the trustee or solicitor is guilty of misconduct, the court may refuse to allow the solicitor's costs to be paid out of the estate notwithstanding taxation (*Re Pooley, Ex parte Harper* (1882), 20 Ch. D. 685, C. A.). As to the costs of solicitor employed by a trustee in bankruptcy, see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 107, note (*l*), 127, note (*d*).

SECT. 1. Amount Fixed by Law.

whether the assets have been certified as not likely to realise £100; (2) whether they are likely not to realise £300 (*f*); and (3) whether they are likely to realise more than £300 (*g*).

SECT. 2.—*Special Agreements Fixing Amount.*

SUB-SECT. 1.—*In General.*

Statutes applicable.

1271. The validity of a special agreement between a solicitor and his client as to the terms on which the solicitor's business is to be done depends, so far as the solicitor is concerned, upon two statutes, namely, the Attorneys and Solicitors Act, 1870 (*h*), relating to contentious business (*i*), and the Solicitors Remuneration Act, 1881 (*k*), relating to non-contentious business (*l*). Such an agreement was not necessarily unenforceable before 1870 (*m*), though the court would have viewed it with great jealousy and would have been slow to enforce it, where it was favourable to the solicitor, unless satisfied that it had been made in circumstances precluding any suspicion of undue influence (*n*). Where, on the other hand, the special agreement was favourable to the client, the difficulty did not arise, and the court would enforce the agreement against the solicitor (*o*).

Necessity of compliance with statutes.

A special agreement being thus in the hands of the solicitor an agreement of imperfect validity, the object of the statutes was to relieve the solicitor from his disability, and to prescribe the terms on which such agreements should in future be held valid (*p*). Unless such terms are complied with the solicitor cannot avail himself of the benefits and privileges conferred by the statutes (*q*).

(*f*) Where the estate is estimated to realise less then £300, costs are to be taxed on the lower scale, but if afterwards the estate realises more than that sum they may be retaxed (Bankruptcy Rules, rr. 112, 112A, 112B).

(*g*) *Ibid.*, Appendix, Part II. As to details of allowances relating to different classes of work, both contentious and non-contentious, see General Regulations (*ibid.*, Appendix, Part II. (VII.)) at the end of the scales of costs. As to costs of a solicitor-trustee, see also title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 127, and as to the court's discretion to allow solicitor and client costs, see *ibid.*, p. 321, note (*e*); as to costs of application for commitment, see *ibid.*, p. 344, note (*c*).

(*h*) 33 & 34 Vict. c. 28, ss. 4—15.

(*i*) See pp. 771 *et seq.*, *post.*

(*k*) 44 & 45 Vict. c. 44, s. 8.

(*l*) See pp. 773 *et seq.*, *post.*

(*m*) *Clare* v. *Joseph*, [1907] 2 K. B. 369, C. A., *per* FLETCHER MOULTON, L.J., at p. 376; *Gundry* v. *Sainsbury*, [1910] 1 K. B. 645, C. A., *per* FLETCHER MOULTON, L.J., at p. 650. For examples, see *Re Whitcombe* (1844), 8 Beav. 140; *Stedman* v. *Collett* (1854), 17 Beav. 608; *Scarth* v. *Rutland* (1866), L. R. 1 C. P. 642.

(*n*) *Clare* v. *Joseph*, *supra*, *per* FLETCHER MOULTON, L.J., at p. 376; see *Saunderson* v. *Glass* (1742), 2 Atk. 296; *Re Ingle* (1855), 21 Beav. 275.

(*o*) *Clare* v. *Joseph*, *supra*, *per* FLETCHER MOULTON, L.J., at p. 376; see *Collins* v. *Brook* (1859), 4 H. & N. 270; *Turner* v. *Tennant* (1846), 10 Jur. 429, n.; *Moon* v. *Hall* (1864), 17 C. B. (N. S.) 760; *Tabram* v. *Horn* (1827), 1 Man. & Ry. (K. B.) 228; *Morgan* v. *Taylor* (1859), 5 C. B. (N. S.) 653.

(*p*) *Clare* v. *Joseph*, *supra*; *Gundry* v. *Sainsbury*, *supra*; *Re Jones*, [1896] 1 Ch. 222, C. A.

(*q*) *Clare* v. *Joseph*, *supra*.

The client, however, who sets up a special agreement is not bound to show that it has been made in accordance with the statutory terms, since his agreement is valid at common law and he does not require any assistance from the statutes (*r*); if, however, he claims a benefit given by the statutes, he must comply with their terms (*s*).

SUB-SECT. 2.—*Under the Attorneys and Solicitors Act*, 1870.

Form of agreement.

1272. A solicitor may make a special agreement with his client as to the costs of contentious matters under the Attorneys and Solicitors Act, 1870 (*t*). To bind the client (*a*) the agreement must be in writing (*b*), signed (*c*) by him (*d*). It may be contained in a letter (*e*) or any other document (*f*), provided that all the terms of the agreement appear therein (*g*) and the intention of the parties is clearly shown (*h*). Writing is not, however, necessary to bind the solicitor, since the client's right to enforce a special agreement depends, not on the statute, but on common law (*i*). Thus, a verbal agreement to charge the client nothing for costs binds the solicitor (*k*) and precludes him from recovering anything for costs either from the client (*l*) or from the opposite party (*m*).

Scope of agreement.

1273. The special agreement may relate to any contentious business, whether past or future, and may deal with the whole or

(*r*) *Clare* v. *Joseph*, [1907] 2 K. B. 369, C. A.

(*s*) *Ibid.*

(*t*) 33 & 34 Vict. c. 28, s. 4. Any such agreement is exempt from stamp duty, and no signed bill need be delivered (*ibid.*, s. 15).

(*a*) Such an agreement is valid, notwithstanding the client's subsequent bankruptcy; and money paid to the solicitor without notice of an act of bankruptcy may be retained, though the work is not done till afterwards (*Re Charlwood, Ex parte Masters*, [1894] 1 Q. B. 643, C. A.; *Re Sinclair, Ex parte Payne* (1885), 15 Q. B. D. 616; contrast *Re Beyts and Craig, Ex parte Cooper* (1894), 38 Sol. Jo. 327; *Re Pollitt, Ex parte Minor*, [1893] 1 Q. B. 175; and compare Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 12).

(*b*) Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 4.

(*c*) As to the place of the signature, see *Evans* v. *Hoare*, [1892] 1 Q. B. 593; and compare *Re Frape, Ex parte Perrett*, [1893] 2 Ch. 284, 291, C. A.

(*d*) *Re Thompson, Ex parte Baylis*, [1894] 1 Q. B. 462, disapproving on this point *Re Lewis, Ex parte Munro* (1876), 1 Q. B. D. 724; *Bake* v. *French* (No. 2), [1907] 2 Ch. 215; compare *Re Jones*, [1896] 1 Ch. 222, C. A., where no objection was raised to the agreement on this ground; see, *contra*, *Re Raven, Ex parte Pitt* (1881), 45 L. T. 742.

(*e*) *Pontifex* v. *Farnham* (1892), 5 R. 149; compare *Re Palmer* (1890), 45 Ch. D. 291, C. A.

(*f*) *Re Thompson, Ex parte Baylis, supra.*

(*g*) *Ray* v. *Newton*, [1913] 1 K. B. 249, C. A.; compare *Re Baylis*, [1896] 2 Ch. 107, C. A.

(*h*) *Pontifex* v. *Farnham, supra; Re Van Laun, Ex parte Pattullo*, [1907] 1 K. B. 155.

(*i*) See the text, *supra.*

(*k*) *Clare* v. *Joseph, supra; Gundry* v. *Sainsbury*, [1910] 1 K. B. 645, C. A.; *Jennings* v. *Johnson* (1873), L. R. 8 C. P. 425; *Ibberson* v. *Neck* (1886), 2 T. L. R. 427.

(*l*) He is not entitled to recover even out-of-pocket expenses (*Turner* v. *Tennant* (1846), 10 Jur. 429, n.), unless the agreement is in fact to charge only out-of-pocket expenses (*Jones* v. *Reade* (1836), 5 Dowl. 216).

(*m*) *Gundry* v. *Sainsbury, supra.*

SECT. 2. Special Agreements Fixing Amount.

part of the costs (*n*), and their amount or manner of payment (*o*). The remuneration under the agreement may be greater or less than that which would have been payable in the absence of any agreement (*p*); but the solicitor has no further claim beyond the terms of the agreement in respect of matters covered thereby (*q*). The solicitor cannot, by his agreement, contract out of liability for negligence (*r*), nor must the agreement be champertous (*s*).

Allowance by taxing master.

1274. No remuneration under the agreement is to be received (*t*) by the solicitor until the agreement has been examined and allowed by a taxing master (*u*). If the taxing master is of opinion that it is not fair and reasonable (*a*), as, for instance, where the agreed sum is in addition to the ordinary remuneration (*b*), or where, in the circumstances, it is excessive (*c*), he may require the opinion of the court to be taken (*d*); and the court may reduce the amount payable, or order the agreement to be cancelled and the costs to be taxed as if no such agreement had been made (*e*).

(*n*) Compare *Mackendrick* v. *National Union of Dock Labourers* (1911), 48 Sc. L. R. 17, where the agreement was held to cover not only charges and disbursements, but also the Edinburgh agent's account.

(*o*) Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 4; *Re Russell, Son and Scott* (1885), 30 Ch. D. 114, *per* KAY, J., at p. 116. Apparently the amount must not be paid by a commission or percentage on the amount recovered, as this would make the agreement champertous (*Re Attorneys and Solicitors Act*, 1870 (1875), 1 Ch. D. 573, *per* JESSEL, M.R., at p. 575); and see *Hilton* v. *Woods* (1867), L. R. 4 Eq. 432; *Knight* v. *Bowyer* (1858), 5 De G. & Sm. 421, C. A.; *Re Hoggart's Settlement* (1912), 56 Sol. Jo. 415 (where the agreement in question was held not to be champertous); see also title ACTION, Vol. I., pp. 53 *et seq.*

(*p*) Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 4.

(*q*) *Ibid.*, s. 6.

(*r*) *Ibid.*, s. 7.

(*s*) *Ibid.*, s. 11; see *Pince* v. *Beattie* (1863), 9 Jur. (N. S.) 1119; *Re Attorneys and Solicitors Act*, 1870, *supra*; *Strange* v. *Brennan* (1846), 2 Coop. *temp.* Cott. 1; *Earle* v. *Hopwood* (1861), 9 C. B. (N. S.) 566; *Grell* v. *Levy* (1864), 16 C. B. (N. S.) 73 (where the agreement was made in France and was valid by French law). As to champerty generally, see title ACTION, Vol. I., pp. 53 *et seq.*

(*t*) This provision does not apply where the agreement relates to payments which have already been made (*Re Thompson, Ex parte Baylis*, [1894] 1 Q. B. 462). But the taking of a bill of exchange, which is dishonoured, for an agreed sum, is not sufficient (*Ray* v. *Newton*, [1913] 1 K. B. 249, C. A.).

(*u*) Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 4; see also *ibid.*, s. 11, relating to agreements by guardians, trustees and committees. With these exceptions special agreements are exempt from taxation (*ibid.*, s. 15). The court will not, on taxation, determine whether a special agreement exists, and how the agreed costs and charges are to be paid (*Re Rhodes* (1844), 8 Beav. 224; *Re Beale* (1849), 11 Beav. 600; *Re Thompson* (1845), 8 Beav. 237).

(*a*) As to the meaning of "fair and reasonable," see *Re Owen, Ex parte Payton* (1885), 52 L. T. 628; *Re Stuart, Ex parte Cathcart*, [1893] 2 Q. B. 201, C. A.

(*b*) *Re Montagu, Scott and Baker*, [1889] W. N. 40.

(*c*) *Mearns* v. *Knapp* (1889), 37 W. R. 585.

(*d*) The opinion of the court cannot be taken before the amount agreed on is payable (*Re Attorneys and Solicitors Act*, 1870, *supra*).

(*e*) Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 4; *Bake* v. *French* (No. 2), [1907] 2 Ch. 215.

SECT. 2. Special Agreements Fixing Amount.

Enforcement of agreement.

1275. No action can be brought upon the agreement (*f*); but all questions relating to its validity, effect, or enforcement are to be raised summarily by application to the court (*g*). On such application the court may, if it is of opinion that the agreement is fair and reasonable, enforce it; otherwise it may set the agreement aside and order the costs to be taxed as if such agreement had not been made (*h*). In special circumstances the court has also power to reopen the agreement after payment, provided that the client makes application within twelve months after payment (*i*).

Quantum meruit.

1276. If the solicitor dies or becomes incapable of acting before the completion of the work to which the agreement refers, the court may, on the application of any party to the agreement or his personal representative, deal with the agreement so far as it has been acted upon; if the court thinks the agreement fair and reasonable, it may direct the taxing master to ascertain the value of the work done thereunder (*k*). The same principle applies when the client changes his solicitor before the completion of the work. In this case the court may direct the taxing master to have regard to the circumstances in which the change of solicitors has taken place; and the solicitor is not entitled to be paid the full amount agreed unless it appears that there were no reasonable grounds for the change (*l*).

Position of third persons.

1277. The existence of a special agreement does not affect the position of third persons as regards costs recoverable from or payable to the client, except that the client cannot recover as costs from any other person more than the amount payable by him to his own solicitor under the agreement (*m*). If therefore the solicitor has agreed to charge his client no costs, no costs can be awarded to the client (*n*).

SUB-SECT. 3.—*Under the Solicitors Remuneration Act*, 1881.

Form of agreement.

1278. As regards non-contentious business (*o*), a solicitor may

(*f*) But the solicitor may sue the client for failure to employ him under the agreement (*Rees* v. *Williams* (1875), L. R. 10 Exch. 200).

(*g*) As to what court has jurisdiction, see Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 8; title COUNTY COURTS, Vol. VIII., p. 585; and see *Re Jones*, [1896] 1 Ch. 222, C. A., where it was held, as regards an agreement relating to business at a police court or quarter sessions, that the jurisdiction was in the High Court. In the King's Bench Division the application is by a summons in chambers (*Re Thomas*, [1893] 1 Q. B. 670).

(*h*) Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 9. The court may do this although the taxing master has allowed the agreement (*Re Stuart, Ex parte Cathcart*, [1893] 2 Q. B. 201, C. A.).

(*i*) Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 10.

(*k*) *Ibid.*, s. 13.

(*l*) *Ibid.*, s. 14.

(*m*) *Ibid.*, s. 5; *Re Owen, Ex parte Payton* (1885), 52 L. T. 628. The position is different when the solicitor is the salaried servant of the client (*Henderson* v. *Merthyr Tydfil Urban Council*, [1900] 1 Q. B. 434).

(*n*) *Gundry* v. *Sainsbury*, [1910] 1 K. B. 645, C. A.

(*o*) This is defined as business connected with sales, purchases, leases, mortgages, settlements and other matters of conveyancing, and other business not being business in any action or transacted in any court or in

SECT. 2. Special Agreements Fixing Amount.

make a special agreement as to his remuneration under the Solicitors Remuneration Act, 1881 (*p*). The agreement must be in writing (*q*), signed by the person to be bound thereby (*r*) or by his agent in that behalf (*s*).

The agreement may be made at any time before or after the business is undertaken or completed; it may provide for remuneration by a gross sum, commission or percentage (*t*), or by salary or otherwise (*u*), and it may, at the option of the parties, be inclusive or exclusive of disbursements (*a*).

Enforcement of agreement.

1279. The agreement may be enforced or set aside by action (*b*); or it may be reviewed under an order for taxation (*c*). In this case the taxing master may, if the agreement is objected to as unfair or unreasonable, inquire into the facts and certify them to the court, and the court may order the agreement to be cancelled or the amount payable thereunder to be reduced (*d*).

SECT. 3.—*Delivery of a Bill of Costs.*

Necessity for delivery.

1280. It is provided by statute (*e*) that no solicitor is to commence or maintain any action for his fees, charges, or disbursements until the expiration of one calendar (*f*) month after he has delivered

the chambers of any judge or master, and not being otherwise contentious business (Solicitors Remuneration Act, 1881 (44 & 45 Vict. c. 44), s. 2). An agreement as to non-professional work is not affected by the statute, and if it is disputed that the agreement relates to professional work, the court cannot order a taxation until that question is determined (*Re Inderwick* (1883), 25 Ch. D. 279, C. A.; compare *Re Gray, Ex parte Everitt* (1886), 30 Sol. Jo. 551).

(*p*) 44 & 45 Vict. c. 44, s. 8 (1).

(*q*) *Re Baylis*, [1896] 2 Ch. 107, C. A. (where a document referring to a verbal agreement was held to be insufficient).

(*r*) *Re Frape, Ex parte Perrett*, [1893] 2 Ch. 284, C. A.

(*s*) Solicitors Remuneration Act, 1881 (44 & 45 Vict. c. 44), s. 8 (2). *Re West, King and Adams, Ex parte Clough*, [1892] 2 Q. B. 102.

(*t*) An agreement to take a percentage of a sum to be recovered in non-contentious proceedings is not champertous, but will be strictly regarded by the court, which will take into consideration the question whether the client has had independent advice (*Re Hoggart's Settlement* (1912), 56 Sol. Jo. 415).

(*u*) Solicitors Remuneration Act, 1881 (44 & 45 Vict. c. 44), s. 8 (1). The agreed remuneration must be in lieu of, and not in addition to, the scale fee (*Re Montagu, Scott and Baker*, [1889] W. N. 40).

(*a*) Solicitors Remuneration Act, 1881 (44 & 45 Vict. c. 44), s. 8 (3).

(*b*) *Ibid.*, s. 8 (4).

(*c*) *Ibid.* But some ground for taxation must be shown (*Re Palmer* (1890), 45 Ch. D. 291, C. A.); compare *Re Duncan* (1907), 51 Sol. Jo. 485.

(*d*) Solicitors Remuneration Act, 1881 (44 & 45 Vict. c. 44), s. 8 (4).

(*e*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37. The statute does not apply to an Irish solicitor suing here for work done in Ireland (*Kernaghan* v. *Wadeson* (1855), 3 C. L. R. 764). The defence under the statute should be specially pleaded (*Lane* v. *Glenny* (1837), 7 Ad. & El. 83; *Robinson* v. *Rowland* (1838), 2 Jur. 136). As to the right to sue on an account stated, see p. 776, *post*; as to the solicitor's remedies for costs, see pp. 812 *et seq.*, *post*.

(*f*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 48. The month is reckoned exclusive of the day of delivery (*Blunt* v. *Heslop* (1838), 8 Ad. & El. 577). Where the bill is sent by post the month begins on the day following that on which the bill will be delivered in the ordinary course of post (*Browne* v. *Black*, [1912] 1 K. B. 316, C. A.). The solicitor may, with

SECT. 3. Delivery of a Bill of Costs.

his bill (*g*) to the person to be charged (*h*). This provision applies only where the business to which the solicitor's claim relates was done by him in his professional capacity; he need not deliver a bill where his claim relates to business of a different kind (*i*). As regards disbursements, a distinction must be drawn between professional disbursements, that is to say, payments made by the solicitor in his professional capacity, which must be included in his bill of costs, and disbursements made by him merely as agent on behalf of his client, which must be inserted in a separate cash account, and not in the bill of costs (*k*). Professional disbursements include payments which are necessarily made by the solicitor in pursuance of his professional duty (*l*), such as, for instance, court fees (*m*) or counsel's fees (*n*), or which are sanctioned as professional disbursements by the general and established custom of the profession (*o*). To the class of non-professional disbursements belong all payments which are made by the solicitor merely as a matter of convenience and not in pursuance of his professional duty (*p*), and which are therefore to be regarded as advances to the client (*q*), such as, for instance, payments of money into court as security for costs (*r*), payments of stamp (*s*), estate (*t*) or other

Disbursements.

leave, bring his action before the month has expired, if he satisfies the court that there is probable cause for believing that the party chargeable is about to quit England, or to become a bankrupt, or to compound with his creditors, or to do any other act which in the opinion of the court would tend to defeat or delay payment (Legal Practitioners Act, 1875 (38 & 39 Vict. c. 79), s. 2). As to when time begins to run against a solicitor, see title LIMITATION OF ACTIONS, Vol. XIX., p. 48.

(*g*) For a case where, in the circumstances, the solicitor was held entitled to sue though no bill had been delivered, see *Turner* v. *Willis*, [1905] 1 K. B. 468, where there had been cross-claims and a balance had been agreed in favour of the solicitor; see also title CONTRACT, Vol. VII., p. 492; and compare title POOR LAW, Vol. XXII., p. 541.

(*h*) This does not include a guarantor (*Greening* v. *Reeder* (1892), 67 L. T. 28).

(*i*) *Bush* v. *Martin* (1863), 2 H. & C. 311; compare *Mowbray* v. *Fleming* (1809), 11 East, 285; *Re Eldridge* (1849), 12 Beav. 387; *Re Inderwick* (1883), 25 Ch. D. 279; *Re Shilson, Coode & Co.*, [1904] 1 Ch. 837. Work done by a solicitor as revision agent (*Re Andrews* (1853), 17 Beav. 510) or election agent (*Re Osborne* (1858), 25 Beav. 353) is work done in a professional capacity.

(*k*) *Re Remnant* (1849), 11 Beav. 603; followed in *Re Kingdon and Wilson*, [1902] 2 Ch. 242, C. A., and *Re Blair and Girling*, [1906] 2 K. B. 131, C. A.

(*l*) *Re Remnant, supra.* A London agent's charges are to be given in detail as part of his bill; they are not disbursements (*Re Pomeroy and Tanner*, [1897] 1 Ch. 284).

(*m*) Compare *Re Grant, Bulcraig & Co.*, [1906] 1 Ch. 124.

(*n*) *Re Harrison* (1886), 33 Ch. D. 52, C. A.; *Re Metcalfe* (1862), 30 Beav. 406.

(*o*) *Re Remnant, supra*; *Franklin* v. *Featherstonhaugh* (1834), 1 Ad. & El. 475.

(*p*) *Re Remnant, supra.*

(*q*) *Re Taylor, Stileman, and Underwood*, [1891] 1 Ch. 590, C. A.; compare *Wardle* v. *Nicholson* (1833), 4 B. & Ad. 469.

(*r*) *Re Buckwell and Berkeley*, [1902] 2 Ch. 596, C. A.

(*s*) *Re Blair and Girling, supra.*

(*t*) *Re Kingdon and Wilson, supra*, overruling *Re Lamb* (1889), 23 Q. B. D. 5.

SECT. 3. Delivery of a Bill of Costs.

duties (*a*), and payments due from the client whether under a judgment (*b*) or a contract (*c*).

The solicitor's failure to deliver a bill precludes him only from maintaining an action for his costs; it does not preclude him from setting off his costs in an action brought against him by his client (*d*), or from proving for them in his client's bankruptcy (*e*); nor does it preclude him from maintaining an action in any other form than upon the bill, as, for instance, upon an account stated (*f*), or upon a promissory note given to him by his client on account of the costs (*g*), or, where he has taken a mortgage to secure his costs, for foreclosure (*h*).

Contents of bill.

1281. The bill must contain sufficient information to enable the client to obtain advice as to its taxation (*i*). It must, therefore, be a complete bill of the whole of the fees, charges, and disbursements in respect of the particular business done (*k*). The business to which it relates should be specified item by item (*l*). Each item should be dated (*m*), and should state its subject-matter precisely, and not in vague and general terms (*n*). If the bill relates to contentious business, the action or actions in question and the court concerned should be specified (*o*). All items must be charged in a taxable shape (*p*); each item must therefore be charged specifically, and

(*a*) *Re Haigh* (1849), 12 Beav. 307; *Re Bedson* (1846), 9 Beav. 5.

(*b*) *Woollison* v. *Hodgson* (1834), 2 Dowl. 360; *Harrison* v. *Ward* (1835), 4 Dowl. 39.

(*c*) *Re Kingdon and Wilson*, [1902] 2 Ch. 242, C. A., *per* COZENS-HARDY, L.J., at p. 254.

(*d*) *Harrison* v. *Turner* (1847), 10 Q. B. 482; *Ex parte Cooper* (1854), 14 C. B. 663; *Brown* v. *Tibbits* (1862), 11 C. B. (N. S.) 855; see title SET-OFF AND COUNTERCLAIM, Vol. XXV., p. 493.

(*e*) *Eicke* v. *Nokes* (1829), Mood. & M. 303; *Re Howell, Ex parte Howell* (1812), 1 Rose, 312; compare *Re Duffield, Ex parte Peacock* (1873), 8 Ch. App. 682.

(*f*) *Turner* v. *Willis*, [1905] 1 K. B. 468; see title CONTRACT, Vol. VII., p. 492.

(*g*) *Jeffreys* v. *Evans* (1845), 14 M. & W. 210.

(*h*) *Thomas* v. *Cross* (1864), 11 L. T. 430.

(*i*) *Engleheart* v. *Moore* (1846), 15 M. & W. 548; *Waller* v. *Lacy* (1840), 1 Man. & G. 54, 69; *Haigh* v. *Ousey* (1857), 7 E. & B. 578; *Keene* v. *Ward* (1849), 13 Q. B. 515. A bill containing scandalous matters will be struck out (*Re Miller, Re French, Love* v. *Hills* (1884), 54 L. J. (CH.) 205).

(*k*) *Cobbett* v. *Wood*, [1908] 2 K. B. 420, C. A. (where the bill omitted all items of party and party costs, and charged extra costs only), commenting on *Re Mercantile Lighterage Co.*, [1906] 1 Ch. 491, 495; see also *Pigot* v. *Cadman* (1857), 1 H. & N. 837; *Waller* v. *Lacy*, *supra*, at p. 69.

(*l*) *Re Smith* (1841), 4 Beav. 309; *Wilkinson* v. *Smart* (1875), 33 L. T. 573.

(*m*) Masters' Practice Notes, 1902 (Yearly Practice of the Supreme Court, 1914, pp. 2147 *et seq.*).

(*n*) *Re Pender* (1847), 10 Beav. 390.

(*o*) *Lewis* v. *Primrose* (1844), 6 Q. B. 265; *Engleheart* v. *Moore*, *supra*; *Martindale* v. *Faulkner* (1846), 2 C. B. 706; *Ivimey* v. *Marks* (1847), 16 M. & W. 843; *Anderson* v. *Boynton* (1849), 13 Q. B. 308; *Sargent* v. *Gannon* (1849), 7 C. B. 742; *Dimes* v. *Wright* (1849), 8 C. B. 831. This information may be derived from letters accompanying the bill (*Cozens* v. *Graham* (1852), 12 C. B. 398).

(*p*) *Philby* v. *Hazle* (1860), 8 C. B. (N. S.) 647.

it is not sufficient to detail the separate items and to charge a lump sum at the end of the bill (*q*). Professional charges must be entered in a separate column from disbursements (*r*); and items representing disbursements not paid at the time when the bill was delivered must be set out under a separate heading (*s*).

Delivery in parts.

The whole bill need not be delivered at once; there is no objection to a delivery in parts, or to a delivery of successive bills relating to particular periods or particular groups of items (*t*).

Signature.

1282. The bill must be signed by the solicitor, his personal representative, or assignee (*a*), or, in case of a partnership, by any of the partners, either in his own name or the name of the partnership (*b*); or, if not signed, must be enclosed in or accompanied by a letter so signed and referring to the bill (*c*). Signature by a clerk is not sufficient (*d*), unless ratified by the solicitor (*e*). The client may treat the delivery of an unsigned bill as a nullity, or, if he thinks fit, he may waive the absence of the signature and adopt the bill (*f*), as, for instance, by applying for its taxation (*g*).

Name of person to be charged.

1283. The bill must clearly show the person who is to be charged, otherwise he is not liable upon it (*h*). It is immaterial whether his

(*q*) *Wilkinson* v. *Smart* (1875), 33 L. T. 573.

(*r*) R. S. C., Ord. 65, r. 19II. As to the allowance of moneys properly paid out of pocket, see *Re Page* (No. 3) (1863), 32 Beav. 487; *Re Porter, Amphlett and Jones*, [1912] 2 Ch. 98, following *Southampton Guardians* v. *Bell* (1888), 21 Q. B. D. 297, and distinguishing *Re James (Frank) & Sons*, [1903] W. N. 99; and compare *Osmond* v. *Mutual Cycle and Manufacturing Supply Co.*, [1899] 2 Q. B. 488, C. A.

(*s*) R. S. C., Ord. 65, r. 27 (29A), altering the law as laid down in *Sadd* v. *Griffin*, [1908] 2 K. B. 510, C. A.

(*t*) *Cobbett* v. *Wood*, [1908] 2 K. B. 420, C. A., *per* FLETCHER MOULTON, L.J., at p. 428; *Ottaway* v. *Hamilton* (1878), 3 C. P. D. 393, C. A. On the other hand, separate bills relating to distinct transactions are not to be treated as one bill because they are delivered together (*Re Ward*, [1896] 2 Ch. 31, C. A.). As to when there are natural breaks in a transaction permitting different bills to be sent in, see p. 738, *ante*.

(*a*) *Ingle* v. *M'Cutchan* (1884), 12 Q. B. D. 518; *Re Ward* (1885), 28 Ch. D. 719.

(*b*) *Owens* v. *Scales* (1842), 10 M. & W. 657; *Smith* v. *Brown* (1831), 5 C. & P. 94. It is immaterial that the bill contains items of work done before the then partnership was constituted (*Pilgrim* v. *Hirchfelt* (1865), 9 L. T. 288); and the then partnership may sue in respect of such items as assignees of the old firm (*Penley* v. *Anstruther* (1883), 52 L. J. (CH.) 367).

(*c*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37; compare *Re Bush* (1844), 8 Beav. 66; *Blake* v. *Hummel* (1884), 1 T. L. R. 22.

(*d*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.

(*e*) *Angell* v. *Tratt* (1883), Cab. & El. 118 (where the solicitor, who was paralysed, had his hand subsequently guided over the signature with a dry pen).

(*f*) *Re Gedye* (1851), 14 Beav. 56; compare *Pritchard* v. *Draper* (1831), 1 Russ. & M. 191; *Gerrard* v. *Arnold* (1838), 6 Dowl. 336.

(*g*) *Re Pender* (1846), 2 Ph. 69; compare *Whalley* v. *Glover* (1850), 3 Car. & Kir. 13.

(*h*) *Manning* v. *Glyn and Sheehan* (1835), 1 Jo. Ex. Ir. 513; distinguished and doubted in *Roberts* v. *Lucas* (1855), 11 Exch. 41, where it was suggested that a personal delivery of the bill to the person liable might be sufficient, though it did not specify his name.

SECT. 3. **Delivery of a Bill of Costs.**

name appears on the face of the bill (*i*), or whether it is contained in some writing connected with the bill (*k*), as, for instance, the envelope in which it is sent (*l*), or the letter accompanying it (*m*).

Mode of delivery.

1284. The bill must be delivered (*n*) to the person to be charged (*o*), or to some person authorised to accept delivery on his behalf (*p*). It may be delivered to him personally (*q*), or sent by post to or left at his business (*r*) or private address (*s*), or at his last known place of abode (*t*), or at any address to which he may have directed letters to be sent (*a*).

Effect of delivery.

1285. For purposes of taxation (*b*) the solicitor is, as a general rule, bound by his bill as delivered (*c*); and he is not entitled, as of course, to withdraw the bill delivered and substitute an amended one, whether on the first bill he has overcharged (*d*) or undercharged (*e*) his client. Where the overcharge or undercharge is intentional no amendment can be made without the leave of the court (*f*). Leave will only be granted in special circumstances and

Amendment.

(*i*) *Phipps* v. *Daubney* (1851), 16 Q. B. 514, Ex. Ch.; *Mant* v. *Smith* (1859), 4 H. & N. 324.

(*k*) *Champ* v. *Stokes* (1861), 6 H. & N. 683; *Kienran* v. *Brereton* (1866), 17 I. C. L. R. 203.

(*l*) *Roberts* v. *Lucas* (1855), 11 Exch. 41.

(*m*) *Taylor* v. *Hodgson* (1845), 3 Dow. & L. 115.

(*n*) *Phipps* v. *Daubney, supra*; *Re Robertson* (*a Solicitor*) (1889), 42 Ch. D. 553. As to proof of delivery by the indorsement of a deceased clerk, see *Champneys* v. *Peck* (1816), 1 Stark. 404.

(*o*) *Gridley* v. *Austen* (1849), 16 Q. B. 504; *Re Abbott* (1861), 4 L. T. 576.

(*p*) *Re Bush* (1844), 8 Beav. 66; *Phipps* v. *Daubney, supra*; *Eggington* v. *Cumberledge* (1847), 1 Exch. 271; *Re Kellock* (*Solicitors*) (1887), 56 L. T. 887; *Re Layton, Steele & Co.* (1890), 38 W. R. 652.

(*q*) In the case of joint contractors, delivery to one is sufficient (*Mant* v. *Smith, supra*; *Crowder* v *Shee* (1808), 1 Camp. 437; *Finchett* v. *How and Jarratt* (1809), 2 Camp. 275; *Oxenham* v. *Lemon* (1823), 2 Dow. & Ry. (K. B.) 461; *Kiteley* v. *Scofield* (1842), 6 Jur. 1059; *Edwards* v. *Lawless* (1848), 6 C. B. 329).

(*r*) *Edwards* v. *Lawless, supra*; *Blandy* v. *De Burgh* (1848), 6 C. B. 623.

(*s*) Delivery to a servant at his dwelling-house is sufficient (*Macgregor* v. *Keily* (1849), 3 Exch. 794).

(*t*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37. If the bill is actually delivered, it is a good delivery, though it was misdirected (*Welsh* v. *Silwell* (1847), 11 Jur. 471).

(*a*) *Spier* v. *Bernard* (1863), 8 L. T. 396.

(*b*) See pp. 780 *et seq.*, *post*.

(*c*) *Loveridge* v. *Botham* (1797), 1 Bos. & P. 49; *Re Carven* (1845), 8 Beav. 436; *Davis* v. *Dysart* (*Earl*) (1856), 8 De G. M. & G. 33, C. A.; *Re Jones* (*a Solicitor*), *Ex parte King* (1885), 54 L. T. 648; *Hays* v. *Trotter* (1834), 5 B. & Ad. 1106.

(*d*) *Re Heather* (1870), 5 Ch. App. 694; followed in *Re Holroyde and Smith* (1881), 43 L. T. 722; *Re Blakesley and Beswick* (1863), 32 Beav. 379.

(*e*) *Re Wells* (1845), 8 Beav. 416; *Re Walters* (1845), 9 Beav. 299. The omission of items does not preclude the solicitor from recovering upon the items properly inserted (*Haigh* v. *Ousey* (1857), 7 E. & B. 578; followed in *Blake* v. *Hummel* (1884), Cab. & El. 345; *Pilgrim* v. *Hirchfelt* (1863), 9 L. T. 288).

(*f*) *Re Thompson* (1885), 30 Ch. D. 441, C. A.; *Lumsden* v. *Shipcote Land Co.*, [1906] 2 K. B. 433, C. A., *per* VAUGHAN WILLIAMS, L.J., at p. 436; see also *Re Wells, supra*; *Re Walters, supra*. The consent of the client to the amendment is not necessarily sufficient (*Re Heather, supra*).

where the solicitor has acted with perfect fairness to his client, as, for instance, where the solicitor informs him that the first bill includes charges which cannot be sustained on taxation (*g*). Where, however, the overcharge or undercharge is due to accident or mistake, the solicitor will be permitted to rectify the bill, by omitting the items wrongly inserted (*h*) or by inserting or increasing the items unintentionally omitted or undercharged (*i*). Moreover, where a lump sum is claimed in the bill in respect of a particular transaction, the solicitor may, on taxation, bring in particulars showing how the lump sum is made up (*k*).

Rectification.

Where the solicitor sues the client on the second bill, and succeeds on the question of the client's liability, no question of taxation having been raised, the court may refer the question of amount to a taxing master, who is entitled to consider both bills (*l*).

1286. By statute (*m*) the court is empowered to order a solicitor to deliver a bill to the client in the same cases in which it may refer a bill, when delivered, to the taxing master (*n*); if, however, the solicitor makes no claim for costs and swears that he has not retained any costs out of the client's moneys, he cannot be ordered to deliver a bill under the statute, though it seems that the court may order him to do so under its general jurisdiction (*o*). Delivery of a bill may also be ordered on the application of any person other than the client, who is entitled to claim taxation of the bill when delivered (*p*). The court has also, under its general jurisdiction, power to order a solicitor, on the application of the client, to deliver a bill (*q*), though this power is exercised rarely and in special circumstances only (*r*).

Order for delivery.

(*g*) *Re Thompson* (1885), 30 Ch. D. 441, C. A.; *Re Andrews* (1853), 17 Beav. 510; *Re Chambers* (1865), 34 Beav. 177.

(*h*) *Re Negus*, [1895] 1 Ch. 73 (where the solicitor delivered an item bill instead of a scale bill); but see *Re Whalley* (1855), 20 Beav. 576.

(*i*) *Re Whalley, supra; Re Walters* (1845), 9 Beav. 299; *Marshall* v. *Oxford* (1832), 5 Sim. 456.

(*k*) *Re Tilleard* (1863), 32 Beav. 476; *Re Russell, Son and Scott* (1886), 55 L. T. 71, C. A.; *Re Kellock* (*Solicitors*) (1887), 56 L. T. 887.

(*l*) *Lumsden* v. *Shipcote Land Co.*, [1906] 2 K. B. 433, C. A. The first bill is evidence against the new or increased items in the second bill (*ibid.*, *per* FLETCHER MOULTON, L.J., approving Archbold's Practice, 14th ed., p. 157).

(*m*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37. As to the procedure, see pp. 780 *et seq.*, *post*; title PRACTICE AND PROCEDURE, Vol. XXIII., pp. 190, 191.

(*n*) The solicitor cannot resist the application on the ground of delay, provided that he has the materials necessary for the bill (*Re Baylis*, [1896] 2 Ch. 107; compare *Re Ker* (1850), 12 Beav. 390, C. A.), or on the ground that his retainer was champertous (*Re Thomas, Jaquess* v. *Thomas*, [1894] 1 Q. B. 747, C. A.).

(*o*) *Re Landor* (*a Solicitor*), [1899] 1 Ch. 818; *Re Griffith, Eggar and Griffith* (1891), 7 T. L. R. 268.

(*p*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 40; *Re Blackmore* (1851), 13 Beav. 154; *Tanner* v. *Lea* (1842), 4 Man. & G. 617.

(*q*) *Re West, King and Adams, Ex parte Clough*, [1892] 2 Q. B. 102;

(*r*) For note (*r*) see p. 780, *post*.

SECT. 4. Taxation of Costs.

SECT. 4.—*Taxation of Costs.*

SUB-SECT. 1.—*Jurisdiction of the Court.*

Threefold jurisdiction.

1287. In dealing with a solicitor's costs the High Court (*s*) has a threefold jurisdiction (*t*). Usually the court acts under its statutory jurisdiction, by virtue of which the bill is referred to a taxing master for taxation (*a*). Where the statutory jurisdiction is inapplicable, as where part only of a bill is involved, the court may order taxation under its general jurisdiction over its officers (*b*). Where taxation is no longer possible (*c*), the court may, if the solicitor has sued the client to judgment upon the bill (*d*), or claimed for its amount in the administration of the client's estate (*e*), refer the bill to a taxing master for the purpose of investigating the reasonableness of its charges; in this case, the court acts under its ordinary jurisdiction in dealing with contested claims, and the taxing master does not tax the bill, but inquires on behalf of the court into the propriety of any disputed items (*f*).

compare *Duffett* v. *McEvoy* (1885), 10 App. Cas. 300, P. C. Where the relationship of solicitor and client exists or has existed, the client may take out a summons for the delivery of a cash account, or the payment of moneys, or the delivery of securities, and the solicitor may be ordered to deliver a list of the moneys or securities in his custody or control or to bring into court the whole or part of the same; provision is made at the same time for any claim for costs or lien (R. S. C., Ord. 52, r. 25; *Haydon* v. *Cartwright*, [1902] W. N. 163, C. A.). This rule does not apply where the money is in the solicitor's hands as a loan (*Re Y.* (*a Solicitor*), (1910) 54 Sol. Jo. 459).

(*r*) *Re Foljambe* (1846), 9 Beav. 402 (where the solicitor had undertaken to do so); *Re Bailey* (1865), 34 Beav. 392.

(*s*) As to taxation of costs of private Bills, see title PARLIAMENT, Vol. XXI., p. 745; in the county court, Vol. VIII., pp. 597 *et seq.*; as to taxation by the clerk of the peace where the bill is payable by a local authority, see title LOCAL GOVERNMENT, Vol. XIX., pp. 288 *et seq.*; as to the taxation of counsel's fees, see title BARRISTERS, Vol. II., pp. 418 *et seq.*; and as to taxation of costs in the Divorce Division, see title HUSBAND AND WIFE, Vol. XVI., pp. 580 *et seq.* The costs of obtaining a provisional order for a tramway or light railway are taxed on the High Court scale and not on the parliamentary scale; see title TRAMWAYS AND LIGHT RAILWAYS, Vol. XXVII., pp. 785, note (*h*) (tramway), 832, note (*s*) (light railway).

(*t*) *Re Park, Cole* v. *Park* (1889), 41 Ch. D. 326, C. A., *per* STIRLING, J., at p. 331; compare *Wilson* v. *Gutteridge* (1824), 3 B. & C. 157.

(*a*) See p. 781, *post*. As to the effect of an undertaking to pay costs when taxed, for the purpose of the Statute of Limitations, see title LIMITATION OF ACTIONS, Vol. XIX., p. 66.

(*b*) *Re Johnson and Weatherall* (1888), 37 Ch. D. 433, C. A.; affirmed, *sub nom. Storer & Co.* v. *Johnson* (1890), 15 App. Cas. 203; *Re Thomas, Jaquess* v. *Thomas*, [1894] 1 Q. B. 747, C. A.; *Re Griffith, Eggar and Griffith* (1891), 7 T. L. R. 268; *Re Druce* (1893), 94 L. T. Jo. 583.

(*c*) See pp. 785 *et seq.*, *post*.

(*d*) *Lumsden* v. *Shipcote Land Co.*, [1906] 2 K. B. 433, C. A.

(*e*) *Re Park, Cole* v. *Park, supra* (deceased client); *Re Van Laun, Ex parte Chatterton*, [1907] 2 K. B. 23, C. A. (bankrupt client); *Re Foss, Bilbrough, Plaskitt and Foss*, [1912] 2 Ch. 161 (insolvent company), discussing *Re Marseilles Extension Railway and Land Co., Ex parte Evans* (1870), L. R. 11 Eq. 151, *Re James, Ex parte Quilter* (1850), 4 De G. & Sm. 183, *Re Liverpool Household Stores Association*, [1889] W. N. 48, *Re Brabant* (1879), 23 Sol. Jo. 779, and *Re Park, Cole* v. *Park, supra*; compare *Re Companies* (*Consolidation*) *Act*, 1908, *Re Palace Restaurants, Ltd.* (1914), *Times*, 21st January, C. A.

(*f*) *Re Park, Cole* v. *Park, supra*, discussing *Anderson* v. *May* (1800), 2

SECT. 4. Taxation of Costs.

Statutory jurisdiction.

1288. The statutory jurisdiction of the court extends over all bills relating to business transacted by a solicitor in his professional capacity (*g*), but not over bills relating to business transacted by him in any other capacity (*h*). Thus, taxation will be ordered where the bill relates to a solicitor's charges as election agent (*i*), but not as canvassing agent (*k*), or where it relates to the fees for holding a court leet as steward of a manor (*l*), though the ordinary fees as steward of the manor are not taxable (*m*). Where the solicitor acts in a professional capacity, it is immaterial whether the bill relates to contentious or non-contentious (*n*) business, or as regards contentious business, whether the business was civil or criminal (*o*) or parliamentary (*p*). Taxation may also be ordered of an agency bill between a country solicitor and his London agent (*q*).

Persons entitled to taxation: (1) Client.

1289. The persons entitled to invoke the jurisdiction of the court are the following, namely:—

(1) The client (*r*), as being the person chargeable with the bill (*s*),

Bos. & P. 237, and *Hooper* v. *Till* (1779), 1 Doug. (K. B.) 198; *Re Woods, Ex parte Ditton* (1880), 13 Ch. D. 318, C. A.; *Allen* v. *Jarvis* (1869), 4 Ch. App. 616.

(*g*) *Re Ward, Allen* v. *Aldridge* (1844), 5 Beav. 401. It is immaterial that the work is done out of the jurisdiction (*Re Maugham* (1885), 29 Sol. Jo. 576).

(*h*) *Re Ward, Allen* v. *Aldridge, supra*; *Re Baker, Lees & Co.*, [1903] 1 K. B. 189, C. A.; compare *Bush* v. *Martin* (1863), 2 H. & C. 311. Unless he adopts the character of a solicitor by delivering the bill in the usual form (*Re Jones* (1872), L. R. 13 Eq. 336).

(*i*) *Re Osborne* (1858), 25 Beav. 353; *Re Andrews* (1853), 17 Beav. 510.

(*k*) *Re Oliver* (1867), 36 L. J. (CH.) 261; compare *Re Parker* (1882), 21 Ch. D. 408, C. A.

(*l*) *Luxmore* v. *Lethbridge* (1822), 5 B. & Ald. 898.

(*m*) *Re Ward, Allen* v. *Aldridge, supra*; compare *Re Corsellis, Lawton* v. *Elwes* (1887), 34 Ch. D. 675, C. A.

(*n*) *Re Lees* (1844), 5 Beav. 410; *Re Bowen* (1872), 41 L. J. (CH.) 327; *Re Barker* (1834), 6 Sim. 476; *Re Rice* (1837), 2 Keen, 181.

(*o*) *Curling* v. *Sedger* (1838), 4 Bing. (N. C.) 743; *Sylvester* v. *Webster* (1832), 9 Bing. 388; *Clarke* v. *Donovan* (1794), 5 Term Rep. 694; *Billing* v. *Coppock* (1847), 1 Exch. 14, 15. As to the taxation of costs of a licensing appeal, see title INTOXICATING LIQUORS, Vol. XVIII., p. 85; and compare title POOR LAW, Vol. XXII., p. 616.

(*p*) *Allison* v. *Herring* (1839), 9 Sim. 583; *Re Strother* (1857), 3 K. & J. 518; *Re Sudlow and Kingdom* (1849), 11 Beav. 400; but see *Ex parte Wheeler* (1814), 3 Ves. & B. 21; *Re Baker, Lees & Co., supra.*

(*q*) *Jones* v. *Roberts* (1838), 2 Jur. 30; *Re Boord, Toghill* v. *Grant* (1840), 2 Beav. 261; *Smith* v. *Dimes* (1849), 4 Exch. 32.

(*r*) The client has a right to taxation, though the agreement is to charge only out-of-pocket costs (*Re Ransom* (1854), 18 Beav. 220; compare *Re Philp* (*a Solicitor*) (1860), 2 Giff. 35). As to the position of a mortgagee of sums due to the client from the solicitor, see *Re Battams and Hutchinson*, [1897] 1 Ch. 699; note (*q*), p. 793, *post.*

(*s*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37. This includes the country solicitor, as regards the London agent's bill (*Re Wilde*, [1910] 1 Ch. 100); but the amount due must be brought into court (*Storer & Co.* v. *Johnson* (1890), 15 App. Cas. 203; *Jones* v. *Roberts* (1837), 8 Sim. 397; *Lees* v. *Nuttall* (1834), 2 My. & K. 284); except in special circumstances (*Re Smith* (1841), 4 Beav. 309). A bill may be referred to taxation, though unsigned (*Young* v. *Walker* (1847), 16 M. & W. 446; *Re Pender* (1846), 2 Ph. 69).

SECT. 4. Taxation of Costs.

or his personal representative (*t*), or trustee in bankruptcy (*a*). If the solicitor is retained to act on behalf of several persons in the same matter, each is entitled, where the retainer is separate, to have the whole bill taxed, although he himself is only liable for a portion of the whole amount (*b*). Where the retainer is joint, all should, if possible, concur; but the court will make the order on the application of one of the persons chargeable, if the other refuses to join (*c*).

(2) Solicitor.

(2) The solicitor (*d*), his personal representative (*e*), or trustee in bankruptcy (*f*), but not, probably, his assignee (*g*).

(3) Third persons.

(3) Any person not being the person chargeable with the bill,

(*t*) See *Langford* (*Lady*) v. *Mahony* (1843), 4 Dr. & War. 81, where the application was made after the death of the administrator by his administrator as administrator *de bonis non*. The taxation is not confined to costs incurred after the client's death (*Re Dalby* (1845), 8 Beav. 469). If the client dies during the taxation, the proceedings may be revived (*Re Whalley* (1855), 20 Beav. 576).

(*a*) *Re Elmslie & Co.* (1869), L. R. 9 Eq. 72; *Stephens* v. *Davies* (1827), 6 L. J. (O. S.) (CH.) 66. In this case the bankrupt himself cannot obtain the order (*Re Leadbitter* (1878), 10 Ch. D. 388, C. A.; *Re Halsall* (1848), 11 Beav. 163; compare *Re Gingell, Ex parte Gingell* (1833), 2 Deac. & Ch. 546). If the client, after obtaining the order, becomes bankrupt, the trustee in bankruptcy, where the solicitor undertakes not to prove for his costs, cannot continue the taxation without undertaking to pay the taxed amount of the bill (*Re Merrick, Ex parte Joyce*, [1911] 1 I. R. 279, C. A.).

(*b*) *Re Salaman*, [1894] 2 Ch. 201, C. A., following *Re Colquhoun, Ex parte Ford* (1854), 5 De G. M. & G. 35, C. A.; *Re Allen, Davies* v. *Chatwood* (1879), 11 Ch. D. 244. To avoid a multiplicity of taxations the court, as far as possible, directs a single taxation in the presence of all persons interested (*Re Salaman, supra*).

(*c*) *Margerum* v. *Sandiford* (1791), 3 Bro. C. C. 233; *Lockhart* v. *Hardy* (1841), 4 Beav. 224; *Re Schelingser, Ex parte Watts* (1836), 1 Deac. 588; *Re Dawson and Bryan* (1860), 28 Beav. 605; *Re Hair* (1847), 10 Beav. 187 (where the solicitor had obtained judgment against one partner, but the other partners were allowed to obtain an order for taxation); but see *Re Chilcote* (1839), 1 Beav. 421.

(*d*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37. The court has a discretion (*Re Woods, Ex parte Ditton* (1880), 13 Ch. D. 318, C. A.). A London agent cannot obtain an order against the country solicitor's client (*Re Scholes & Sons* (1886), 32 Ch. D. 245). Taxation by the clerk of the peace on behalf of a local authority (see title LOCAL GOVERNMENT, Vol. XIX., pp. 288, 289) does not preclude the solicitor from applying (*Southampton Guardians* v. *Bell and Tayler* (1888), 21 Q. B. D. 297; *Re Blake and Croydon Rural Sanitary Authority* (1886), 2 T. L. R. 336). If the client dies, the solicitor may apply for taxation against his estate (*Re Raphael, Ex parte Salomon*, [1899] 1 Ch. 853).

(*e*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37. If the solicitor dies during the taxation, the proceedings may be revived on the application of the client (*Re Nicholson* (1861), 29 Beav. 665), or of the solicitor's personal representatives (*Re Waugh* (1859), 29 Beav. 666).

(*f*) Solicitors Act, 1843 (6 & 7 Vict. c. 72), s. 37.

(*g*) See *Re Ward* (1885), 28 Ch. D. 719, where the court refused to decide whether the word "assignees" in the statute extended to persons to whom the solicitor had assigned his costs. In that case it was stated that no taxing master had ever seen an order to tax made on the application of an assignee of costs. An assignee is entitled to payment of the costs as against the solicitor's trustee in bankruptcy (*Day* v. *Day* (1857), 1 De G. & J. 144, C. A; *Sharples* v. *Marsh* (1854), 2 W. R. 400).

who is liable to pay (*h*) or who has paid it (*i*), or his trustee in bankruptcy (*j*). In this case application can only be made when the taxation is between solicitor and client (*k*). The application is subject to the same conditions as those governing an application by the client (*l*), and the taxation is a taxation of the bill as between the original parties (*m*). Persons liable to pay include a purchaser (*n*), a lessee (*o*), a mortgagor (*p*), or his trustee in bankruptcy (*q*), or a subsequent incumbrancer (*r*), as regards a vendor's, lessor's, or mortgagee's costs (*s*); a person obliged to sue in the name of another, as regards the nominal plaintiff's costs (*t*); any party to a compromise, as regards the costs which he has agreed to pay (*u*), or which, being payable out of a fund, fall upon

(*h*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 38; *Re Cusack* (1888), 21 L. R. Ir. 493. If he has no copy of the bill, the court may order the solicitor to deliver him a copy on payment (Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 40); the charge is 4*d.* per folio of seventy-two words; see *Re Blackmore* (1851), 13 Beav. 154.

(*i*) As to taxation after payment, see pp. 787 *et seq.*, *post*.

(*j*) *Re Allingham* (1886), 32 Ch. D. 36, C. A., distinguishing *Re Marsh, Ex parte Marsh* (1885), 15 Q. B. D. 340, C. A.

(*k*) *Re Cowdell* (1883), 52 L. J. (CH.) 246; *Re Grundy, Kershaw & Co., Solicitors* (1881), 17 Ch. D. 108, explaining *Re Hartley* (1861), 30 Beav. 620; *Re Morris* (1874), 27 L. T. 554. The court will not, except in special circumstances, order retaxation on the application of a person liable, if the bill has already been taxed (Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 40; see *Re Congreve* (1841), 4 Beav. 87; *Worsley* v. *Labouchere* (1893), 28 L. J. 879; *Newton* v. *Boodle* (1847), 4 C. B. 359). The petition is to be served also on the party chargeable if the bill is not taxable between the solicitor and himself; see *Re Baker* (1863), 32 Beav. 526.

(*l*) *Re Jones and Everett*, [1904] 2 Ch. 363. Hence, taxation will not be ordered, in the absence of special circumstances, where the bill has already been paid (*Re Shrewsbury and Leicester Rail. Co., Re Vardy* (1851), 20 L. J. (CH.) 325; *Re Abbott* (1861), 4 L. T. 576; *Re Dickson* (1856), 8 De G. M. & G. 655, C. A.; *Re Smith* (1884), 32 W. R. 408; *Re Carew* (1844), 8 Beav. 150; *Re Massey* (1845), 8 Beav. 458). As to special circumstances, see pp. 788 *et seq.*, *post*.

(*m*) *Re Wells* (1845), 8 Beav. 416; *Re Jones* (1845), 8 Beav. 479; *Re Fyson* (1846), 9 Beav. 117; *Re Harrison* (1847), 10 Beav. 57; *Re Barrow* (1853), 17 Beav. 547; *Re Phillpotts* (1853), 18 Beav. 84; *Re Taylor* (1854), 18 Beav. 165; *Re Newman* (1867), 2 Ch. App. 707; *Re Longbottam & Sons*, [1904] 2 Ch. 152, C. A. But the solicitor may bind himself to submit to taxation as between the client and the person paying the costs (*Re Fisher* (1854), 18 Beav. 183). An allowance must be made where the third person is not liable for the whole of the costs (*Re Negus*, [1895] 1 Ch. 73; *Re Morecroft* (1885), 29 Sol. Jo. 471, C. A.; *Re Cohen and Cohen*, [1905] 2 Ch. 137, C. A.).

(*n*) *Re Morecroft, supra*.

(*o*) *Re Gray*, [1901] 1 Ch. 239; *Re Negus, supra*.

(*p*) *Re Wells, supra; Re Carew, supra; Re Lees* (1844), 5 Beav. 410; *Re Bignold* (1845), 9 Beav. 269; *Re Thomas* (1844), 8 Beav. 145; *Painter* v. *Linsell* (1840), 8 Scott, 453.

(*q*) *Re Allingham, supra*.

(*r*) *Re Taylor, supra*. As to the liability of the next friend of an infant for costs, see title INFANTS AND CHILDREN, Vol. XVII., p. 139; and as to the rights of a solicitor where the infant attains full age and adopts the proceedings, see *ibid.*, p. 140. As to the costs of a solicitor appointed guardian *ad litem*, see *ibid.*, p. 144; *Re Jessop* (1863), 32 Beav. 406.

(*s*) As to the usage of the legal profession in these and similar matters, see title CUSTOM AND USAGES, Vol. X., pp. 283, 284.

(*t*) *Re Masters* (1835), 4 Dowl. 18.

(*u*) *Hirst and Capes* v. *Fox*, [1908] A. C. 416; *Balme* v. *Paver* (1821),

SECT. 4. Taxation of Costs.

his share (*a*); and, generally, any person who is legally liable to pay the bill as such (*b*). On the other hand, application for taxation cannot be made by a ratepayer, though the bill is payable out of the rates (*c*), or by a person who has voluntarily paid the bill (*d*).

(4) Persons interested.

(4) Where a trustee or personal representative is chargeable, any person interested in the property out of which the bill has been or is to be paid (*e*). This provision enables a creditor to apply for the taxation of an executor's bill paid out of the deceased debtor's estate (*f*); but it does not extend to a trustee in bankruptcy, so as to enable the bankrupt to apply for taxation (*g*). The court has a discretion as to making the order (*h*); if the application is made after payment, the application must show sufficient special circumstances to support an order on the application of the person originally chargeable (*i*). As in the case of the person liable (*k*), the taxation is as between the original parties (*l*); but costs not properly chargeable against the estate are to be disallowed (*m*).

SUB-SECT. 2.—*The Making of the Order.*

Application within one month.

1290. Where the application is made within one month from the date of the delivery of the bill, the client is entitled as of course to

Jac. 305; *Vincent* v. *Venner* (1833), 1 My. & K. 212; *Re Hulbert and Crowe* (1894), 71 L. T. 748; *Re Hartley* (1861), 30 Beav. 620. A person who has agreed to pay a fixed sum for costs cannot apply (*Re Morris* (1892), 27 L. T. 554; *Re Heritage, Ex parte Docker* (1878), 3 Q. B. D. 726).

(*a*) *Re Early*, [1897] 1 I. R. 6, C. A.; *Re Brown* (1867), L. R. 4 Eq. 464.

(*b*) *Sadler* v. *Palfreyman* (1834), 1 Ad. & El. 717 (where there was an agreement to pay costs as between solicitor and client); *Re Shrewsbury and Leicester Rail. Co., Re Vardy* (1851), 20 L. J. (CH.) 325 (liquidator); compare *Re Mills* (1885), 79 L. T. Jo. 162 (person supplying funds for convict's defence).

(*c*) *Re Barber, Ex parte Manchester and Leeds Rail. Co.* (1845), 14 M. & W. 720.

(*d*) *Re Becke and Flower* (1844), 5 Beav. 406; *Langford* v. *Nott* (1820), 1 Jac. & W. 291.

(*e*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 39; *Re Spencer, Spencer* v. *Hart* (1881), 51 L. J. (CH.) 271, C. A.; *Re Jackson, Re Cottrell, Boughton-Leigh* v. *Boughton-Leigh* (1889), 40 Ch. D. 495; *Re Hallett* (1855), 21 Beav. 250; *Re Drake* (1856), 22 Beav. 438. Except in special circumstances retaxation will not be ordered if the bill has already been taxed (Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 40); see note (*l*), p. 783, *ante*.

(*f*) *Re Jones and Everett*, [1904] 2 Ch. 363.

(*g*) *Re Leadbitter* (1878), 10 Ch. D. 388, C. A.

(*h*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 39. The court may take into consideration the extent and nature of the applicant's interest (*ibid.*); see *Re Dawson* (1860), 2 L. T. 686.

(*i*) *Re Wellborne*, [1901] 1 Ch. 312, C. A., following *Re Press and Inskip* (1865), 35 Beav. 34, and *Re Neate* (1847), 10 Beav. 181, and not following *Re Chowne* (1884), 52 L. T. 75, C. A.; *Re Dickson* (1856), 8 De G. M. & G. 655, C. A. No taxation can be ordered under this provision after the lapse of twelve months from payment (*Re Rees* (1849), 12 Beav. 256; *Re Downes* (1844), 5 Beav. 425; *Re Massey* (1845), 8 Beav. 458).

(*k*) See p. 783, *ante*.

(*l*) *Re Brown* (1867), L. R. 4 Eq. 464; *Re Dickson, supra*; *Re Story, Ex parte Marwick* (1859), 8 W. R. 15; *Re Downes, supra*; compare *Re Miles*, [1903] 2 Ch. 518.

(*m*) *Re Brown, supra*; *Re Dickson, supra*; compare *Re Hill, a Solicitor* (1886), 33 Ch. D. 266, C. A.

obtain an order for the taxation of the bill (*n*). The solicitor, however, is not entitled to obtain an order within the month unless he satisfies a judge that the person chargeable is about to leave the country or to become bankrupt or to compound with his creditors or to do any other act which in the opinion of the judge would tend to defeat or delay the recovery or payment of the amount claimed (*o*).

Application after the month.

1291. Where application is not made until after the expiration of one month from the date of delivery of the bill, the order for taxation may be obtained either by the client or by the solicitor (*p*). In this case the court may give such directions and impose such conditions as it thinks proper (*q*), and may restrain the solicitor from suing upon his bill (*r*).

After verdict.

If the solicitor has, before the application is made, already obtained a verdict (*s*) in an action upon the bill, the court will not order taxation except in special circumstances (*t*).

Application after twelve months.

1292. Where the application is not made until after the expiration of twelve months (*a*) from the date of the delivery of the bill, or, where the bill is delivered in parts (*b*), from the date of the delivery of the last part (*c*), the court will not order taxation except in special circumstances (*d*).

Special circumstances.

1293. Special circumstances exist wherever there are circumstances in the particular case (*e*) which appear to the court so special

(*n*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.

(*o*) Legal Practitioners Act, 1875 (38 & 39 Vict. c. 79), s. 2; *Re Duckers* (1906), 50 Sol. Jo. 441.

(*p*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.

(*q*) *Re Brockman*, [1909] 2 Ch. 170, C. A.; *Re Gaitskell* (1845), 1 Ph. 576; *Re Pender* (1846), 2 Ph. 69.

(*r*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.

(*s*) See *Re Gedye* (1852), 15 Beav. 254; *Re Barnard, Ex parte Wetherell* (1852), 2 De G. M. & G. 359, C. A.; *Re Hair* (1847), 10 Beav. 187 (where judgment had been obtained against one of three partners); compare *Re Chilcote* (1839), 1 Beav. 421.

(*t*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37; *Lumsden* v. *Shipcote Land Co.*, [1906] 2 K. B. 433, C. A. As to special circumstances, see *Re Shrewsbury and Leicester Rail. Co., Re Vardy* (1851), 20 L. J. (CH.) 325; *Re Whicher* (1844), 13 M. & W. 549; *Langstaffe* v. *Taylor* (1807), 14 Ves. 262; and see the text, *infra*.

(*a*) In the case of a company in liquidation the material date is the date of the winding-up (*Re Foss, Bilbrough, Plaskitt and Foss*, [1912] 2 Ch. 161, following *Re Marseilles Extension Railway and Land Co., Ex parte Evans* (1870), L. R. 11 Eq. 151; *Re Companies (Consolidation) Act*, 1908, *Re Palace Restaurants, Ltd.* (1914), *Times*, 21st January, C. A.). As to the material date when a fund over which the solicitor has a lien is paid into court, see *De Bay* v. *Griffin* (1875), 10 Ch. App. 291.

(*b*) See p. 777, *ante*.

(*c*) *Re Romer and Haslam*, [1893] 2 Q. B. 286, C. A.; *Re Cartwright* (1873), L. R. 16 Eq. 469; contrast *Re Hall and Barker* (1878), 9 Ch. D. 538, followed in *Re Hudson* (*a Solicitor*), [1904] W. N. 32; *Re James, Ex parte Quilter* (1850), 4 De G. & Sm. 183.

(*d*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37; *Re Harper* (1847), 10 Beav. 284; *Re Wilton* (1843), 13 L. J. (Q. B.) 17; *Cowdell* v. *Neale* (1856), 1 C. B. (N. S.) 332.

(*e*) *Re Norman* (1886), 16 Q. B. D. 673, C. A., *per* LOPES, L.J., at p. 677. As to reopening an account between solicitor and client, compare title MORTGAGE, Vol. XXI., p. 217, note (*j*).

SECT. 4. Taxation of Costs.

and exceptional as to justify taxation (*f*). The clearest examples of special circumstances are cases of pressure and overcharge (*g*) or overcharge amounting to fraud (*h*). The discretion of the court is not, however, limited to these cases; and, even in the absence of fraud or pressure, the overcharge may be so great as to amount to a special circumstance (*i*). It is not sufficient merely to show that the amount claimed in the bill is excessive (*k*); specific items must be objected to (*l*). Charges for particular items may be unreasonably large, as, for instance, where the solicitor charges for a shorthand note as if a professional shorthand writer had taken it, though it was in fact taken by his own clerk (*m*); there may be charges calling for explanation, as where the solicitor charged £92 for thirty-one days' attendance in London (*n*); or there may be gross blunders on the face of the bill, as where the solicitor charged for witnesses' expenses which had already been paid by the client direct to the witnesses (*o*).

On the other hand, the continuance of the relation of solicitor and client after delivery is not, in itself, a special circumstance (*p*); nor are there special circumstances in the fact that the solicitor has possession of the client's papers (*q*), or that he has charged for counsel's fees which have not yet been paid (*r*).

Third persons.

If the application is made by a third person as being the person liable to pay or having paid the bill (*s*), the court may take into

(*f*) *Re Boycott* (1885), 29 Ch. D. 571, C. A., *per* BOWEN, L.J., at p. 579, approved in *Re Norman* (1886), 16 Q. B. D. 673, C. A.; compare *Re Baylis*, [1896] 2 Ch. 107, C. A.

(*g*) *Re Strother* (1857), 3 K. & J. 518; see p. 789, *post*; compare *Re Williams* (1852), 15 Beav. 417, where the bill was delivered just before the client went abroad and long after he had asked for it.

(*h*) *Re Pybus* (1887), 35 Ch. D. 568; *Re Elmslie & Co., Ex parte Tower Subway Co.* (1873), L. R. 16 Eq. 326.

(*i*) *Re Boycott, supra; Re Norman, supra; Re Cheeseman*, [1891] 2 Ch. 289, C. A.; *Re Williams, Ex parte Love* (1891), 65 L. T. 68; *Re Nicholson* (1861), 3 De G. F. & J. 93, C. A.; *Re Hook* (1861), 10 W. R. 116; *Re Robinson* (1867), L. R. 3 Exch. 4; *Re G., a Solicitor* (1909), 53 Sol. Jo. 469; compare *Hughes* v. *Murray* (1863), 9 L. T. 93, where the solicitor had offered to take a much smaller sum. The fact that the bill contains a few items which would not be allowed on taxation is not sufficient (*Re Harle* (*a Solicitor*) (1868), 19 L. T. 305).

(*k*) But a dispute as to the completeness of the bill may be sufficient (*Re Bagshawe, Ex parte Huddersfield and Manchester Rail. and Canal Co.* (1848), 2 De G. & Sm. 205; *Binns* v. *Hey* (1843), 1 Dow. & L. 661; *Re Pomeroy and Tanner*, No. 2 (1897), 76 L. T. 149).

(*l*) *Re Boycott, supra*, where, however, BOWEN, L.J., at p. 582, differed on this point from the rest of the court; *Re Williams* (1852), 15 Beav. 417; *Re Bennett* (1845), 8 Beav. 467; *Re Evans* (1845), 15 L. J. (CH.) 115. All the items objected to need not be specified (*Re Dawson and Bryan* (1860), 28 Beav. 605; compare *Ex parte Andrews* (1844), 13 L. J. (CH.) 222).

(*m*) *Re Norman, supra.*

(*n*) *Re Robinson, supra.*

(*o*) *Re Norman, supra.*

(*p*) *Re Elmslie & Co., Ex parte Tower Subway Co., supra*, discussing *Re Nicholson, supra*, and *Ex parte Flower* (1868), 18 L. T. 457; see *Re Layton, Steele & Co.*, [1890] W. N. 112.

(*q*) *Re Gedye* (1851), 14 Beav. 56.

(*r*) *Re Nelson, Son and Hastings* (1885), 30 Ch. D. 1, C. A.

(*s*) See p. 782, *ante*.

consideration any additional special circumstances applicable to the person making the application (*t*).

Application after payment.

1294. After the bill has been paid (*a*), the client is not entitled to obtain an order for taxation, unless he makes application within twelve months of the date of payment (*b*), and unless he satisfies the court that there are special circumstances calling for its intervention (*c*). To preclude the client on the ground of payment from his general right to have the bill taxed, the solicitor must prove (1) that a proper bill was delivered (*d*), except in the cases where the costs have been paid by some person other than the client, such as, for instance, a purchaser (*e*); and (2) that the bill has in fact been paid (*f*). To satisfy the statute the payment should be a payment in money, though the giving of security for the amount of the bill after its delivery is, apparently, equivalent to payment (*g*). The delivery by the client to the solicitor of a negotiable instrument for the amount of the bill is not in itself payment of the bill (*h*), and if the negotiable instrument is dishonoured the bill is not paid (*i*). Since, however, the parties may agree to substitute a different consideration, the solicitor may succeed in proving that the parties intended the negotiable instrument to be taken as payment in any event (*j*). Similarly, the retainer (*k*) by the solicitor of the amount of the bill out of moneys received by him on behalf of the client is not payment (*l*), unless the client agrees thereto (*m*).

"Payment."

(*t*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 38; *Re Dickson* (1856), 8 De G. M. &. G. 655, C. A.; *Re Massey* (1845), 8 Beav. 458.

(*a*) The bill may have been paid by a third person (*Turner* v. *Hand* (1859), 27 Beav. 561).

(*b*) See *Sayer* v. *Wagstaff* (1844), 8 Jur. 1083.

(*c*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 41; *Re South-Eastern Rail. Co., Ex parte Somerville* (1883), 23 Ch. D. 167.

(*d*) *Re Baylis*, [1896] 2 Ch. 107, C. A., explaining *Re Bischoff and Coxe, Ex parte Hemming* (1856), 28 L. T. (o. s.) 144 (followed in *Re Sealy* (1911), 45 I. L. T. 1), and *Re Thompson, Ex parte Baylis*, [1894] 1 Q. B. 462; *Re Street* (1869), L. R. 10 Eq. 165.

(*e*) *Re Chapman* (1903), 20 T. L. R. 3, C. A.

(*f*) A payment on account is not sufficient (*Re Woodard* (1869), 18 W. R. 37; *Re Angove* (1882), 26 Sol. Jo. 417; *Re Callis* (1901), 49 W. R. 316).

(*g*) *Re Boyle, Ex parte Turner* (1854), 5 De G. M. & G. 540, C. A. (where, however, the security was paid off before the application).

(*h*) If the negotiable instrument is honoured, the date when it is honoured, and not the date when it is given, is the date of payment (*Sayer* v. *Wagstaff, supra*; *Re Harries* (1844), 13 M. & W. 3).

(*i*) *Re Harries, supra*; *Re Peach* (1844), 2 Dow. & L. 33; *Re Romer and Haslam*, [1893] 2 Q. B. 286, C. A.; *Ray* v. *Newton*, [1913] 1 K. B. 249, C. A. (where, however, the court refused to stay an action on the negotiable instrument); see *Re a Solicitor* (1894), 38 Sol. Jo. 239.

(*j*) *Re Harries, supra*; *Re Romer and Haslam, supra*; compare *Re Harper* (1847), 10 Beav. 284.

(*k*) As to the distinction between retainer and payment, see *Re Harman & Son, Solicitors*, [1912] W. N. 111 (solicitor-trustee).

(*l*) *Re Street* (1869), L. R. 10 Eq. 165; followed in *Re Stogdon, Ex parte Baker* (1887), 56 L. T. 355; *Re Baylis, supra*; *Re West, King*

(*m*) For note (*m*) see p. 788, *post*.

SECT. 4. **Taxation of Costs.**

Special circumstances after payment.

1295. Since payment of the bill is *primâ facie* an admission of its correctness (*n*), a strong case is required to entitle the client to taxation (*o*). Delay in making the application is therefore prejudicial (*p*), unless the client had no opportunity, at the time of payment, of examining into the bill (*q*). On the other hand, the client may, at the time of payment, expressly reserve the right to have the bill taxed (*r*), or may pay under protest (*s*); these facts amount to special circumstances within the meaning of the statute. There is no rigid rule defining what are special circumstances (*t*); the court has in each case a discretion (*a*), with which a court of appeal is slow to interfere (*b*). As a general rule, however, the same principles are applied as in the other cases where taxation depends on special circumstances (*c*), except that, perhaps,

and Adams, Ex parte Clough, [1892] 1 Q. B. 102; *Re Frape, Ex parte Perrett*, [1893] 2 Ch. 284, C. A.; *Re Ingle* (1855), 21 Beav. 275; *Re Vines and Hobbs, Ex parte Shackell* (1852), 2 De G. M. & G. 842, C. A. The solicitor cannot insist on including in the taxation a previous bill which has been settled in the same way (*Re Gregg* (1861), 30 Beav. 259).

(*m*) *Re Thompson, Ex parte Baylis*, [1894] 1 Q. B. 462; *Re Bischoff and Coxe, Ex parte Hemming* (1856), 28 L. T. (O. S.) 144; *Hitchcock* v. *Stretton*, [1892] 2 Ch. 343; *Re David* (1861), 30 Beav. 278; *Re Falls* (1891), 29 L. R. Ir. 1; *Re Foss, Bilbrough, Plaskitt and Foss*, [1912] 2 Ch. 161; compare *Turner* v. *Willis*, [1905] 1 K. B. 468, explained in *Re Van Laun, Ex parte Chatterton*, [1907] 2 K. B. 23, C. A., *per* VAUGHAN WILLIAMS, L.J., at p. 26. But there must have been a delivered bill (*Re Baylis*, [1896], 2 Ch. 107, C. A.; *Re Thompson, Ex parte Baylis, supra*), or the agreement must be one which binds the client (*Re Brady* (1867), 15 W. R. 632; *Brown* v. *Tibbitts* (1862), 11 C. B. (N. S.) 855). The subsequent delivery of a bill may be sufficient (*Re Baylis, supra*, explaining *Re Thompson, Ex parte Baylis, supra*; *Re Bischoff and Coxe, Ex parte Hemming, supra*), but not if made under an order of the court (*Re Baylis, supra*, doubting *Hitchcock* v. *Stretton, supra*).

(*n*) *Re Harding* (1847), 10 Beav. 250.

(*o*) *Re Browne, Ex parte Jefferies* (1852), 1 De G. M. & G. 322, C. A.; *Re Barrow* (1853), 17 Beav. 547; compare *Re Heritage, Ex parte Docker* (1878), 3 Q. B. D. 726; *Re Wyche* (1848), 11 Beav. 209; *Horlock* v. *Smith* (1837), 2 My. & Cr. 495; *Lewes* v. *Morgan* (1817), 5 Price, 42.

(*p*) *Re Harrison* (1847), 10 Beav. 57; *Re Browne, Ex parte Jefferies, supra*; *Re Bayley* (1854), 18 Beav. 415; *Re Barrow, supra*; *Re King* (1910), 74 J. P. 445; compare *Re Colquhoun, Dunt* v. *Dunt* (1846), 9 Beav. 146.

(*q*) *Re Steele* (1851), 20 L. J. (CH.) 562; *Re Fielder and Sumner* (1871), 40 L. J. (CH.) 615.

(*r*) *Re Williams, Ex parte Love* (1892), 65 L. T. 68; *Re Tweedie, Solicitors*, [1909] W. N. 110; compare *Re Dearden* (1853), 9 Exch. 210.

(*s*) *Re Cheeseman*, [1891] 2 Ch. 289, C. A.; *Re R. E. F.* (1908), 52 Sol. Jo. 83; *Re Tryon* (1844), 7 Beav. 496; *Re Leggatts and Carruthers* (1908), 53 Sol. Jo. 84; compare *Re Ward, Bowie & Co.* (1910), 102 L. T. 881; but see *Re Browne* (1851), 15 Beav. 61.

(*t*) *Re Cheeseman, supra*; *Re Ward, Bowie & Co., supra*. It is a special circumstance that a criminal charge, which may be affected by the taxation, has been brought against the solicitor's clerk (*Re Fisher & Co.* (1879), 42 L. T. 261).

(*a*) *Re Chowne* (1884), 52 L. T. 75, C. A.; *Re Norman* (1884), 16 Q. B. D. 673, C. A.

(*b*) *Re Cheeseman, supra*; *Gane and Kilner* v. *Linley* (1909), 53 Sol. Jo. 198, C. A.

(*c*) See pp. 785, 786, *ante*.

they are applied more strictly (*d*). The most usual special circumstances are overcharge and pressure (*e*) and overcharge accompanied by fraud (*f*). Pressure exists where the solicitor requires immediate payment of the bill as a condition of permitting a transaction to be completed (*g*), as, for instance, where the client requires his title deeds for the purpose, and the solicitor, who has them in his possession, refuses to hand them over until his bill is paid (*h*). The client must, however, establish a case of real pressure: he must show that the prompt completion of the transaction was not merely a convenience (*i*), but a pressing necessity (*k*), and that it involved as a consequence the immediate payment of the solicitor's bill (*l*). He must further show (*m*) that, through the solicitor's delay in delivering the bill (*n*), he was given, before payment, no opportunity of considering it (*o*); if the bill was in his hands for a sufficient time beforehand, there is no pressure (*p*). It is not, however, necessary to show pressure or fraud; the court will interfere where the overcharge is excessive (*q*), and

(*d*) *Re Browne* (1851), 15 Beav. 61; *Re Barrow* (1853), 17 Beav. 547; *Re Abbott* (1854), 18 Beav. 393.

(*e*) *Re Foster, Ex parte Walker* (1860), 2 De G. F. & J. 105, C. A.; *Re Currie* (1846), 9 Beav. 602; *Re Rance* (1856), 22 Beav. 177; *Re Sladden* (1847), 10 Beav. 488; *Re Wells* (1845), 8 Beav. 416; *Re Harrison* (1847), 10 Beav. 57; *Re Newman* (1867), 2 Ch. App. 707; contrast *Re Griffith, Jones & Co.* (1883), 53 L. J. (CH.) 303, C. A.

(*f*) *Re Harding* (1847), 10 Beav. 250; *Re Hubbard* (1852), 15 Beav. 251; *Re Munns and Longden* (1884), 50 L. T. 356.

(*g*) *Re Pugh, Ex parte Briscoe* (1863), 1 De G. J. & Sm. 673, C. A.; *Re Wells, supra*; *Re Bennett* (1845), 8 Beav. 467; *Re Philpotts* (1853), 18 Beav. 84.

(*h*) *Re Lett* (1862), 31 Beav. 488; *Re Tryon* (1844), 7 Beav. 496; *Ex parte Andrews* (1844), 13 L. J. (CH.) 222. The court does not, however, interfere where the overcharge is not excessive (*Re Finch and Shepheard, Ex parte Barton* (1853), 4 De G. M. & G. 108, C. A.).

(*i*) *Re Abbott, supra*; compare *Re Dolman* (1854), 2 W. R. 447.

(*k*) *Re Harding, supra*; *Re Finch* (1853), 16 Beav. 585; *Re Boycott* (1886), 29 Ch. D. 571, C. A.

(*l*) *Re Newman, supra*; *Re Browne, Ex parte Jefferies* (1852), 1 De G. M. & G. 322, C. A.; *Re Kinneir, Ex parte Price* (1858), 7 W. R. 175.

(*m*) *Re Mash* (1851), 15 Beav. 83.

(*n*) *Re Boycott, supra.* An order is not made where the solicitor has, before payment, offered an opportunity for taxation, and warned the client of the difficulty of obtaining an order after payment (*Re Boyle, Ex parte Turner* (1854), 5 De G. M. & G. 540, C. A.).

(*o*) *Re Fielder and Sumner* (1871), 25 L. T. 56; *Re Elmslie* (1850), 12 Beav. 538; *Re Pugh* (1863), 8 L. T. 586; *Re Abbott, supra*; *Re Massey* (1909), 101 L. T. 517; compare *Re Loughborough* (1857), 23 Beav. 439; *Re Fyson* (1846), 9 Beav. 117.

(*p*) *Re Harrison, supra*; *Re Drew* (1847), 10 Beav. 368; *Re Hubbard, supra*; *Re Jones* (1845), 8 Beav. 479; *Re Lacey & Son* (1883), 25 Ch. D. 301, C. A.; *Re Welchman* (1848), 11 Beav. 319; *Re Towle* (1860), 30 Beav. 170; compare *Nokes* v. *Warton* (1842), 5 Beav. 448.

(*q*) *Re Norman* (1884), 16 Q. B. D. 673, C. A.; *Re Barrow, supra*; *Re Kinneir, Ex parte Price, supra*; *Re Dickson* (1856), 8 De G. M. & G. 655, C. A.; *Re Eley* (1887), 37 Ch. D. 40; *Re Brady* (1867), 15 W. R. 632; contrast *Re Layton, Steele & Co.* (1890), 38 W. R. 652. A trifling overcharge is not sufficient (*Re Drake* (1844), 8 Beav. 123; *Re Walsh* (1850), 12 Beav. 490; *Re Chowne* (1884), 52 L. T. 75, C. A.;

SECT. 4. **Taxation of Costs.**

unexplained (*r*); and, generally, wherever the bill contains charges open to criticism (*s*).

Twelve months after payment.

1296. After the expiration of twelve months from the date of payment, no order to tax the bill can be made (*t*).

Procedure in Chancery Division.

1297. In the Chancery Division application may be made for an order of course for taxation of the bill, within one month after the delivery of the bill, by the client (*a*) or person liable to pay the bill (*b*), or, after the expiration of a month and within twelve months after the delivery of the bill, by the client (*c*), or person liable to pay the bill (*d*), or by the solicitor (*e*). The application is made *ex parte*, by petition (*f*), which should contain full materials to enable the court to decide whether or not the application should be granted (*g*) and the order is made *ex parte* by a registrar (*h*).

Re Towle (1860), 30 Beav. 170; *Re Finch and Shepheard, Ex parte Barton* (1853), 4 De G. M. & G. 108).

(*r*) *Re Robinson* (1867), L. R. 3 Exch. 4. A common mistake that the remuneration was by scale fee is not sufficient to justify taxation (*Re Glascodine and Carlyle* (1885), 52 L. T. 781, C. A.).

(*s*) *Re N., a Solicitor* (1912), 56 Sol. Jo. 520.

(*t*) *Binns* v. *Hey* (1843),1 Dow. & L. 661; *Re Wilton* (1843), 13 L. J. (Q. B.) 17; *Re Harper* (1847), 10 Beav. 284; *Barwell* v. *Brooks* (1844), 7 Beav. 345 (where a petition presented within time failed on the ground of irregularity); *Waters* v. *Taylor* (1837), 1 Jur. 375; *Re Sutton* (1883), 11 Q. B. D. 377, C. A.; *Re Falls* (1891), 29 L. R. Ir. 1; contrast *Watson* v. *Rodwell* (1879), 11 Ch. D. 150, C. A.; *Re Cawley and Whatley* (1870), 18 W. R. 1125. The same principle applies to an application by a person interested (*Re Jackson, Re Cottrell, Boughton-Leigh* v. *Boughton-Leigh* (1889), 40 Ch. D. 495; *Re Wellborne*, [1901] 1 Ch. 312, C. A., following *Re Downes* (1844), 5 Beav. 425). But taxation may be ordered notwithstanding twelve months have elapsed if no proper bill has been delivered (*Re Callis* (1901), 49 W. R. 316, n).

(*a*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.

(*b*) *Ibid.*, s. 38; *Re Bracey* (1845), 8 Beav. 338; *Re Bignold* (1845), 9 Beav. 269; *Re Hartley* (1861), 30 Beav. 620. The bill (*Re Robertson, a Solicitor* (1889), 42 Ch. D. 553), or a copy (*Re Kellock* (1887), 35 W. R. 695), must have been delivered to him; it need not have been delivered to the party chargeable (*Re Abbott* (1861), 4 L. T. 576). A person applying as a person interested cannot apply for an order of course; see p. 791, *post*.

(*c*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37. A second order of course should not be applied for where the first has lapsed (*Re Webster*, [1891] 2 Ch. 102; *Re Taylor, Sons, and Tarbuck*, [1894] 1 Ch. 503; see *Re Gedye* (1852), 15 Beav. 254; *Re Hinton* (1852), 15 Beav. 192; and compare *Harvey* v. *Mayhew* (1853), 2 W. R. 128 (London agent)).

(*d*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 38.

(*e*) *Ibid.*, s. 37.

(*f*) For the forms of petition, see Daniell, Chancery Forms, 5th ed., pp. 1042—1048. The petition must be indorsed in the name of the country solicitor, not of his London agent (*Re Scholes & Sons* (1886), 32 Ch. D. 245).

(*g*) *Re Gedye, supra*, followed in *Re Collyer-Bristow, Russell Hill & Co., Ex parte Fletcher* (1899), 81 L. T. 110; *Re Ingle* (1855), 21 Beav. 275; *Re S., a Solicitor* (1910), 55 Sol. Jo. 127.

(*h*) See R. S. C., Appendix N., item 195, n.; Ord. 62, r. 18. The district registrars at Liverpool and Manchester have now jurisdiction to make the order (*ibid.*, Ord. 35, r. 6A, altering the law as laid down in *Stead* v. *Smith*, [1911] A. C. 688). For the present form of order, see *Re Brockman*, [1909] 2 Ch. 170, C. A.; R. S. C., Appendix K, No. 41A.

Special order.

Where the right to taxation depends upon special circumstances (*i*), application must not be made for an order of course, but for a special order. A special order should also be applied for where there is a dispute between the parties as to the existence of the retainer (*k*) or of some point affecting the right to tax, such as the delivery (*l*) or payment (*m*) of the bill or the professional character of the work done (*n*), or where the application is made by one only of several clients (*o*), or against a firm of solicitors, only one of the partners being concerned (*p*), or by a person who is not a client, but who claims taxation as a person interested (*q*), or by a country solicitor against his London agent (*r*), or, generally, wherever, in the circumstances, the common order is inapplicable (*s*). In these cases the application is made by an originating summons (*t*); it must

Procedure.

(*i*) As where taxation is applied for after payment (*Sayer* v. *Wagstaff* (1843), 12 L. J. (CH.) 496; *Re Carew* (1844), 8 Beav. 150; *Re Winterbottom* (1851), 15 Beav. 80; *Re Forsyth* (1865), 2 De G. J. & Sm. 509, C. A.; see *Howell* v. *Edmunds* (1827), 4 Russ. 67). The same principle applies to a person liable to pay (*Re Becke and Flower* (1844), 5 Beav. 406).

(*k*) *Re Thurgood* (1854), 19 Beav. 541; *Re Wood*, [1891] W. N. 203; *Re Haddelsey* (*a Solicitor*) (1891), 35 Sol. Jo. 563; compare *Re Donaldson* (1884), 27 Ch. D. 544; and see *Re Graham and Wigley* (1908), 52 Sol. Jo. 684. But, under the common order, the retainer may be disputed as to particular items (*Re Frape, Ex parte Perrett* (No. 2), [1894] 2 Ch. 290; *Re Herbert* (1887), 34 Ch. D. 504; *Re Bracey* (1845), 8 Beav. 266). The solicitor may obtain the common order, though he knows that his retainer is disputed (*Re Jones, a Solicitor* (1887), 36 Ch. D. 105; considered in *Re Wingfield and Blew* (*Solicitors*), [1904] 2 Ch. 665).

(*l*) *Re Hulbert and Crowe* (*Solicitors etc.*) (1894), 39 Sol. Jo. 83; *Re Thompson* (1885), 30 Ch. D. 441, C. A.; *Re Robertson* (*a Solicitor*) (1889), 42 Ch. D. 553 (where the delivery to a person liable was in dispute); compare *Re C.* (*a Solicitor*) (1907), 53 Sol. Jo. 616.

(*m*) *Re Winterbottom, supra*; compare *Re Holland* (1854), 19 Beav. 314.

(*n*) *Re Eldridge* (1849), 12 Beav. 387; *Re Inderwick* (1883), 25 Ch. D. 279, C. A.

(*o*) *Re Perkins* (1845), 8 Beav. 241; *Re Lewin* (1853), 16 Beav. 608; *Re Ilderton* (1863), 33 Beav. 201.

(*p*) *Re Curnot and Parkinson* (1871), 40 L. J. (CH.) 608.

(*q*) *Re Straford* (1852), 16 Beav. 27; *Re Richardson, Ex parte Mobbs* (1845), 8 Beav. 499; compare *Re Hallett* (1855), 21 Beav. 250. For the form of summons, see Daniell, Chancery Forms, 5th ed., p. 1049; for the form of order, 1 Seton, Judgments and Orders, 7th ed., pp. 250, 251.

(*r*) *Lees* v. *Nuttall* (1834), 2 My. & K. 284; *Foley* v. *Smith* (1851), 20 L. J. (CH.) 621; but see *Harvey* v. *Mayhew* (1853), 2 W. R. 128. As to bringing the amount of the bill into court, see *Ostle* v. *Christian* (1823), Turn. & R. 324; *Lees* v. *Nuttall, supra*; *Re Smith* (1841), 4 Beav. 309; *Storer & Co.* v. *Johnson* (1890), 15 App. Cas. 203, 205.

(*s*) *Re Jones, a Solicitor, supra*; *Re Thompson* (1888), 36 Ch. D. 441, C. A.; *Re Carven* (1845), 8 Beav. 436; *Re Rees* (1849), 12 Beav. 256; *Re Fanshawe* (*H. H.*), [1905] W. N. 64. A special order must be obtained to tax one of several distinct bills (*Re Yetts* (1864), 33 Beav. 412; *Re Byrch, Holland* v. *Gwynne* (1844), 8 Beav. 124; *Re Wavell* (1856), 22 Beav. 634; *Re Law and Gould* (1856), 21 Beav. 481), unless it is admitted that nothing is due to the solicitor, the only question being whether he has been overpaid (*Re Ward*, [1896] 2 Ch. 31, C. A.).

(*t*) R. S. C., Ord. 55, r. 2 (15). For the form, see *ibid.*, Appendix K, No. 1G; Daniell's Chancery Forms, 5th ed., pp. 1047—1049. In taxations of the costs of conveyances under the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), where the promoter and the party entitled to such costs are unable to agree, the application is by petition (*ibid.*, s. 83).

SECT. 4. Taxation of Costs.

be served on the other side two clear days before the return day (*a*), but no appearance need be entered (*b*). The order, whether granting or refusing the application, is a final order for the purpose of appeal (*c*).

Costs of improper procedure.

An order obtained *ex parte* which should not have been so obtained will be, as a rule, discharged with costs (*d*), though the court may deal with it on the merits (*e*). Application to discharge the order must be made by motion (*f*), and the notice of motion should state the objections to the order (*g*). If a special application is made where an order of course might have been obtained, the applicant must pay the extra costs incurred (*h*). In a doubtful case, therefore, the applicant should ask the other side to consent to an order *ex parte* (*i*): if consent is improperly refused, the person refusing will be ordered to pay the extra costs (*k*).

Submission to pay.

1298. Where the client applies for an order of course within one month after delivery of the bill, he has an absolute right to it, and cannot be required to bring money into court or to submit to pay the amount found on taxation to be due (*l*). Where, however, he applies for the delivery up of papers (*m*), or where he appeals to the discretion of the court (*n*), the court may require from him a submission to pay (*o*). This submission, which is inserted in the

(*a*) R. S. C., Ord. 54, r. 4E.

(*b*) *Ibid.*, r. 4F (1). If the client does not oppose the summons, he cannot afterwards object that items in the bill are not taxable (*Re Johnson* (1855), 1 Jur. (N. S.) 1140).

(*c*) *Re Reeves* (*Herbert*) *& Co.*, [1902] 1 Ch. 29, C. A.; see R. S. C., Ord. 58, r. 3.

(*d*) *Re S., a Solicitor* (1910), 55 Sol. Jo. 127; *Re Byrch, Holland* v. *Gwynne* (1844), 8 Beav. 124; compare *Re Straford* (1852), 16 Beav. 27; *Re Brown* (1867), L. R. 4 Eq. 464; *Re Perkins* (1845), 8 Beav. 241; *Re Gabriel* (1846), 10 Beav. 45, where, in the circumstances, the order was discharged without costs.

(*e*) *Re Webster*, [1891] 2 Ch. 102; *Re Taylor, Sons and Tarbuck*, [1894] 1 Ch. 503; *Re Thompson* (1888), 36 Ch. D. 441, C. A.; *Re Kellock* (1887), 35 W. R. 695; compare R. S. C., Ord. 70, r. 1.

(*f*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 50; see *Boake* v. *Stevenson*, [1895] 1 Ch. 358. The application must be made within a reasonable time (R. S. C., Ord. 70, r. 2; *Re Hilliard, Ex parte Arthur & Co.* (1891), 35 Sol. Jo. 698). An application by the client to vary his own order must also be made within a reasonable time (*Re Tibbitts, a Solicitor* (1881), 30 W. R. 177; *Re Springall* (1844), 8 Beav. 63).

(*g*) R. S. C., Ord. 70, r. 3.

(*h*) *Curwen* v. *Milburn* (1889), 42 Ch. D. 424, C. A.; *Re Bignold* (1845), 9 Beav. 269; *Re Steele* (1851), 20 L. J. (CH.) 562; *Re Cattlin, Barwell* v. *Brooks* (1844), 8 Beav. 121; *Re Atkinson and Pilgrim* (1858), 26 Beav. 151; compare *Re Kellock*, *supra*.

(*i*) *Re Taylor* (1852), 15 Beav. 145.

(*k*) *Re Adamson* (1854), 18 Beav. 460; *Re Lett* (1862), 31 Beav. 488; *Re Bracey* (1845), 8 Beav. 266.

(*l*) *Re Brockman*, [1909] 2 Ch. 170, C. A.

(*m*) The court has a discretion as to adding an order for the delivery of papers (*Ex parte Jarman* (1877), 4 Ch. D. 835).

(*n*) See *Re Battams and Hutchinson*, [1897] 1 Ch. 699, where the client was bankrupt and the application was made by a mortgagee of the sums due from the solicitor.

(*o*) A submission to pay is not necessary, since an order can be made to pay the certified balance under the Solicitors Act, 1843 (6 & 7 Vict. c. 73),

order, should be a submission to pay not what is due, but only what is certified as recoverable, having regard to, *inter alia*, the Statute of Limitations (*p*); in this case the order should direct taxation of the statute-barred items so as to ascertain the amount for which the solicitor has a lien (*q*). The forms of order in use further provide for the solicitor giving credit for all moneys received on behalf of the client, for the costs of the reference, for certifying the amount due (*r*) and by whom it is to be paid (*s*), for delivery up of papers on payment, and for restraining the solicitor from suing on the bill pending the reference (*t*).

Service of order.

When the order of course is obtained by the client, it must be indorsed and personally served on the solicitor (*a*).

Procedure in King's Bench Division.

1299. In the King's Bench Division the application is made, if connected with proceedings before the court, by a summons in the action or other proceeding (*b*); if not connected with any proceedings, by an originating summons (*c*). The order is made by a master (*d*).

SUB-SECT. 3.—*The Conduct of the Taxation.*

Appointment for taxation.

1300. The solicitor having the carriage of an order for taxation must, within seven days after the order is perfected, leave at the office of the taxing master to whom the taxation is allotted (*e*) a

s. 43; but it is convenient as saving the expense of a separate application (*Re Brockman*, [1909] 2 Ch. 170, C. A.).

(*p*) 21 Jac. 1, c. 16; see *Re Brockman, supra*, discussing *Budgett* v. *Budgett*, [1895] 1 Ch. 202, and *Re Margetts*, [1896] 2 Ch. 263; *Re Templeton & Co.* (1909), 101 L. T. 144, C. A.

(*q*) *Re Brockman, supra.* As to the effect of the Statute of Limitations (21 Jac. 1, c. 16) on a solicitor's bill of costs, see title LIMITATION OF ACTIONS, Vol. XIX., p. 42; as to when time begins to run, see pp. 774, 775, *ante*; title LIMITATION OF ACTIONS, Vol. XIX., p. 48.

(*r*) The taxing master may, under R. S. C., Ord. 65, r. 27 (57), extend the time limited in the order (namely, one month) for making the certificate (*Re Macintosh and Thomas, Solicitors*, [1903] 2 Ch. 394, C. A.). If the solicitor attends the taxation after the time limited has expired, this is a waiver of his right to object (*Re Field* (1853), 16 Beav. 593).

(*s*) Where the order is obtained by the solicitor, it provides only for payment of any balance due from him (1 Seton, Judgments and Orders, 7th ed., pp. 234 *et seq.*; R. S. C., Appendix K, No. 42). He can recover what is due from the client by action only (*Re Debenham and Walker*, [1895] 2 Ch. 430; *Re Harcourt, a Solicitor* (1887), 32 Sol. Jo. 92); see p. 812, *post*.

(*t*) This does not prevent the solicitor from enforcing any collateral security for his costs; see p. 811, *post*.

(*a*) R. S. C., Ord. 41, r. 5; *Re Wilde*, [1910] W. N. 129, C. A.; *Re Norvall, a Solicitor*, [1869] W. N. 255; compare *Re Robertson* (*a Solicitor*) (1889), 42 Ch. D. 553. As to service out of the jurisdiction, see R. S. C., Ord. 11, r. 8A, altering the law as laid down in *Re Bouron, Ex parte Brandon* (1886), 54 L. T. 128. The taxing master also gives notice by post of the dates when the bills are to be left for taxation, and when the taxation is to be proceeded with (R. S. C., Ord. 65, r. 19D; compare *ibid.*, r. 19E).

(*b*) For the form, see R. S. C., Appendix K, No. 42A.

(*c*) For forms, see *ibid.*, Nos., 40C, 41B.

(*d*) *Re Thomas*, [1893] 1 Q. B. 670. For forms of orders, see R. S. C., Appendix K, Nos. 41—43. In *Re Brockman, supra*, it was suggested that the same form should be used both in the Chancery and in the King's Bench Division.

(*e*) For the allotment of business amongst the taxing masters, see Regulations issued by Taxing Masters, 1902. Any taxing master may

SECT. 4. Taxation of Costs.

copy of the order, together with a statement containing the names and addresses of parties appearing in person and of the solicitors of parties not appearing in person (*f*). The taxing master then gives notice by post fixing a date before which the bills to be taxed are to be left at his office, along with the necessary vouchers, and a subsequent date on which the taxation is to be proceeded with (*g*). The taxation must, if possible, continue without interruption till completed; notice of any adjournment must be sent by the taxing master to any solicitor not present at the time of the adjournment whose attendance is desired at the next appointment (*h*).

Powers of taxing master.

1301. The taxing master has, for the purposes of the taxation, power to administer oaths, to examine witnesses (*i*), and to require the production of documents (*k*). He may grant extensions of time (*l*), and may award costs against any person neglecting to proceed with the taxation (*m*). He may direct parties to be represented by separate solicitors (*n*); and, where the costs are payable out of a fund, he may direct what parties are to attend and disallow the costs of any parties attending unnecessarily (*o*). He may take account of what is due on the taxation (*p*), and may adjust the rights of the parties by allowing a set-off (*q*).

assist in taxing a bill referred to another taxing master (R. S. C., Ord. 65, r. 19; Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 42).

(*f*) R. S. C., Ord. 65, r. 19C. If he fails to do so, he loses the costs of drawing and copying the bill and of attending the taxation (*ibid.*).

(*g*) *Ibid.*, r. 19D.

(*h*) *Ibid.*, r. 19E. Where any party entitled to costs delays bringing in his costs, the taxing master may proceed without him, and may allow him a nominal or other sum (*ibid.*, r. 27 (28)).

(*i*) If necessary, he must hear witnesses on both sides and allow them to be cross-examined (*Brown* v. *Great Western Rail. Co.* (1887), 3 T. L. R. 582; *Re Flux, Argles and Rawlins* (1874), 44 L. J. (CH.) 375).

(*k*) R. S. C., Ord. 65, r. 27 (25); *Re Evans, Ex parte Brown* (1887), 35 W. R. 546; see also *Harben* v. *Gordon* (1913), 48 L. J. 703.

(*l*) R. S. C., Ord. 65, r. 27 (57). This enables the taxing master to extend the time for making the allocatur, though the time limited by the order has expired (*Re Macintosh and Thomas, Solicitors*, [1903] 2 Ch. 394, C. A.). As to the costs of applications to extend time, see R. S. C., Ord. 65, r. 27 (24).

(*m*) *Ibid.*, r. 27 (28).

(*n*) *Ibid.*, r. 27 (25).

(*o*) *Ibid.*, r. 27 (27); *Re Salmond, Rydon* v. *Williams* (1905), 22 T. L. R. 161; *Stahlschmidt* v. *Lett* (1861), 9 W. R. 830. Before completing the taxation the taxing master may require the solicitor to submit the bill to his client and to inform the client of the taxation (R. S. C., Ord. 65, r. 27 (56)).

(*p*) *Ibid.*, r. 27 (27); see also *ibid.*, r. 27 (28). But not general accounts between the parties (*Jones* v. *James* (1839), 1 Beav. 307; *Re Smith* (1841), 4 Beav. 309; *Cooper* v. *Ewart* (1847), 15 Sim. 564; *King* v. *Savery* (1856), 8 De G. M. & G. 311, C. A.; *Re Le Brasseur and Oakley*, [1896] 2 Ch. 487, C. A.).

(*q*) R. S. C., Ord. 65, r. 27 (21); *Batten* v. *Wedgwood Coal and Iron Co.* (1884), 28 Ch. D. 317; *Harmer* v. *Harris* (1826), 1 Russ. 155; *Re Crawshay, Dennis* v. *Crawshay* (1890), 45 Ch. D. 318, C. A. This does not apply to costs of different proceedings between the same parties which cannot be set off (*David* v. *Rees*, [1904] 2 K. B. 435, C. A.; *Bake* v. *French*, [1907] 1 Ch. 428; *Re Bassett, Ex parte Lewis*, [1896] 1 Q. B. 219; *Re Adams, Ex*

1302. On the completion of the taxation the taxing master issues his certificate or allocatur (*r*) showing the result of the taxation (*s*).

SUB-SECT. 4.—*Review of Taxation.*

Allocatur.

List of objections.

1303. At any time before the allocatur is issued (*t*) any party (*a*) dissatisfied with the taxing master's allowance or disallowance of the whole or part of any items may carry in a list of objections; the list must be in writing, and must specify concisely the particular items or parts of items objected to (*b*), and the grounds of objection (*c*). Thereupon application is made to the taxing master to review the taxation (*d*); and the taxing master is to review the taxation before issuing the allocatur (*e*). He may receive further evidence, if he thinks fit (*f*); and, if required, he must state in his allocatur or by reference to the objections his decision thereon, together with his reasons and any special facts or circumstances (*g*).

Review by taxing master.

Order for review.

1304. As regards items not so objected to, the taxing master's allocatur is final (*h*). As regards items which have been specified in the list of objections, any party (*i*) dissatisfied with the

parte Griffin (1880), 14 Ch. D. 37, C. A.; *Hassell* v. *Stanley*, [1896] 1 Ch. 607; *Barker* v. *Hemming* (1880), 5 Q. B. D. 609, C. A.).

(*r*) For the form, see R. S. C., Appendix F, Nos. 21, 21A.

(*s*) See title PRACTICE AND PROCEDURE, Vol. XXIII., p. 185. He may issue an *interim* allocatur without waiting till the whole amount can be certified (R. S. C., Ord. 65, r. 27 (17) (b), (39)). If it appears that there must in any event be moneys due from the solicitor to the client, he may issue an *interim* allocatur, on the filing of which a master may order the moneys so certified to be forthwith paid to the client or brought into court (*ibid.*, Ord. 52, r. 26).

(*t*) See, however, *Re Furber* (1898), 33 L. J. 343, C. A., where, to avoid a miscarriage of justice, the allocatur was set aside so as to enable objections to be carried in.

(*a*) Including any party's solicitor, though no longer acting for him, where such party's costs are directed to be taxed (*Re Clarke's Settlement* (1911), 55 Sol. Jo. 293).

(*b*) R. S. C., Ord. 65, r. 27 (39). As regards libel, the objections are absolutely privileged (*Pedley and May* v. *Morris* (1891), 61 L. J. (Q. B.) 21).

(*c*) No fresh grounds of objection can be taken before the judge (*Strousberg* v. *Sanders* (1889), 38 W. R. 117, C. A.).

(*d*) R. S. C., Ord. 65, r. 27 (39).

(*e*) *Ibid.*, r. 27 (40). Where the taxing master to whom the bill was referred has been assisted in his taxation by another taxing master, the first taxing master is to review the taxation, though the items objected to were dealt with by the second taxing master (*Ross* v. *Ashwin*, [1884] W. N. 86; *Re Lett, Ex parte Parry* (1861), 5 L. T. 416).

(*f*) R. S. C., Ord. 65, r. 27 (40).

(*g*) *Ibid.*; *Dashwood* v. *Magniac*, [1892] W. N. 54; compare *Re Mahon*, [1893] 1 Ch. 507, C. A. The opposite party may then carry in counter-objections (*Strousberg* v. *Sanders*, *supra*; *Shrapnel* v. *Laing* (1888), 20 Q. B. D. 334, C. A.; *Re Furber*, *supra*).

(*h*) R. S. C., Ord. 65, r. 27 (41). Where the taxation is conducted under the Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11), s. 1 (2), the court has no power to review it (*Re Cannings, Ltd. and Middlesex County Council*, [1907] 1 K. B. 51, C. A.; see also *Sandback Charity Trustees* v. *North Staffordshire Rail. Co.* (1877), 3 Q. B. D. 1, C. A., following *Owen* v. *London and North Western Rail. Co.* (1867), L. R. 3 Q. B. 54).

(*i*) A person who is not a party should apply to have the order for taxation discharged (*Charlton* v. *Charlton* (1882), 31 W. R. 237).

SECT. 4. Taxation of Costs.

allocatur (*k*) may, within fourteen days from its date (*l*), apply to the judge in chambers for an order to review the taxation; and the judge may make such order as he thinks just (*m*). No evidence other than that before the taxing master is to be received unless the judge so directs (*n*).

Principles followed by the court.

The court does not, as a general rule, interfere with the discretion of the taxing master (*o*), even though he may have disallowed the whole of the costs (*p*). Where, however, the matter is not purely one for his discretion (*q*), or where he has acted upon a wrong principle (*r*), or has mistaken the scope of the order for taxation (*s*), or where he ought to have heard further evidence (*t*), the court orders a review.

Appeal.

1305. An appeal lies to the Court of Appeal from the order of the judge (*a*). The order being an interlocutory order, leave is necessary (*b*), and the appeal must be brought within fourteen days (*c*).

(*k*) The review is not ordered until the allocatur is made (*Re Le Brasseur and Oakley*, [1896] 2 Ch. 487, C. A.). The objections must be confined to those taken before the taxing master (*Strousberg* v. *Sanders* (1889), 38 W. R. 117, C. A.; *Re Hill, a Solicitor* (1886), 33 Ch. D. 266, C. A.; *Shrapnel* v. *Laing* (1888), 20 Q. B. D. 334, C. A.; *Craske* v. *Wade* (1899), 80 L. T. 380, C. A.; *Re Nation, Nation* v. *Hamilton* (1887), 57 L. T. 648), unless the objection is to the whole of the finding (*Re Castle* (1887), 36 Ch. D. 194, following *Re Sparrow* (1881), 8 Q. B. D. 479, C. A.), or unless the taxing master has wrongly allowed a lump sum without taxing at all (*Re Johnston, Mills* v. *Johnston* [1904] 1 Ch. 132).

(*l*) The time may be extended (R. S. C., Ord. 65, r. 27 (41)).

(*m*) *Ibid.* Where the taxation has taken place before a district registrar, the judge may refer the items objected to to a taxing master of the Supreme Court (*Stevens* v. *Griffin*, [1897] 2 Q. B. 368, C. A.).

(*n*) R. S. C., Ord. 65, r. 27 (42); *Sturge* v. *Dimsdale* (1846), 9 Beav. 170; *Hester* v. *Hester* (1887), 34 Ch. D. 607, C. A.

(*o*) *In the Estate of Ogilvie, Ogilvie* v. *Massey*, [1910] P. 243, C. A.; *Ginn* v. *Robey*, [1911] W. N. 28, C. A.; *Re Findlay, Findlay* v. *Cuthbertson* (1910), 44 I. L. T. 214, C. A.; *Denaby and Cadeby Main Collieries* v. *Yorkshire Miners' Association* (1907), 23 T. L. R. 635, C. A.; *Wheeler* v. *Fradd* (1898), 14 T. L. R. 440, C. A.; *Glamorgan County Council* v. *Great Western Rail. Co.*, [1895] 1 Q. B. 21; *Re Maddock, Butt* v. *Wright*, [1899] 2 Ch. 588, 591; *Mangan* v. *Metropolitan Electric Supply Co.*, [1891] 2 Ch. 551, C. A.; *Fenton* v. *Crickett* (1818), 3 Madd. 496; *Alsop* v. *Oxford* (*Lord*) (1833), 1 My. & K. 564; *Friend* v. *Solly* (1847), 10 Beav. 329; *Re Catlin* (1854), 18 Beav. 508; *Eyre* v. *Shelley* (1841), 5 Jur. 439; *Re Moss* (1854), 3 W. R. 19; *Bucknall* v. *Boydell* (1839), 7 Scott, 171; *Re Brown* (1867), L. R. 4 Eq. 464; *Clarke* v. *Tyne Improvement Commissioners* (1868), L. R. 3 C. P. 230; *Yglesias* v. *Royal Exchange etc. Corporation* (1870), L. R. 5 C. P. 141; *Potter* v. *Rankin* (1870), L. R. 5 C. P. 518; *Beattie* v. *Ebury* (*Lord*) (1873), 43 L. J. (CH.) 80. But he must have exercised his discretion (*Boswell* v. *Coaks* (1887), 36 Ch. D. 444, C. A.).

(*p*) *Simmons* v. *Storer* (1880), 14 Ch. D. 154.

(*q*) *Ager* v. *Blacklock & Co.* (1887), 56 L. T. 890.

(*r*) *Fenton* v. *Crickett, supra; Sparrow* v. *Hill* (1881), 7 Q. B. D. 362; *Carter* v. *Apfel* (1912), 57 Sol. Jo. 97; *Re Porter, Amphlett and Jones*, [1912] 2 Ch. 98.

(*s*) *Russell* v. *Buchanan* (1838), 9 Sim. 167.

(*t*) *Sturge* v. *Dimsdale, supra.*

(*a*) *Re Oddy*, [1895] 1 Q. B. 392, C. A.; see also *Harben* v. *Gordon* (1913), 48 L. J. 703.

(*b*) *Re Jerome*, [1907] 2 Ch. 145, C. A.

(*c*) *Re Watson, Ex parte Phillips* (1887), 19 Q. B. D. 234, C. A.

SECT. 5.—*What Costs Allowed on Taxation.*

SUB-SECT. 1.—*In General.*

Discretion of taxing master.

1306. Where an order is made for the taxation of costs pursuant to the statutory powers of the court (*d*), the taxing officer, subject to the court's direction, is given a very large discretion as to the amount which he may allow (*e*). The principles of allowance by which he ought to be guided in taxations in matters and actions in the Supreme Court of Judicature (*f*), and in non-contentious cases where he has jurisdiction, differ according to the circumstances of the case, depending upon which of the following categories the taxation belongs to, namely:—(1) As between solicitor and client; (2) as between party and party; (3) where the costs are payable out of a fund; (4) where they are to include costs, charges, and expenses, and to be by way of indemnity; (5) where they are covered by the scales attached to the Solicitors Remuneration Order, 1881, Schedule I.; and (6) where they are regulated or affected by any statutory provision.

SUB-SECT. 2.—*Costs as between Solicitor and Client.*

Where applicable.

1307. The taxation of costs as between solicitor and client applies to costs which a solicitor is entitled to recover as against his own client; and to costs which in special cases may be awarded as between solicitor and client against an unsuccessful party to litigation (*g*).

As against client.

1308. The solicitor's right to recover costs as against his own client arises out of his professional employment (*h*). In non-contentious business the taxing master is bound to allow the scale charges fixed by the Remuneration Order, 1882 (*i*), unless the work done falls outside the scale (*j*), or unless the solicitor has elected to charge item charges (*k*). As regards contentious proceedings, the solicitor is not limited in his charges against his own client to such sums as may be allowed against his opponent as party and party costs (*l*). Any items in excess of party and party costs will become payable to him when he has complied with his obligation to deliver to his client a signed bill of such items and has waited the necessary month (*m*). If, however, any of the items are unusual in their

(*d*) See p. 780, *ante*.

(*e*) R. S. C., Ord. 65, r. 27 (29); *Re Ermen, Tatham* v. *Ermen*, [1903] 2 Ch. 156; *McIver & Co., Ltd.* v. *Tate Steamers, Ltd.*, [1902] 2 K. B. 184, C. A.; *Re Burroughs, Wellcome & Co.'s Trade Marks* (1904), 22 R. P. C. 164.

(*f*) As to costs in the county court, see title COUNTY COURTS, Vol. VIII., pp. 578 *et seq.*

(*g*) See also title PRACTICE AND PROCEDURE, Vol. XXIII., p. 183. As to costs in county court actions where a solicitor is not employed, see title COUNTY COURTS, Vol. VIII., p. 583; as to costs as between solicitor and client, see *ibid.*, p. 585.

(*h*) See pp. 728 *et seq.*, *ante*.

(*i*) See pp. 760 *et seq.*, *ante*.

(*j*) See pp. 765 *et seq.*, *ante*.

(*k*) See *ibid.* As to special agreements as to remuneration, see pp. 770 *et seq.*, *ante*.

(*l*) As to party and party costs, see pp. 799 *et seq.*, *post*.

(*m*) See pp. 774, 775, *ante*.

SECT. 5. What Costs Allowed on Taxation.

nature, and such as would not be incurred in the matter by a solicitor in the ordinary course of conducting a business of the kind on behalf of his client, the solicitor cannot recover these items unless he has protected himself by taking his client's express authority to incur them (*n*). Moreover, where costs have been incurred improperly or without any reasonable cause, or where there has been misconduct or default on the part of the solicitor by reason of which the costs, although properly incurred, have proved fruitless to the client, such costs may be disallowed (*o*).

Trustees and personal representatives.

1309. The court has power by a special order to award costs as between solicitor and client to a successful party where it is exercising its equitable jurisdiction (*p*), but not where it is exercising its ordinary common law jurisdiction (*q*). This power is discretionary, and the court may either itself allow or direct the taxing master to allow costs as between solicitor and client wherever the court on special grounds may consider it right and proper to do so (*a*).

Such orders are usually made in favour of trustees (*b*) and personal representatives (*c*).

(*n*) *Re Harrison* (1886), 33 Ch. D. 52, C. A.; *Re Blyth and Fanshawe* (1882), 10 Q. B. D. 207, applied in *Re Broad and Broad* (1885), 15 Q. B. D. 420, C. A., and in *Re Roney & Co.* (1913), 49 L. J. 34, C. A.; *Foy* v. *Cooper* (1842), 2 Q. B. 937; *Lynch to Chance* (1892), 30 L. R. Ir. 278, C. A.; *Re Evans, Ex parte Brown* (1887), 35 W. R. 546; *Re Barnhill* (1893), 29 L. R. Ir. 399 (where the court held that for the allowance of costs disallowed on a prior party and party taxation, the client's authority ought to be produced or valid reasons shown, arising from the importance of the case or otherwise, why the expenses were incurred; it is very doubtful, however, whether this would be followed in England). The authority given by the client must be regarded as qualified by the discretion in the taxing master to disallow (*Donnelly* v. *Malone* (1913), 47 I. L. T. 208).

(*o*) R. S. C., Ord. 65, r. 11; *Re X., a Solicitor* (1886), 54 L. T. 634; *Potts* v. *Dutton* (1845), 8 Beav. 493; *Langford* (*Lady*) v. *Mahony* (1845), 3 Jo. & Lat. 97; *Re Clark* (1851), 1 De G. M. &. G. 43, C. A.; *Re Massey and Carey* (1884), 26 Ch. D. 459, C. A. As to a solicitor being ordered to pay costs personally, see pp. 832 *et seq., post;* title MALICIOUS PROSECUTION AND PROCEDURE, Vol. XIX., p. 673, note (*s*).

(*p*) *Andrews* v. *Barnes* (1888), 39 Ch. D. 133, C. A., approving *Mordue* v. *Palmer* (1870), 6 Ch. App. 22; *Eady* v. *Elsdon*, [1901] 2 K. B. 460, C. A.; *Brown* v. *Burdett* (1888), 40 Ch. D. 244, C. A.; *Re Brown* (1867), L. R. 4 Eq. 464; *Johnson* v. *Telford* (1827), 3 Russ. 477; *Re Davies, Jenkins* v. *Davies* (1891), 64 L. T. 824; *Re Medland, Eland* v. *Medland* (1889), 41 Ch. D. 476, C. A.

(*q*) A plaintiff in an action of tort can only be awarded party and party costs (*Cockburn* v. *Edwards* (1881), 18 Ch. D. 449, C. A.), and the difference between solicitor and client costs and party and party costs cannot be awarded as damages (*Harrison* v. *McSheehan*, [1885] W. N. 207). An action may, however, be settled on the terms that one of the parties is to have costs as between solicitor and client (*Young* v. *Walker* (1847), 16 M. & W. 446).

(*a*) *Re Bradshaw, Bradshaw* v. *Bradshaw*, [1902] 1 Ch. 436.

(*b*) *Dodds* v. *Duke* (1884), 25 Ch. D. 617; *Re Turner, Wood* v. *Turner*, [1907] 2 Ch. 126, 133, C. A.; *Re Love, Hill* v. *Spurgeon* (1885), 29 Ch. D. 348, C. A.; *Williams* v. *Wight*, [1890] W. N. 50; *Turner* v. *Hancock* (1882), 20 Ch. D. 303, C. A.; *Re Barne, Lee* v. *Barne* (1890), 62 L. T. 922; *Re Beddoe, Downes* v. *Cottam*, [1893] 1 Ch. 547, C. A.; *Brown* v. *Burdett* (1888),

(*c*) For note (*c*) see p. 799, *post.*

SECT. 5. WHAT COSTS ALLOWED ON TAXATION.

1310. Where in an action brought against a public authority the plaintiff proceeds after tender of amends or payment into court, and does not recover more than the amount tendered or paid into court, the defendants are, unless good cause exists for depriving them of the costs (*d*), entitled to costs as between solicitor and client as from the date of the tender or payment in (*e*). In proceedings relating to the opposition to the grant of a patent, the Comptroller may award to any party such costs as he may consider reasonable, which would include costs as between solicitor and client (*f*). A defendant who in an action of infringement of a patent is granted a certificate of validity is in a subsequent action entitled to solicitor and client costs unless deprived of them by the court's order (*g*).

Actions against public authorities.

Patent actions.

Where the client has received costs from the opposite party, it is the proper course for his solicitor to include the details of such costs in his solicitor and client bill (*h*).

SUB-SECT. 3.—*Costs as between Party and Party.*

1311. All costs ordered to be paid in an action ought to be taxed as between party and party (*i*), unless in the order there are qualifying words directing that they are to be allowed in any other manner (*j*).

Party and party costs.

40 Ch. D. 244, 260, C. A.; *Allen* v. *Jarvis* (1869), 4 Ch. App. 616; *Re Brown* (1867), L. R. 4 Eq. 464; *Johnson* v. *Telford* (1827), 3 Russ. 477. The real as well as the personal estate is liable to pay costs (*Re Vickerstaff, Vickerstaff* v. *Chadwick*, [1906] 1 Ch. 762); see title TRUSTS AND TRUSTEES.

(*c*) *Re Griffiths, Jones* v. *Owen* (1904), 90 L. T. 639; see title EXECUTORS AND ADMINISTRATORS, Vol. XIV., p. 352.

(*d*) *East* v. *Berkshire County Council* (1911), 106 L. T. 65.

(*e*) Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1 (c); see title PUBLIC AUTHORITIES AND PUBLIC OFFICERS, Vol. XXIII., pp. 339 *et seq.* But if the plaintiff takes the money out of court and discontinues, the defendants are only entitled to party and party costs from the date of payment in (*Smith* v. *Northleach Rural Council*, [1902] 1 Ch. 197). As to the taxation of solicitors' bills chargeable to the council, see title LOCAL GOVERNMENT, Vol. XIX., pp. 288, 289; and as to costs in an action against a corporate officer, see *ibid.*, p. 327.

(*f*) Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 39 (1); see title PATENTS AND INVENTIONS, Vol. XXII., p. 178, note (*f*). As to costs in infringement actions, see *ibid.*, pp. 225, 226.

(*g*) Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 35; see title PATENTS AND INVENTIONS, Vol. XXII., pp. 225, 226. As to collusive or vexatious actions, see *Davenport* v. *Rylands* (1865), L. R. 1 Eq. 302, 309; *Proctor* v. *Sutton Lodge Chemical Co.* (1888), 5 R. P. C. 142.

(*h*) *Re Osborn and Osborn*, [1913] 3 K. B. 862, C A.

(*i*) For the regulations governing the taxation of costs as between party and party, see R. S. C., Ord. 65, r. 27 (1)—(58); and Masters' Practice Notes, 1902 (Yearly Practice of the Supreme Court, 1914, pp. 2147 *et seq.*). As to the amounts to be allowed in respect of particular items, see R. S. C., Appendix N. The present title, on the question of costs, deals comprehensively with the general principles governing taxation, but mere questions of amount and matters of detail in respect of the particular items allowable fall outside its scope. They are, however, dealt with exhaustively in the Yearly Practice of the Supreme Court, 1914. As to costs as between party and party in county courts, see title COUNTY COURTS, Vol. VIII., pp. 583, 584; as to costs in divorce matters, see title HUSBAND AND WIFE, Vol. XVI., pp. 547 *et seq.*

(*j*) *Re Bradshaw, Bradshaw* v. *Bradshaw*, [1902] 1 Ch. 436. In certain cases it has been provided by Masters' Regulations that fixed costs are to be allowed (see title PRACTICE AND PROCEDURE, Vol. XXIII., pp. 176 *et seq.*), as, for instance, in cases under R. S. C., Ord. 14 (Masters' Resolu-

SECT. 5. **What Costs Allowed on Taxation.**

The proper principle upon which party and party costs should be taxed is that the successful party should have an indemnity against costs reasonably incurred in prosecuting or defending the action (*k*). This principle is, however, subject to the allowance being limited by the charges set forth in the lower scale of charges (*l*).

Discretion of taxing master.

Where, however, the taxing master has a discretion as to amount, he may allow such amounts as may appear to him to be proper to be paid for the attainment of justice or for defending the rights of any party, though he is precluded from allowing against an adverse party any costs which appear to him to have been incurred or increased through over-caution, negligence, or mistake, or by payment of special fees to counsel, or special charges or expenses to witnesses or other persons, or by other unusual expenses (*m*). The effect of this latitude is to give the master a very wide margin in the allowance of amount in discretionary items (*n*), and where he *bonâ fide* exercises his discretion and does not err in the principle of allowance, the court will not as a rule interfere on appeal, particularly on the question of *quantum* of allowance (*o*).

Special allowances.

1312. The taxing master may make special allowances for the preparation of special indorsements, special cases, pleadings, answers

tions, May, 1906, see Yearly Practice of the Supreme Court, 1914, p. 2145), garnishee cases (Masters' Resolutions, 1911, see *ibid.*, p. 687), and cases where the defendant fails to appear (Masters' scale issued in May, 1906, see *ibid.*, p. 2144; and see *Armitage* v. *Parsons*, [1908] 2 K. B. 410, C. A.). If an action or petition is dismissed, or motion refused, with costs, the taxing master may tax such costs without an order, unless the court or a judge prohibits the taxation (R. S. C., Ord. 65, r. 27 (33); *Gosnell* v. *Bishop* (1888), 38 Ch. D. 385). As to the power of the court to deal with costs in an action, see title PRACTICE AND PROCEDURE, Vol. XXIII., pp. 176 *et seq.*

(*k*) *Richardson* v. *Richardson*, [1895] P. 346, C. A.; *Carson* v. *Pickersgill & Sons* (1885), 14 Q. B. D. 859, C. A., *per* BRETT, M.R., at p. 868; *Picasso* v. *Maryport Harbour Trustees*, [1884] W. N. 85; and see *Smith* v. *Buller* (1875), L. R. 19 Eq. 473; as to costs in an action for breach of covenant, see title LANDLORD AND TENANT, Vol. XVIII., pp. 542, 544.

(*l*) R. S. C., Appendix N; *Price* v. *Clinton*, [1906] 2 Ch. 487. As to the higher and lower scales, see p. 768, *ante;* as to costs where the Crown is a party, see title CONSTITUTIONAL LAW, Vol. VI., p. 412.

(*m*) R. S. C., Ord. 65, r. 27 (29); *Re Broad and Broad* (1885), 1 T. L. R. 653, C. A..

(*n*) This regulation gives the master power to increase but not to decrease the items set out in R. S. C., Appendix N (*Price* v. *Clinton*, [1906] 2 Ch. 487; *Re Burroughs, Wellcome & Co.'s Trade Marks* (1904), 22 R. P. C. 164; *Bartlett* v. *Higgins*, [1901] 2 K. B. 230, C. A.). It does not abolish the distinction between solicitor and client and party and party costs (*Re Bradshaw, Bradshaw* v. *Bradshaw*, [1902] 1 Ch. 436). The items mentioned in R. S. C., Appendix N, may be increased by the taxing master in the following cases, namely:—Instructions for originating summons (*Re Ermen, Tatham* v. *Ermen*, [1903] 2 Ch. 156); attending on examination of witness before an examiner (*McIver & Co., Ltd.* v. *Tate Steamers, Ltd.*, [1902] 2 K. B. 184, C. A.); daily refreshers to counsel (*Stewart & Co.* v. *Weber* (1903), 19 T. L. R. 722; *Cavendish* v. *Strutt*, [1904] 1 Ch. 524); taking evidence before trial (*Bartlett* v. *Higgins, supra; Delaroque* v. *S.S. Oxenholme & Co.*, [1883] W. N. 227); fees to counsel to view (*Leeds Forge Co., Ltd.* v. *Deighton's Patent Flue and Tube Co., Ltd.*, [1903] 1 Ch. 475); settling a special case for appeal in the Revenue Paper (*Manchester Corporation* v. *Sugden, Gresham Life Assurance Society* v. *Bishop*, [1903] 2 K. B. 171, C. A.).

(*o*) See p. 796, *ante.*

to interrogatories, and other special affidavits and admissions in lieu of the scale allowances for instructions and preparing or drawing (*p*). He may also, if on special grounds he considers the fees set forth in the scale for instructions for and preparing briefs inadequate, increase them as he may consider reasonable (*q*).

A reasonable allowance in excess of the scale charge may be made for an affidavit to be sworn by several deponents or at a distance (*r*).

Delivery of pleadings etc.

The fees for delivery of pleadings, services and notices do not apply where both parties are represented by the same solicitor unless an affidavit of service is required (*s*). Where two or more defendants (*t*) are represented by the same solicitor (*u*) and deliver separate pleadings, the taxing master must consider whether such separate pleadings are necessary (*a*); if he thinks they are not, he is to disallow them, both as between solicitor and client and as between party and party (*b*).

Evidence.

Such just and reasonable charges are to be allowed for procuring evidence (*c*) and the attendance of witnesses (*d*) as in the opinion of the taxing master have been properly incurred (*e*).

(*p*) R. S. C., Ord. 65, r. 27 (1). As to instructions, see *Re Burroughs, Wellcome & Co.'s Trade Marks* (1904), 22 R. P. C. 164; *Re Anglo-Austrian Printing and Publishing Union*, [1894] 2 Ch. 622; *S.* v. *K.* (1886), 30 Sol. Jo. 220; as to attendances, *Re Mahon*, [1893] 1 Ch. 507, 514, C. A.; *Re Bray Electric Tramway* (1889), 23 L. R. Ir. 116; *Lynch to Chance* (1892), 30 L. R. Ir. 278, C. A.). As to the costs of amendment, see R. S. C., Ord. 65, r. 27 (31), (32); *Nottage* v. *Jackson* (1883), 11 Q. B. D. 627, C. A.

(*q*) R. S. C., Ord. 65, r. 27 (3). This is probably the most elastic item in the whole scale. The fee for instructions may range from 1 guinea to 1,000 guineas, according to the magnitude and importance of the case; see *Turnbull* v. *Janson* (1878), 3 C. P. D. 264; *Re Craven's Settlement* (1889), 6 T. L. R. 105. The taxing master's discretion is not subject to review unless he has acted on a wrong principle (*Carter* v. *Apfel* (1912), 57 Sol. Jo. 97).

(*r*) R. S. C., Ord. 65, r. 27 (4); *How* v. *Winterton* (*Earl*) (No. 4) (1905), 91 L. T. 763.

(*s*) R. S. C., Ord. 65, r. 27 (6).

(*t*) This does not apply to several actions brought against the same defendant for the same or a similar object (*Grieb's Case* (1890), 45 Ch. D. 606).

(*u*) As between themselves, each defendant is chargeable only with his proportion of the costs (*Re Colquhoun, Ex parte Ford* (1854), 5 De G. M. & G. 35; *Beaumont* v. *Senior*, [1903] 1 K. B. 282).

(*a*) A defendant severing his defence ought to have an opportunity of explaining why he did so (*Re Isaac, Cronbach* v. *Isaac*, [1897] 1 Ch. 251, C. A.).

(*b*) R. S. C., Ord. 65, r. 27 (7). No appeal lies against his decision unless he has failed to exercise his discretion at all (*Boswell* v. *Coaks* (1887), 36 Ch. D. 444, C. A.).

(*c*) *Re Catlin* (1854), 18 Beav. 508, 510 (bills of costs); *Great Eastern Rail. Co.* v. *Norwich and Spalding Rail. Co.*, [1881] W. N. 92 (co-defendant's pleadings); *Wentworth* v. *Lloyd* (1866), L. R. 2 Eq. 607 (perusal of depositions taken abroad); *Re de Rosaz, Rymer* v. *de Rosaz* (1883), 24 Ch. D. 684 (exhibits); *Betts* v. *Cleaver* (1872), 7 Ch. App. 513 (affidavits of documents).

(*d*) Conduct money is to be allowed unless paid prematurely (*Carter* v. *Apfel, supra*). The scale of allowances in use is that issued in Hilary Term, 1853, under the Common Law Procedure Act, 1852 (15 & 16 Vict.

(*e*) For note (*e*) see p. 802, *post*.

SECT. 5. **What Costs Allowed on Taxation.**

Agency cases.

1313. In country agency cases the taxing master may make a special allowance in respect of any special or extensive correspondence between the country solicitor and his London agent (*f*). He may also make a special allowance for the attendance of the country

c. 76). This is put under two heads, namely: (i.) those who reside in the town where the action is tried; and (ii.) those who reside at a distance from it; thus common witnesses receive from 5*s.* to 7*s.* 6*d.*; tradesmen, farmers etc., from 7*s.* 6*d.* to 15*s.*; professional men, 21*s.*; solicitors' and others' clerks, 10*s.* 6*d.* to 21*s.*; engineers, surveyors and notaries, 21*s.* to 63*s.*; gentlemen, bankers, merchants etc., 21*s.* first day and reasonable expenses after; females (according to station in life), 5*s.* to 20*s.*; police inspectors, 5*s.* to 10*s.*; and police constables, 3*s.* to 7*s.* 6*d.* Reasonable travelling expenses may be allowed in addition (*Hunter* v. *Liddell* (1851), 16 Q. B. 402; *Vice* v. *Anson* (*Dowager Viscountess*) (1827), 3 C. & P. 19; *Re Working Men's Mutual Society* (1882), 21 Ch. D. 831; *Wiltshire* v. *Marshall*, [1866] W. N. 80). Hotel expenses are in the discretion of the taxing master (*East Stonehouse Local Board* v. *Victoria Brewery Co.*, [1895] 2 Ch. 514; *Briggs & Co.* v. *Gaylord* (1894), 97 L. T. Jo. 389 (county court)). Parties to an action are not allowed conduct money, but are entitled to the same allowance as witnesses of the same class for their travelling and hotel expenses (*Dowdell* v. *Australian Royal Mail Steam Navigation Co.* (1854), 3 E. & B. 902; *Howes* v. *Barber* (1852), 18 Q. B. 588). Foreign witnesses may be allowed compensation for loss of time where brought to or detained in England to give evidence; see *Lonergan* v. *Royal Exchange Assurance* (1831), 7 Bing. 729; *Tremain* v. *Barrett* (1815), 6 Taunt. 88; *Lopes* v. *de Tastet* (1822), 7 Moore (C. P.), 120; *Picasso* v. *Maryport Harbour Trustees*, [1884] W. N. 85; *The City of Lucknow* (1884), 51 L. T. 907. A witness subpœnaed by both sides is entitled to be paid all his expenses by the party who puts him into the witness box at the trial (*Allen* v. *Yoxall* (1844), 1 Car. & Kir. 315), but not by both (*Hale* v. *Bates* (1858), E. B. & E. 575, 581). Where a witness gives evidence on more than one issue and a party is by the judgment given costs of only one issue, he is not entitled to costs of any witnesses who did not give evidence on the issue on which he succeeded exclusively (*Brown* v. *Houston*, [1901] 2 K. B. 855, C. A.; *Harrison* v. *Bush* (1855), 5 E. & B. 344). As to the number of days' attendance allowable, see *Railways Commissioner* v. *O'Rourke*, [1896] A. C. 594, P. C.; *Fryer* v. *Sturt* (1855), 16 C. B. 218. Scientific witnesses may be allowed such sum for qualifying as the master in his absolute discretion thinks fit; see *Ashworth* v. *English Card Clothing Co., Ltd.* (No. 1), [1904] 1 Ch. 702; *Smith* v. *Buller* (1875), L. R. 19 Eq. 473; *Batley* v. *Kynock* (1875), 20 Eq. 632; *Re Laffitte* (*Charles*) *& Co., Ltd., Laffitte's Claim* (1875), L. R. 20 Eq. 650. As to the number of witnesses who will be allowed for qualifying (usually not more than two), see *Leonhardt* v. *Kalle*, [1895] W. N. 97 (where three chemists were allowed); *Stanger Leathes* v. *Stanger Leathes*, [1879] W. N. 86; but the master ought to have evidence showing how their qualifying fee is justified (*Thompson* v. *Moore* (1890), 25 L. R. Ir. 98). Costs of bringing inanimate evidence into court (*e.g.*, a broken wheel or piece of machinery) are proper to be allowed (*Mackley* v. *Chillingworth* (1877), 2 C. P. D. 273, 279). Costs of employing interpreters to translate the evidence of foreign witnesses are proper to be allowed (*Shrewsbury* (*Earl*) v. *Trappes* (1862), 10 W. R. 663). Witnesses may recover their fees for attendance from the party serving them with subpœnas (*Collins* v. *Godefroy* (1831), 1 B. & Ad. 950; *Chamberlain* v. *Stoneham* (1889), 24 Q. B. D. 113 (bankruptcy); but see *Re Working Men's Mutual Society*, *supra*). As to the expenses of witnesses generally, see title EVIDENCE, Vol. XIII., pp. 583 *et seq.*

(*e*) R. S. C., Ord. 65, r. 27 (9). The expenses of procuring evidence may be allowed to a defendant when the plaintiff discontinues (*Windham* v. *Bainton* (1888), 21 Q. B. D. 199; compare *Bright's Trustee* v. *Sellar*, [1904] 1 Ch. 369).

(*f*) R. S. C., Ord. 65, r. 27 (10). As to the relation between the country solicitor and the London agent, see, further, pp. 844 *et seq.*, *post.*

solicitor at the trial (*g*) in London, provided that the case is exceptional, and the country solicitor's attendance is necessary on account of his personal knowledge of the case (*h*) or on account of the nature of the case (*i*).

Attendances.

1314. For attendances before a registrar in the Chancery Division for the purpose of settling and passing judgments or orders, the taxing master may make a special allowance, if the registrar has certified (*j*) that a special allowance ought to be made on account of the special nature, unusual length or difficulty of the judgment or order in question (*k*). For attendances before the judge or master in chambers the usual fee is 6*s*. 8*d*., or, according to circumstances, not to exceed £1 1*s*. (*l*). Where the attendance is lengthy, or the case difficult, the taxing master may allow up to £2 2*s*. (lower scale), or £3 3*s*. (higher scale), and in company cases £5 5*s*. In very special cases the judge may by memorandum signed by him and stating his grounds allow up to £10 10*s*. (*m*).

Failure to attend.

Where a solicitor fails to attend an appointment at judges' chambers, or where by reason of his not having the necessary evidence or not being properly prepared to proceed the appointment becomes abortive, the client or his solicitor personally may be ordered to pay the costs of such appointment, and may be deprived of his own costs of the same against any other party or a fund (*n*).

Counsel's fees.

1315. The taxing master may allow such fees to counsel for advice (*o*) or settling pleadings and other documents (*p*) as in his discretion he may think fit (*q*); but no additional fees are allowed for conferences, unless the taxing master is of opinion that for some

(*g*) In *McIver & Co., Ltd.* v. *Tate Steamers, Ltd.*, [1902] 2 K. B. 184, C. A., attendance before an examiner of the court was allowed. In *Perry & Co.* v. *Hessin & Co.* (1913), 108 L. T. 332, attendance on trial for passing-off action was disallowed.

(*h*) *The Soto*, [1893] P. 73, considering *Bell* v. *Aitkin* (1868), L. R. 3 C. P. 320, *Potter* v. *Rankin* (1868), L. R. 4 C. P. 76, *Re Snell* (*a Solicitor*) (1877), 5 Ch. D. 815, C. A., *Re Foster, Ex parte Dickens* (1878), 8 Ch. D. 598, *Re Sherwell, Ex parte Snow*, [1879] W. N. 22, and *Re Storer* (1884), 26 Ch. D. 189.

(*i*) *Re Dixon, Tousey* v. *Sheffield*, [1898] 2 Ch. 443, C. A. (fraud and personal misconduct). If allowance is made for the country solicitor's attendance, no allowance is made for the London agent's attendance (Masters' Practice Notes, 1902; see Yearly Practice of the Supreme Court, 1914, pp. 2147 *et seq.*).

(*j*) Under R. S. C., Ord. 62, r. 15.

(*k*) *Ibid.*, Ord. 65, r. 27 (11).

(*l*) *Ibid.*, Appendix N, Nos. 150, 151.

(*m*) *Ibid.*, Ord. 65, r. 27 (12).

(*n*) *Ibid.*, r. 27 (13); compare title MALICIOUS PROSECUTION AND PROCEDURE, Vol. XIX., p. 673, note (*s*). As to disallowance of costs improperly incurred, see p. 800, *ante*.

(*o*) One fee to counsel to advise on evidence only is generally allowed, but in exceptional circumstances a second fee may be allowed (*Wicksteed* v. *Biggs* (1885), 54 L. J. (CH.) 967). Originals of important documents should not be laid before counsel, and the cost of preparing copies is allowed (*Re Beamish's Trusts* (1871), 19 W. R. 740; compare *Stephens* v. *Newborough* (*Lord*) (1848), 11 Beav. 403).

(*p*) Including indorsement on writ (*Tisdall* v. *Richardson* (1887), 20 L. R. Ir. 199), or notice of appeal (*Re Bailey, Bailey* v. *Bailey*, [1909] W. N. 110).

(*q*) R. S. C., Ord. 65, r. 27 (15); *A.-G.* v. *Carrington* (*Lord*) (1843), 6 Beav. 454; *Parkinson* v. *Hanbury* (1865), 11 Jur. (N. S.) 474.

SECT. 5. What Costs Allowed on Taxation.

special reason a conference was proper (*r*). The attendance of counsel at chambers is not allowed, unless the case is certified as fit for counsel (*s*). Where not more than £50 is recovered in an action of contract, the costs of briefing one counsel only are as a general rule allowed (*t*). In other cases the taxing master has a discretion as to allowing the costs of briefing two counsel (*a*) and as to allowing fees for consultations (*b*) and refreshers (*c*). No

(*r*) R. S. C., Ord. 65, r. 27 (45); *Re Harrison* (1886), 33 Ch. D. 52, C. A.; *Hanwell Local Board* v. *Wenham* (1892), 36 Sol. Jo. 743; *Re Anglo-Austrian Printing and Publishing Union*, [1894] 2 Ch. 622; *Railways Commissioner* v. *O'Rourke*, [1896] A. C. 594, P. C.

(*s*) R. S. C., Ord. 65, r. 27 (16). This rule applies also to taxations between solicitor and client (*Re Chapman* (1882), 10 Q. B. D. 54, C. A.).

(*t*) R. S. C., Ord. 65, r. 27 (46).

(*a*) *Wheeler* v. *Fradd* (1898), 14 T. L. R. 440, C. A.; *Friend* v. *Solly* (1847), 10 Beav. 329; *Benton* v. *Ellis, Lever & Co.* (1885), 1 T. L. R. 499; *Drew* v. *Josolyne* (1888), 4 T. L. R. 717; *Orient Steam Navigation Co.* v. *Ocean Marine Insurance Co.* (1887), 3 T. L. R. 778; *Re Webb's Estate, Webb* v. *Jones* (1873), 28 L. T. 726). As a rule two counsel should be allowed in a contested case in the High Court (*Llanover* v. *Homfray*, [1884] W. N. 134), but three counsel should not be allowed unless the taxing master is of opinion that a prudent man acting with ordinary prudence would not have ventured to go into court with less than three (*Kirkwood* v. *Webster* (1878), 9 Ch. D. 239, 242). There must, however, be special complications in the case (*Peel* v. *London and North Western Rail. Co.* (No. 2), [1907] 1 Ch. 607; *Great Western Railway* v. *Carpalla United China Clay Co., Ltd.* (No. 2), [1910] A. C. 83; *The Mammoth* (1884), 9 P. D. 126; *Re Cathcart*, [1893] W. N. 107, C. A.; *Re Anglo-Austrian Printing and Publishing Union* (1894), 71 L. T. 331; *Hartopp* v. *Hartopp and Cowley* (1904), 20 T. L. R. 216, C. A.). It is not sufficient that the case took a long time (*Denaby and Cadeby Main Collieries* v. *Yorkshire Miners' Association* (1907), 23 T. L. R. 635, C. A.; *Dyer* v. *London School Board* (1903), 19 T. L. R. 413; *Perry & Co.* v. *Hessin & Co.* (1913), 108 L. T. 332), or involved a large amount of scientific evidence (*A.-G.* v. *Birmingham, etc. Drainage Board* (1908), 52 Sol. Jo. 855). The costs of three counsel are not allowed as between solicitor and client (*Downing College Case* (1838), 3 My. & Cr. 474; compare *A.-G.* v. *Vigors* (1838), 2 Jur. 508), unless the solicitor pointed out to the client that they would not be allowed on taxation against the opposite party (*Re Broad and Broad* (1885), 15 Q. B. D. 420, C. A.). If judgment is given in the same sittings as the case was tried, a fee to counsel to hear judgment will not generally be allowed (*Re Biss, Biss* v. *Biss*, [1903] 2 Ch. 40, C. A.; but see Taxing Masters' Regulations, 1902, No. 39). Crown counsel's fees may be allowed against an unsuccessful party, although such counsel may be paid by salary (*Lord Advocate* v. *Stewart* (No. 2) (1899), 63 J. P. 473). No fee to counsel is allowed unless vouched by his signature (R. S. C., Ord. 65, r. 27 (52)), and the receipt if for over £2 must be stamped (*General Council of the Bar* (*England*) v. *Inland Revenue Commissioners*, [1907] 1 K. B. 462). No attendance on counsel can be allowed unless a fee is paid to him (*Re Catlin* (1854), 18 Beav. 508, 516). In county court cases fees to two counsel cannot be allowed, except where specially provided for by the rules (*Bates* v. *Gordon Hotels, Ltd.*, [1913] 1 K. B. 631); see title COUNTY COURTS, Vol. VIII., p. 594. As to counsel's fees, see, further, title BARRISTERS, Vol. II., pp. 418 *et seq.*

(*b*) *Re Harrison* (1886), 33 Ch. D. 52, C. A.; *Railways Commissioner* v. *O'Rourke, supra*; compare *Forster* v. *Davies* (1863), 32 Beav. 624.

(*c*) R. S. C., Ord. 65, r. 27 (48). The usual refresher fees, namely, from five to ten guineas per day to the leading counsel, and from three to seven guineas to the second counsel, are payable when the trial lasts more than five hours (*ibid.*). The taxing master may allow larger fees, in special circumstances, between solicitor and client (*ibid.*), and even, at his

costs will be allowed where the brief was delivered prematurely, if the case subsequently does not come on for trial (*d*).

Inspection of documents.

1316. The costs of inspection of documents may be allowed if the taxing master is satisfied that there were good reasons for making the inspection (*e*). Copies of documents to be supplied between solicitors are to be charged at 4*d*. per folio; but if the copy is refused by the solicitor in whose possession the document is, the solicitor requiring it may make the copy himself without making any payment (*f*).

Vexatious and unnecessary proceedings.

1317. The court may, on the hearing of any action or matter or upon any application or proceedings either in court or in chambers, disallow the costs of any vexatious or unnecessary (*g*) step or

discretion, between party and party (*Stewart & Co.* v. *Weber* (1903), 19 T. L. R. 722; *Cavendish* v. *Strutt*, [1904] 1 Ch. 524). Refreshers, although within the rule, may be disallowed at the master's discretion (*Smith* v. *Wills* (1885), 34 W. R. 30; *Macleod* v. *Thrupp* (1892), 37 Sol. Jo. 31). The five hours may be distributed between the first and subsequent days (*Boswell* v. *Coaks* (1887), 36 Ch. D. 444, 450, C. A.; *O'Hara, Matthews & Co.* v. *Elliott & Co.*, [1893] 1 Q. B. 362; *The Courier*, [1891] P. 355; *The Hestia*, [1895] W. N. 100; *Wicksteed* v. *Biggs* (1885), 52 L. T. 428; *Dunning* v. *Grosvenor Dairies, Ltd.*, [1901] W. N. 218). As to allowance in the Court of Appeal, see *Easton* v. *London Joint Stock Bank* (1888), 38 Ch. D. 25, C. A.; *Svendsen* v. *Wallace* (1885), 16 Q. B. D. 27; *Edgington* v. *Fitzmaurice* (1885), 33 W. R. 911, 913, C. A. Term refreshers may be allowed where the case has been in the daily list of the term previous to that in which it is tried (*Levetus* v. *Newton* (1883), 28 Sol. Jo. 166). See also Masters' Practice Notes, 1902 (Yearly Practice of the Supreme Court, 1914, pp. 2147 *et seq.*).

(*d*) R. S. C., Ord. 65, r. 27 (49); *Harrison* v. *Leutner* (1881), 16 Ch. D. 559; *Whiteley Exerciser, Ltd.* v. *Gamage*, [1898] 2 Ch. 405. The rule is to allow items relating to getting up evidence and preparation of brief after notice of trial has been given (*Windham* v. *Bainton* (1888), 21 Q. B. D. 199). It depends upon the nature of the action how long the brief should be delivered beforehand (*Thomas* v. *Palin* (1882), 21 Ch. D. 360, C. A.).

(*e*) R. S. C., Ord. 65, r. 27 (17) (a). Where parties for their own convenience desire to produce their documents out of London, it should be at their expense (*Prestney* v. *Colchester Corporation* (1883), 24 Ch. D. 376, C. A.). The costs incident to the inspection of a *locus in quo* may be allowed on taxation, but it is desirable to obtain an order for it and to ask for the costs to be provided for in such order (*Mitchell* v. *Darley Main Colliery Co.* (1883), 10 Q. B. D. 457; *Ashworth* v. *English Card Clothing Co., Ltd.* (No. 1), [1904] 1 Ch. 702). Where an inspection of books is made under the Bankers' Books Evidence Act, 1879 (42 & 43 Vict. c. 11), the order should provide for the costs.

(*f*) R. S. C., Ord. 65, r. 27 (18). Formerly, the party inspecting was not bound to employ the party holding to make the copy for him (*Ormerod, Grierson & Co.* v. *St. George's Ironworks, Ltd.*, [1905] 1 Ch. 505, C. A.); but where the inspection takes place under an order the form of order now provides otherwise; see R. S. C., Appendix K, No. 18. Printed copies of pleadings, notices, special cases, petitions of right, depositions, or affidavits, required to be printed (see title PRACTICE AND PROCEDURE, Vol. XXIII., p. 141, note (*o*)) must be supplied to the solicitor acting for the other parties at 1*d*. per folio for the first copy and ½*d*. per folio for other copies; not more than ten copies need be supplied (R. S. C., Ord. 66, r. 7 (i.)). Carbon copies, if legible, are only charged 2*d*. per folio (Masters' Practice Notes, 1902, see Yearly Practice of the Supreme Court, 1914, p. 2151); as to lithographed and printed copies, see *ibid.* Typewritten copies, produced several at a time by means of a duplicator, cannot be charged for as separately written (*Re Morse, Ex parte Latimer, Clarke, Muirhead & Co., Ltd.* (1891), 65 L. T. 552, C. A.).

(*g*) Because particular evidence provided for the trial is not used, it

SECT. 5. What Costs Allowed on Taxation.

proceeding in the action, or the costs or part of the costs of any document which is of unnecessary (*h*) length or which contains vexatious or unnecessary matter, or any costs incurred or caused by misconduct or negligence (*i*), and may direct the taxing master to look into and disallow such costs; even if the court does not exercise this power, it is the taxing master's duty to look into and disallow such costs (*k*).

Set-off.

1318. Where a party entitled to costs is ordered to pay costs to his opponent in an action, the taxing master may set the one bill off against the other and give his allocatur for the balance, or he may postpone giving his allocatur until the party who has been ordered to pay costs, but has failed to do so, has paid or provided for the same (*l*).

Taxation in case of difference.

1319. Where an order is made for taxation of costs in case the parties differ, the party to whom they are payable must carry them into the taxing office for taxation and give notice to the other side, who may inspect them and agree or object to them within eight days. If he objects, he may tender a sum in satisfaction; and if this sum is not accepted and a taxation follows which results in no more being allowed, the costs of taxation will fall upon the party claiming the costs (*m*).

Discretionary fees.

1320. Discretionary fees are allowed at the discretion of the taxing master, who in exercising it must be guided by any other allowances in respect of the same work, the importance of the matter and its nature, the amount involved, the interest of the parties, the general cost and conduct of the proceedings and all other circumstances; and a fixed sum for the costs of the judgment may be allowed (*n*). Where costs have in the taxing master's

does not follow that it is "unnecessary" under this rule (*Delaroque* v. *S.S. Oxenholme & Co.*, [1883] W. N. 227, 228). The test is whether the costs were unnecessary at the time they were incurred (*Bartlett* v. *Higgins*, [1901] 2 K. B. 230, C. A. (costs of evidence taken *de bene esse*, the witness being present at the trial)).

(*h*) *Hill* v. *Hart-Davis* (1884), 26 Ch. D. 470, C. A.

(*i*) *Re Massey and Carey* (1884), 26 Ch. D. 459, C. A.; but see *The Papa de Rossie* (1878), 3 P. D. 160. As to the solicitor's liability to an action for negligence, see pp. 754 *et seq.*, *ante*.

(*k*) R. S. C., Ord. 65, r. 27 (20); *Baines* v. *Wormsley* (1878), 47 L. J. (CH.) 844; *Cracknall* v. *Janson* (1879), 11 Ch. D. 1, C. A. As to the costs of particulars of objection in a patent action where no certificate has been given under the Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 29 (6), see *Garrard* v. *Edge* (1890), 44 Ch. D. 224, C. A.

(*l*) R. S. C., Ord. 65, r. 27 (21); *Re Crawshay, Dennis* v. *Crawshay* (1890), 45 Ch. D. 318, C. A.; *Re Bassett, Ex parte Lewis*, [1896] 1 Q. B. 219. There can be no set-off between costs in the High Court and those in the county court (*Barker* v. *Hemming* (1880), 5 Q. B. D. 609, C. A.; *Hassell* v. *Stanley*, [1896] 1 Ch. 607; *David* v. *Rees*, [1904] 2 K. B. 435, C. A.; *Bake* v. *French*, [1907] 1 Ch. 428). As to set-off generally, see title SET-OFF AND COUNTERCLAIM, Vol. XXV., pp. 484 *et seq.*

(*m*) R. S. C., Ord. 65, r. 27 (34).

(*n*) *Ibid.*, r. 27 (38); *Re Dale, Stubbs* v. *Dale* (1889), 62 L. T. 28; *MacGuare* v. *Milligan*, [1903] 1 Ch. 145; *Re Ames, Ames* v. *Taylor* (1883), 25 Ch. D. 72; *Re Chapple, Newton* v. *Chapman* (1884), 27 Ch. D. 584. As to fixed costs, see note (*j*), p. 799, *ante*; *Flatau* v. *Cullen* (1899), 81 L. T.

opinion been increased by unnecessary delay, unnecessary proceedings, misconduct or negligence, he may allow a proportionate lump sum according to the importance of the matter in dispute in lieu of item charges, and his allowance may be reviewed by the judge as in the case of an ordinary taxation (*o*).

SUB-SECT. 4.—*Costs Regulated by Statute.*

Double and treble costs.

1321. Where, under any statute (*p*), the successful party is entitled to receive double or treble costs, he is only entitled, in the case of local and personal Acts, to party and party costs (*q*), and in the case of actions to which the Public Authorities Protection Act, 1893 (*r*), applies, to costs as between solicitor and client (*s*). Such costs are not subject to the discretion of the judge or to the provisions of the County Courts Act, 1888 (*t*); hence the successful plaintiff is entitled to them as of right, even though he may recover less than £10 (*u*).

SUB-SECT. 5.—*Costs of Taxation.*

Party and party taxation.

1322. In party and party taxations (*v*), the costs of drawing and fair copying the bill and attending and completing the taxation form part of the costs which are payable by the party against whom the costs are being taxed, unless they are forfeited by reason of a failure to leave the bill after notice to do so or delay in proceeding with the taxation (*w*), or unless, where the costs are to be paid out of a

402, C. A., where £1 for costs of substituted service of writ was held not to be justified.

(*o*) R. S. C., Ord. 65, r. 27 (38A). As to the principles upon which the master should act, see *Williams* v. *Dunphy*, [1889] W. N. 188; *Re Dale, Stubbs* v. *Dale* (1889), 62 L. T. 28. The discretion must be exercised judicially and the special circumstances and reasons stated by him (*Re Johnston, Mills* v. *Johnston*, [1904] 1 Ch. 132).

(*p*) Thus, under the Prisons Act, 1865 (28 & 29 Vict. c. 126), s. 49, double costs are given to any person sued unsuccessfully for anything done under that Act. Formerly double costs were given by the Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15), s. 2, and the Lunacy Act, 1845 (8 & 9 Vict. c. 100), both of which are now repealed.

(*q*) Limitations of Actions and Costs Act, 1842 (5 & 6 Vict. c. 97), s. 1. The expression "full costs" used in any Act of Parliament means that the person who, but for the repealed statutes, would be entitled to them, is entitled instead to ordinary costs as between party and party (*Avery* v. *Wood*, [1891] 3 Ch. 115, C. A.; *Irwine* v. *Reddish* (1822), 5 B. & Ald. 796; *Jamieson* v. *Trevelyan* (1855), 10 Exch. 748; compare *House Property Co. of London* v. *Whiteman*, [1913] 2 K. B. 382, where, the action being brought in the county court, it was held that the costs were to be taxed on the county court scale, but that the plaintiffs were in addition entitled to be indemnified against all costs reasonably incurred in taking action, including the costs of taking counsel's opinion as to whether an action would lie).

(*r*) 56 & 57 Vict. c. 61.

(*s*) *Ibid.*, s. 1, repealing, as regards such actions, the Limitations of Actions and Costs Act, 1842 (5 & 6 Vict. c 97), s. 2; see title PUBLIC AUTHORITIES AND PUBLIC OFFICERS, Vol. XXIII., p. 349.

(*t*) 51 & 52 Vict. c. 43.

(*u*) *Reeve* v. *Gibson*, [1891] 1 Q. B. 652, C. A.

(*v*) As to the costs of taxation of proceedings under the Lands Clauses Acts, see titles COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 113, 114.

(*w*) R. S. C., Ord. 65, rr. 19G, 27 (28), (55).

SECT. 5. **What Costs Allowed on Taxation.**

Solicitor and client taxation.

fund or estate or out of the assets of a company in liquidation, the total bill of charges and disbursements is reduced upon taxation by one-sixth (*a*).

1323. In solicitor and client taxations, at the instance of the client (*b*), or person who has paid or is liable to pay (*c*), or person interested (*d*), the costs of the reference to taxation depend upon whether one-sixth or less is taxed off the bill as delivered (*e*). If less than one-sixth is taxed off, the client pays these costs; if one-sixth or more, the solicitor pays them (*f*). The taxing master may, however, certify specially as to the circumstances, in which case the court may make such order as to the costs of taxation as it may think fit (*g*), and may deprive the solicitor of the costs of the taxation, although less than one-sixth has been taxed off (*h*), or allow

(*a*) R. S. C., Ord. 65, r. 27 (38B); *Simmons* v. *Simmons* (1895), 39 Sol. Jo. 673.

(*b*) See p. 781, *ante*.

(*c*) See pp. 782, 783, *ante*.

(*d*) See p. 784, *ante*.

(*e*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37; *Re Burn and Berridge* (1908), 99 L. T. 606. But allowance must be made for items increased by the taxing master (*R.* v. *Eastwood* (1856), 6 E. & B. 285; *Re Hartley* (1856), 2 Jur. (N. S.) 448). As to the position where several bills delivered to the same client are taxed together, see *May* v. *Biggenden*, *Cheesman* v. *May* (1857), 24 Beav. 207. As to amendment of the bill as delivered, see p. 778, 779, *ante*. If the taxation takes place after action brought but before verdict, the client must, if anything is found due, pay the costs of the action (*Re Hair* (1848), 11 Beav. 96; compare *Thomas* v. *Swansea Corporation* (1843), 2 Dowl. (N. S.) 1003), though the solicitor must pay the costs of the taxation if more than one-sixth is taxed off (*Ex parte Woollett* (1844), 12 M. & W. 504; *Higgins* v. *Woolcott* (1826), 5 B. & C. 760; compare *Featherstonehaugh* v. *Reen* (1833), 1 Cr. & M. 495), the client being liable if less than one-sixth is taxed off (*Wilson* v. *Knapp* (1840), 8 Dowl. 426; *Re Shaw* (1851), 2 L. M. & P. 214). If, however, the reference to the taxing master is after verdict, the one-sixth principle does not, in the ordinary course, apply (*Lumsden* v. *Shipcote Land Co.*, [1906] 2 K. B. 433, C. A.; see *Re Hirst and Capes*, *Hirst and Capes* v. *Fox*, [1908] 1 K. B. 982, 986, note (3), C. A.; compare *Robinson* v. *Powell* (1839), 5 M. & W. 479).

(*f*) This does not apply to taxation in bankruptcy (*Re Marsh*, *Ex parte Marsh* (1885), 15 Q. B. D. 340, C. A.), nor where the taxation takes place after the solicitor's death (*Re Jackson*, *Ex parte Hammond* (1839), 4 Deac. 48; compare *Gale* v. *Pakington* (1823), M'Cle. & Yo. 354), though it does apply as against the representative of a deceased client (*Jefferson* v. *Warrington* (1840), 7 M. & W. 137). Where the solicitor is bankrupt his trustee is liable for the costs if he delivers a bill in respect of which a sixth or more is taxed off (*Re Peers* (1856), 21 Beav. 520); the solicitor himself is liable if he obtains his discharge pending the taxation (*Whalley* v. *Williamson* (1843), 6 Man. & G. 269). The amount of the excess over one-sixth is immaterial (*Swinburn* v. *Hewitt* (1838), 7 Dowl. 314 (where the excess amounted to 5*d.*); *Morris* v. *Parkinson* (1835), 3 Dowl. 744; *Davison* v. *Allen* (1840), 8 Dowl. 673); it is equally immaterial that the solicitor has accepted in full discharge a sum less than that allowed by the taxing master (*Re Elwes and Turner* (1888), 58 L. T. 580; see also *Re Hellard and Bewes*, [1896] 2 Ch. 229).

(*g*) The court may exercise its discretion in favour of the solicitor as well as in favour of the client (*Re Richards*, [1912] 1 Ch. 49, 54; compare *Russell* v. *Yorke* (1839), 7 Scott, 130).

(*h*) *Holderness* v. *Barkworth* (1838), 3 M. & W. 341; *Hodge* v. *Bird* (1844), 6 Man. & G. 1020; *Baker* v. *Mills* (1834), 2 Dowl. 382; *Yea* v. *Yea* (1794), 2 Anst. 494; *Webb* v. *Stone* (1793), 1 Anst. 260.

him the costs though one-sixth or more has been taxed off (*i*). In computing the amount of the bill for this purpose, the amount of the professional charges only, excluding disbursements, is taken into account (*k*). Where the order for taxation itself has been made by the court upon the ground that there were special circumstances justifying it in spite of payment or the expiry of more than a year from its delivery, the court may in the order give special directions relative to the costs of the reference (*l*).

Taxation at solicitor's instance.

1324. If the taxation is at the instance of the solicitor the costs of the taxation, if the client attends, depend upon the event, and the client is liable to pay them if less than one-sixth is taxed off (*m*). The client cannot, however, be ordered to pay the costs of the reference if he fails to attend (*n*).

SECT. 6.—*Interest on Costs.*

Non-contentious matters.

1325. In non-contentious matters (*o*) a solicitor is entitled to charge interest on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from demand (*p*); where they are payable by an infant, or out of a fund not presently available, the demand may be made on the parent or guardian, or the trustee or other person liable (*q*). For this purpose the delivery of the bill is a sufficient demand (*r*). Where the solicitor takes security for future costs (*s*) the security may extend to interest on such costs, but the interest must not commence until the amount due for costs is ascertained by agreement or taxation (*t*).

Contentious matters.

1326. In contentious matters an agreement by the client to pay interest on the costs, if otherwise valid (*u*), seems to be binding (*a*); but interest does not, it seems, commence until the amount of the costs has been ascertained by agreement or

(*i*) *Re Mackenzie, Ex parte Short* (1894), 69 L. T. 751, C. A., following *Re Carthew, Re Paull* (1884), 27 Ch. D. 485, C. A.; compare *Ward* v. *Gregg* (1837), 5 Dowl. 729.

(*k*) *Re Mercantile Lighterage Co.*, [1906] 1 Ch. 491; *Cunningham* v. *M'Donagh*, [1904] 2 I. R. 417; *Wollison* v. *Hodgson* (1834), 2 Dowl. 360. Similarly, items included in the cash account are not taken into consideration (*Re Haigh* (1849), 12 Beav. 307).

(*l*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), ss. 37—39, 41.

(*m*) *Ibid.*, s. 37; compare *Peters* v. *Sheehan* (1842), 10 M. & W. 213.

(*n*) *Ex parte Woollett* (1844), 12 M. & W. 504, *per* PARKE, B., at p. 506; *Re Upperton* (1882), 30 W. R. 840.

(*o*) This provison does not apply to contentious business (*Re Marsden's Estate, Withington* v. *Neumann* (1889), 40 Ch. D. 475); but see *Blair* v. *Cordner*, as reported [1887] W. N. 162.

(*p*) The personal representative of a deceased client is the proper person from whom to demand payment (*Re McMurdo, Penfield* v. *McMurdo*, [1897] 1 Ch. 119).

(*q*) Remuneration Order, 1882, clause 7.

(*r*) *Blair* v. *Cordner* (1887), 19 Q. B. D. 516.

(*s*) See p. 751, *ante*.

(*t*) Remuneration Order, 1882, clause 7.

(*u*) See pp. 770 *et seq.*, *ante*.

(*a*) Compare *Lyddon* v. *Moss* (1859), 4 De G. & J. 104, C. A.; *Shannon* v. *Casey* (1874), 8 I. R. Eq. 307.

SECT. 6. **Interest on Costs.**

taxation (*b*). Apart from this the solicitor may, after delivering his bill, make a demand (*c*) in writing upon his client, giving him notice that interest will be claimed from the date of the demand, in which case the jury (*d*) may, in any action upon the bill, award interest on the costs (*e*).

Disbursements.

A solicitor is by statute entitled to interest on his disbursements, if allowed by the taxing master, at such rate and from such time as the taxing master thinks fit (*f*); but this provision does not apply as between a country solicitor and his London agent (*g*).

Amount shown by allocatur.

After taxation the solicitor is entitled to interest on the amount shown to be due by the taxing master's certificate from the date of the certificate (*h*). Costs, however, ordered by the court to be paid out of a fund do not carry interest in the absence of special directions (*i*); but the court may direct interest to be paid from the date of the certificate (*k*). Such a direction will be given where payment of costs is unavoidably delayed (*l*).

Judgment for costs.

A solicitor who sues upon his bill of costs and recovers judgment is entitled to interest upon the amount recovered from the time of signing judgment (*m*).

Money improperly retained.

1327. A solicitor who improperly retains moneys of his client

(*b*) Compare *Re Smith* (1846), 9 Beav. 342; *Re Bloomfield's Estate* (1878), 3 L. R. Ir. 82.

(*c*) As to what constitutes a sufficient demand, see title MONEY AND MONEY-LENDING, Vol. XXI., p. 38, note (*a*).

(*d*) If the bill is referred to the taxing master, special provision must be made allowing him to deal with the interest; otherwise he cannot award interest (*Berrington* v. *Phillips* (1836), 1 M. & W. 48).

(*e*) Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), s. 28.

(*f*) Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 17; see *Hartland* v. *Murrell* (1873), L. R. 16 Eq. 285. The solicitor cannot appropriate payments to costs so as to leave disbursements unpaid, and, therefore, bearing interest (*Re Harrison* (1886), 33 Ch. D. 52, C. A.).

(*g*) *Ward* v. *Eyre* (1880), 15 Ch. D. 130, C. A., *per* JAMES, L.J., at p. 136.

(*h*) Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 18; Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 43; *Re Marsden's Estate, Withington* v. *Neumann* (1889), 40 Ch. D. 475, *per* CHITTY, J., at p. 479. Where costs are ordered to be paid by the unsuccessful party, interest runs from the date of the judgment (R. S. C., Ord. 41, r. 3; Ord. 42, r. 16; *Pyman & Co.* v. *Burt*, [1884] W. N. 100; *Boswell* v. *Coaks* (1888), 57 L. J. (CH.) 101; *Taylor* v. *Roe*, [1894] 1 Ch. 413).

(*i*) *Re Marsden's Estate, Withington* v. *Neumann, supra; A.-G.* v. *Nethercote* (1841), 11 Sim. 529; *Hartland* v. *Murrell, supra;* but see *Lippard* v. *Ricketts* (1872), L. R. 14 Eq. 291, where the costs were an equitable charge on the fund; see title CHARITIES, Vol. IV., p. 354.

(*k*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 127. The rate of interest is 4 per cent. (*ibid.*). This provision only applies in favour of the solicitor, and not of a party (*Jenner* v. *Morris, Webster* v. *Jenner* (1863), 11 W. R. 943).

(*l*) *Fox* v. *Charlton, Charlton* v. *Fox* (1865), 6 New Rep. 352; *Carter* v. *Carter* (1863), 2 New Rep. 512; *Re Campbell's Trusts* (1871), 19 W. R. 427.

(*m*) Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 17. The rate of interest is 4 per cent. (*ibid.*); see title JUDGMENTS AND ORDERS, Vol. XVIII., pp. 206, 209.

may be ordered by the taxing master to pay interest at such rate and from such time as the taxing master thinks fit (*n*).

SECT. 6. Interest on Costs.

SECT. 7.—*Security for Costs.*

Past and future costs.

1328. A solicitor may at common law take security from his client for costs already due (*o*); as regards future costs, both in contentious (*p*) and non-contentious (*q*) matters, his right to do so is conferred by statute. The security may cover interest, but such interest is not chargeable until the amount due from the client has been ascertained either by agreement or taxation (*r*). The giving of security by the client does not, in the absence of an agreement in writing fixing the amount of payment for specific work to be done (*s*), relieve the solicitor from the necessity of delivering a bill of costs and submitting to have it taxed if the client wishes it (*t*); in this case the security given or the balance of the money deposited must be returned by the solicitor upon payment of what is found to be due by the taxing master (*a*). If the security is taken in the form of a mortgage, great care must be taken, unless the client is separately advised, that no terms which are not strictly usual or are in any way unfairly burdensome to the client are inserted (*b*); otherwise the court will set the transaction aside and only enforce the security for such a sum as it is equitable that the client should pay (*c*). The court will also reopen the transaction where the security is given in circumstances which amount to fraud (*d*) or undue influence (*e*), or where there has been no proper statement or investigation of accounts (*f*).

Mortgage for costs.

(*n*) Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 17; *Burdick* v. *Garrick* (1870), 5 Ch. App. 233.

(*o*) *Sanderson* v. *Glass* (1742), 2 Atk. 296; *Brown* v. *Pring* (1750), 1 Ves. Sen. 407; *Jones* v. *Tripp* (1821), Jac. 322; *Williams* v. *Piggott* (1825), Jac. 598; *Pitcher* v. *Rigby* (1821), 9 Price, 79; *Fowler* v. *Moore* (1837), 2 Jo. Ex. Ir. 415; *Bristowe* v. *Warner* (1847), 10 I. Eq. R. 246, commenting on *Re Evans, Ex parte Bovill* (1826), 2 Mont. & A. 382, n.; *Cheslyn* v. *Dalby* (1836), 2 Y. & C. (EX.) 170; *Nelson* v. *Booth* (1857), 3 Jur. (N. S.) 951; *Jones* v. *Roberts* (1846), 9 Beav. 419; *Hooper* v. *Cooke* (1856), 2 Jur. (N. S.) 527; *Morgan* v. *Higgins* (1859), 1 Giff. 270; *Anderson* v. *Radcliffe* (1858), E. B. & E. 806; *Waters* v. *Taylor* (1837), 2 My. & Cr. 526. As to the validity of securities for costs, see p. 751, *ante*.

(*p*) Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 16.

(*q*) Solicitors Remuneration Act, 1881 (44 & 45 Vict. c. 44), s. 5; Remuneration Order, 1882, clause 7.

(*r*) Remuneration Order, 1882, clause 7; *Re Carnegie* (1907), 52 Sol. Jo. 14.

(*s*) See pp. 770, 771, *ante*.

(*t*) Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 16; *Brown* v. *Pring*, *supra*; *Morgan* v. *Higgins*, *supra*.

(*a*) *Shaw* v. *Neale* (1858), 6 H. L. Cas. 581; *Willens* v. *Tandy* (1842), 5 I. Eq. R. 1; compare *Vaughan* v. *Vanderstegen* (1854), 2 Drew. 289.

(*b*) See p. 751, *ante*.

(*c*) *Cowdry* v. *Day* (1859), 1 Giff. 316; *Cockburn* v. *Edward* (1881), 18 Ch. D. 449, C. A.; *Craddock* v. *Rogers* (1884), 53 L. J. (CH.) 968; but see *Pooley's Trustee* v. *Whetham* (1886), 33 Ch. D. 111, C. A.

(*d*) *Ward* v. *Sharp* (1884), 53 L. J. (CH.) 313.

(*e*) *Walmesley* v. *Booth* (1741), 2 Atk. 27; *Watson* v. *Rodwell* (1879), 11 Ch. D. 150, C. A.; *Eyre* v. *Hughes* (1876), 2 Ch. D. 148.

(*f*) *Davies* v. *Parry* (1859), 1 Giff. 174; *Morgan* v. *Higgins*, *supra*; and see *Todd* v. *Wilson* (1846), 9 Beav. 486; *Gomley* v. *Wood and Daly* (1846), 3 Jo. & Lat. 678.

SECT. 8. Solicitor's Remedies for Costs.

SECT. 8.—*Solicitor's Remedies for Costs.*

SUB-SECT. 1.—*Action.*

Time when action may be brought.

1329. A solicitor (*g*) is entitled to maintain an action against his client for the amount of his bill at the expiration of one month from its delivery (*h*), unless the court has already (*i*) made an order restraining him from doing so pending taxation (*k*).

Procedure.

The writ may be specially indorsed for the full amount of the claim, although the bill has not been taxed (*l*), and the solicitor may apply for summary judgment under R. S. C., Order 14 (*m*). If the client raises no defence, judgment may be given for the full amount claimed without reference to taxation (*n*). If, however, the client disputes the amount of the bill, the bill is referred to a taxing master for taxation, the plaintiff being given leave to sign judgment for the amount found to be due on taxation and the costs of the action (*o*); if it is too late to tax the bill (*p*), the bill may be referred to a taxing master under the general jurisdiction of the court (*q*).

Statute of Limitations.

1330. For the purposes of an action on the bill, the Statute of Limitations (*r*) begins to run against the solicitor from the date when the work to which it relates was completed (*s*), and not from the expiration of one month from the delivery of the bill (*a*). If

(*g*) A solicitor who carries on business under a firm name may sue in his own name if his partner is only a nominal partner (*Kell* v. *Nainby* (1829), 10 B. & C. 20; *Spurr* v. *Cass*, *Cass* v. *Spurr* (1870), L. R. 5 Q. B. 656).

(*h*) See pp. 774, 775, *ante*; and compare *Bell* v. *Girdlestone*, [1913] 2 K. B. 225, explaining *Cubison* v. *Mayo*, [1896] 1 Q. B. 246, C. A. (county court costs). If the client is about to become a bankrupt etc., the court may authorise the solicitor to sue, although the month has not expired (Legal Practitioners Act, 1875 (38 & 39 Vict. c. 79), s. 2); see note (*f*), p. 774, *ante*. As to the effect of a solicitor not taking out a practising certificate or making a false declaration on applying for his certificate, see p. 720, *ante*; see also title AGENCY, Vol. I., p. 151.

(*i*) The court has no power, in making a subsequent order for taxation, to restrain a pending action (Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 24 (5)), but it may order the action to be stayed; see R. S. C., Appendix K, No. 43.

(*k*) See p. 785, *ante*.

(*l*) *Lagos* v. *Grunwaldt*, [1910] 1 K. B. 41, C. A. As to proceedings under R. S. C., Ord 14, after taxation, see *Re Debenham and Walker*, [1895] 2 Ch. 430; and note (*o*), p. 814, *post*.

(*m*) *Smith* v. *Edwardes* (1888), 22 Q. B. D. 10, C. A.; see *Ward* v. *Procter* (1891), 7 T. L. R. 244, where unconditional leave to defend was given; see also title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 113, 114.

(*n*) *Gilsenan* v. *M'Govern* (1892), 30 L. R. Ir. 300; but see *Lumley* v. *Brooks* (1889), 41 Ch. D. 323, C. A., where the solicitor raised no objection to the bill being referred for taxation.

(*o*) *Smith* v. *Edwardes*, *supra*; *Lumley* v. *Brooks*, *supra*; compare *Whalley* v. *Glover* (1850), 3 Car. & Kir. 13; *Re Lowless & Son* (1853), 6 C. B. 123. For the form of order, see R. S. C., Appendix K, No. 9F.

(*p*) See p. 790, *ante*.

(*q*) See p. 780, *ante*.

(*r*) 21 Jac. 1, c. 16.

(*s*) See title LIMITATION OF ACTIONS, Vol. XIX., p. 48, and the cases there cited. As to the duration of a solicitor's retainer, see pp. 737 *et seq.*, *ante*.

(*a*) *Coburn* v. *Colledge*, [1897] 1 Q. B. 702, C. A.; see *Cheese* v. *Keen*, [1908] 1 Ch. 245.

some only of the items included in the bill are statute-barred, the solicitor may recover in respect of the balance (*b*).

When delivery of bill unnecessary.

1331. No delivery of the bill is necessary where the client does not defend the action on this ground (*c*), or where the action is brought not against the client, but against a person who has given the solicitor a guarantee against the amount of his costs (*d*).

SUB-SECT. 2.—*Proceedings in Bankruptcy.*

Proceedings in bankruptcy.

1332. A bankruptcy petition may be presented by the solicitor against his client in respect of his costs, although he has not delivered his bill, and is, therefore, not in a position to maintain an action (*e*). In this case the petition will be stayed until the bill has been delivered and the costs taxed (*f*). Similarly the solicitor may prove in the client's bankruptcy for the amount of his costs (*g*), though he has delivered no bill (*h*), and although the costs have not been taxed (*i*). In this case the trustee may require full particulars of how the amount is made up (*k*), and the proof, when complete, may be referred to a taxing master for consideration under the general jurisdiction of the court (*l*).

SUB-SECT. 3.—*Proceedings on Allocatur.*

Order for payment.

1333. Where the reference to the taxing master results in a certificate or allocatur in favour of the solicitor, the solicitor is entitled to apply to the court for an order for payment by the client of the amount certified to be due (*m*). The order may be made by any Division of the High Court (*n*), and it appears to be immaterial that

(*b*) *Blake* v. *Hummell* (1884), 51 L. T. 430, following *Haigh* v. *Ousey* (1857), 7 E. & B. 578; see *Re Pomeroy and Tanner*, [1897] 1 Ch. 284; *Pilgrim* v. *Hirschfeld* (1863), 12 W. R. 51. The solicitor cannot, after judgment against him on the statute-barred items, set off against them a sum received on behalf of the client, or appropriate such sum to such items (*Smith* v. *Betty*, [1903] 2 K. B. 317, C. A.).

(*c*) *Lane* v. *Glenny* (1837), 7 Ad. & El. 83; *Robinson* v. *Rowland* (1838), 2 Jur. 136; compare *Pritchard* v. *Draper* (1831), 1 Russ. & M. 191. The defence of no signed bill is a statutory defence of which notice must be given under County Court Rules, Ord. 10, rr. 10, 18 (*Lewis and Davies* v. *Burrell* (1897), 77 L. T. 626). As to enforcement of collateral security, see p. 811, *ante*.

(*d*) *Greening* v. *Reeder* (1892), 67 L. T. 28; *Reece* v. *Cox* (1867), 16 L. T. 327.

(*e*) *Ex parte Sutton* (1805), 11 Ves. 163; *Ex parte Steele* (1809), 16 Ves. 162; *Re Howell, Ex parte Howell* (1812), 1 Rose, 312; *Re Ford, Ex parte Ford* (1838), 3 Deac. 494; *Ex parte Dewdney, Ex parte Seaman* (1809), 15 Ves. 479, 489.

(*f*) *Re Symes, Ex parte Prideaux* (1821), 1 Gl. & J. 28.

(*g*) If the bankruptcy takes place after an order to tax has been obtained by the client, and the solicitor undertakes not to prove for his costs, the trustee cannot continue the taxation unless he undertakes to pay the taxed amount of the bill (*Re Merrick, Ex parte Joyce*, [1911] 1 I. R. 279, C. A.).

(*h*) *Re Woods, Ex parte Ditton* (1880), 13 Ch. D. 318, C. A.; *Eicke* v. *Nokes* (1829), Mood. & M. 303.

(*i*) *Re Woods, Ex parte Ditton, supra*; compare *Re Dowson, Ex parte Webb* (1851), 4 De G. & Sm. 366.

(*k*) *Re Van Laun, Ex parte Chatterton*, [1907] 2 K. B. 23, C. A.

(*l*) *Re Woods, Ex parte Ditton, supra.*

(*m*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 43.

(*n*) *Re Brockman*, [1909] 2 Ch. 170, C. A., *per* COZENS-HARDY, M.R., at p. 175.

SECT. 8. Solicitor's Remedies for Costs.

the client has made no submission to pay and that the order for taxation contains no direction requiring him to pay the amount certified to be due (*o*). If the order for taxation contains a direction to pay (*p*), a separate application for an order for payment is unnecessary (*q*), since the court has jurisdiction over the client by virtue of his submission (*r*). The order for payment may be enforced by execution (*s*).

Entry for judgment.

Where the reference was made in the King's Bench Division, the court may also order judgment to be entered up for the amount certified to be due, unless the retainer is disputed (*t*), or may make any order which the court deems proper (*u*). This jurisdiction may be exercised although the order for taxation contains no direction to pay (*w*).

SECT. 9.—*Lien.*

SUB-SECT. 1.—*Kinds of Lien.*

Three kinds of lien.

1334. A solicitor is entitled to three kinds of lien (*a*) to protect his right to recover his costs from his client, namely:—(1) a passive or retaining lien (*b*); (2) a common law lien on property recovered or preserved by his efforts (*c*); (3) a statutory lien enforceable by a charging order (*d*).

SUB-SECT. 2.—*Retaining Lien.*

Property subject to lien.

1335. The retaining lien enures in the solicitor's favour in respect of all deeds, papers, or other personal chattels which come

(*o*) The words of the statute are, "the amount certified to be due and directed to be paid" (Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 43). In the King's Bench Division it has always been the practice to make the order, although the order for taxation contains no direction for payment (Archbold's Practice, 14th ed., p. 159). It was held in *Re Debenham and Walker*, [1895] 2 Ch. 430, that, in the Chancery Division, no order could be made under the statute, if the order for taxation contained no direction for payment, and that the solicitor's remedy was by action under R. S. C., Ord. 14. This decision, however, appears to be inconsistent with the reasoning of *Re Brockman*, [1909] 2 Ch. 170, C. A., where it was stated in general terms that a submission to pay was not necessary in any case, as an order for payment could be made under the statute in any Division of the High Court.

(*p*) See p. 793, *ante*.

(*q*) *Re Brockman, supra, per* COZENS-HARDY, M.R., at p. 175.

(*r*) *Re Debenham and Walker, supra, per* NORTH, J., at p. 432.

(*s*) R. S. C., Ord. 42, r. 17; see also *ibid.*, rr. 3, 8, 24; title EXECUTION, Vol. XIV., pp. 1 *et seq.* Service of the order is not necessary (*Re a Solicitor* (1884), 33 W. R. 131).

(*t*) The parties may, however, have agreed to submit the question of retainer to the master, in which case the client is bound by a decision in favour of the solicitor (*Re Lowless & Son* (1848), 6 C. B. 123).

(*u*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 43; *Griffiths* v. *Hughes* (1847), 16 M. & W. 809; *Neale* v. *Postlethwaite* (1841), 1 Q. B. 243. For the forms of order and of judgment, see Chitty's King's Bench Forms, 11th ed., pp. 22 *et seq.* As to the title of the order, see *Re Hair* (1844), 7 Man. & G. 510; *Re Vallance and Beioley, Gregory* v. *Brunswick (Duke)* (1844), 7 Man. & G. 511.

(*w*) *Re Lowless & Son, supra.*

(*a*) As to lien generally, see title LIEN, Vol. XIX., pp. 1 *et seq.*

(*b*) See the text, *infra*.

(*c*) See pp. 820, 821, *post*.

(*d*) See pp. 823 *et seq.*, *post*.

into his possession in the course of his professional employment (*e*), including bills of exchange (*f*), letters patent (*g*), policies of assurance (*h*), letters of administration (*i*), documents contained in a drawer of which the solicitor is given the key (*k*), and applications for shares (*l*). The solicitor's lien does not, however, extend to the share register and minute book of a company or to any documents which come into his hands after the commencement of the winding-up (*m*).

In respect of what costs.

1336. The costs in respect of which the solicitor's lien arises must be taxable costs, charges and expenses incurred by him as solicitor for his client, including advances which may be disallowed or moderated on taxation (*n*). There is therefore no lien in respect of costs which are not due to him in his capacity as a solicitor (*o*), such as, for instance, his charges as a land agent (*p*), or as steward of a manor (*q*). A town clerk (*r*) or clerk to a local authority (*s*), if a solicitor, has a lien on all papers belonging to the borough council or local authority which come to his hands in his capacity as a solicitor, but not on such papers as he holds merely as clerk.

The solicitor is not entitled to exercise a lien in respect of costs incurred in a matter in which he has no authority to act on behalf of the person against whom the lien is claimed (*t*), such as, for instance, the costs of promoting a company, as against the

(*e*) *Bozon* v. *Bolland* (1839), 4 My. & Cr. 354; *Stedman* v. *Webb* (1839), 4 My. & Cr. 346, 354; *Friswell* v. *King* (1846), 15 Sim. 191; compare title LIEN, Vol. XIX., p. 24. As to the effect of repudiation by an infant on arriving at full age of proceedings taken on his behalf, see title INFANTS AND CHILDREN, Vol. XVII., p. 140.

(*f*) *Gibson* v. *May* (1853), 4 De G. M. & G. 512, C. A.

(*g*) *Re Aubusson, Ex parte Solomon* (1821), 1 Gl. & J. 25.

(*h*) *West of England Bank* v. *Batchelor* (1882), 51 L. J. (CH.) 199.

(*i*) *Barnes* v. *Durham* (1869), L. R. 1 P. & D. 728; *In the Goods of Martin* (1883), 13 L. R. Ir. 312, C. A.

(*k*) *Re Markbey* (1864), 11 L. T. 250; see title CHOSES IN ACTION, Vol. IV., p. 386.

(*l*) *Re Capital Fire Insurance Association* (1883), 24 Ch. D. 408, C. A. Alimony payable to a divorced wife may become subject to the lien; see title HUSBAND AND WIFE, Vol. XVI., p. 520; compare p. 817, *post*.

(*m*) *Re Capital Fire Insurance Association, supra; Re Union Brick and Cement Co., Ex parte Purbrook* (1869), 4 Ch. App. 627; *Re Anglo-Maltese Hydraulic Dock Co.* (1885), 54 L. J. (CH.) 730; see title COMPANIES, Vol. V., p. 247. As to the effect of winding-up on a solicitor's lien, see, further, *ibid.*, pp. 247, 525.

(*n*) *Re Taylor, Stileman and Underwood*, [1891] 1 Ch. 590, C. A.; see also *Richards* v. *Platel* (1841), 5 Jur. 834. As to what are such costs, see pp. 760 *et seq.*, *ante*.

(*o*) *Worrall* v. *Johnson* (1820), 2 Jac. & W. 214; *Re Taylor, Stileman and Underwood, supra*; compare title LIEN, Vol. XIX., p. 20.

(*p*) *Re Walker, Meredith* v. *Walker* (1893), 68 L. T. 517.

(*q*) *Champernown* v. *Scott* (1821), Madd. & G. 93.

(*r*) *R.* v. *Sankey* (1836), 5 Ad. & El. 423; see title LOCAL GOVERNMENT, Vol. XIX., p. 312, note (*s*); see also title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 142, note (*j*).

(*s*) *Newington Local Board* v. *Eldridge* (1879), 12 Ch. D. 349, C. A.

(*t*) *Hall* v. *Laver* (1842), 1 Hare, 571; *Re Phœnix Life Assurance Co., Howard and Dollman's Case* (1863), 1 Hem. & M. 433.

SECT. 9. Lien.

company (*a*); the costs incurred by a firm, as against a partner (*b*); or the costs relating to the obtaining of a writ of *habeas corpus*, as against the prisoner (*c*). Nor is he entitled to exercise a lien in respect of costs which he was never entitled to recover by reason of his being unqualified at the time when they were earned (*d*). On the other hand, the lien is available though the solicitor has lost his right to sue for the costs in respect of which the lien is claimed by reason of the Statutes of Limitation (*e*).

General lien.

1337. The lien is a general lien (*f*). The solicitor may, therefore, exercise his lien over papers handed to him for a particular purpose, and may decline to hand them over unless paid any balance of costs that may be due to him in respect of all matters in which he has acted as solicitor for the client (*g*). The general lien may, however, be excluded by express agreement or by the facts of the particular case (*h*).

Where papers in an action remain in the possession of a solicitor who asserts his lien upon them, an order for their production at the client's instance will be subject to such lien (*i*).

Not available against third persons.

1338. The lien is a right exercisable against the client (*j*), and gives the solicitor no higher right as against third persons than the client himself possesses (*k*). Thus, notwithstanding the lien, the solicitor can be compelled to produce the papers in his possession, if his client would have been bound to produce them (*l*): if, therefore,

(*a*) *Re Galland* (1885), 31 Ch. D. 296, C. A.; compare title COMPANIES, Vol. V., pp. 56, 246, 525.

(*b*) *Turner* v. *Deane* (1849), 3 Exch. 836.

(*c*) *Re Hanbury, Whitting and Nicholson* (1896), 75 L. T. 449.

(*d*) *Re Standing* (1898), *Times*, 21st January; *Latham* v. *Hide* (1832), 1 Dowl. 594.

(*e*) *Re Broomhead* (1847), 5 Dow. & L. 52; *Re Murray*, [1867] W. N. 190; *Re Carter, Carter* v. *Carter* (1885), 55 L. J. (CH.) 230; *Curwen* v. *Milburn* (1889), 42 Ch. D. 424, C. A.; *Re Margetts*, [1896] 2 Ch. 263; compare title LIMITATION OF ACTIONS, Vol. XIX., pp. 42, 48.

(*f*) See title LIEN, Vol. XIX., p. 26.

(*g*) *Ex parte Sterling* (1809), 16 Ves. 258; *Stevenson* v. *Blakelock* (1813), 1 M. & S. 535; *Bozon* v. *Bolland* (1839), 4 My. & Cr. 554; *Ex parte Pemberton* (1810), 18 Ves. 282; *Re Broomhead* (1847), 5 Dow. & L. 52; *Re Faithfull, Re London, Brighton and South Coast Rail. Co.* (1868), L. R. 6 Eq. 325. As to the position of a solicitor as bailee generally, see title LIEN, Vol. XIX., pp. 13, 26.

(*h*) *Champney* v. *Burland* (1879), 9 W. R. 913; *Colmer* v. *Ede* (1870), 40 L. J. (CH.) 185; *Re Messenger, Ex parte Calvert* (1876), 3 Ch. D. 317; *Re Dee Estates, Ltd., Wright* v. *Dee Estates, Ltd.*, [1911] 2 Ch. 85, C. A. There is no lien over money deposited with a solicitor for a specific purpose which has failed (*Stumore* v. *Campbell & Co.*, [1892] 1 Q. B. 314, C. A.).

(*i*) *Lewis* v. *Powell*, [1897] 1 Ch. 678; *Vale* v. *Oppert* (1875), 10 Ch. App. 340; *Re Hawkes, Ackerman* v. *Lockhart*, [1898] 2 Ch. 1, C. A.; followed in *Re Caudery, London Joint Stock Bank* v. *Wightman* (1910), 54 Sol. Jo. 444; see titles DISCOVERY, INSPECTION, AND INTERROGATORIES, Vol. XI., p. 86; EVIDENCE, Vol. XIII., pp. 581, 582.

(*j*) *Re Mason and Taylor* (1878), 10 Ch. D. 729, following *Re Snell* (*a Solicitor*) (1877), 6 Ch. D. 105; *Re Sadd* (1865), 34 Beav. 650; *Lightfoot* v. *Keane* (1836), 1 M. & W. 745; *Re Long, Ex parte Fuller* (1881), 16 Ch. D. 617.

(*k*) *Smith* v. *Chichester* (1842), 2 Dr. & War. 393; *Bell* v. *Taylor* (1836), 8 Sim. 216; see *Turner* v. *Letts* (1855), 24 L. J. (CH.) 638.

(*l*) *Furlong* v. *Howard* (1804), 2 Sch. & Lef. 115; *Vale* v. *Oppert, supra*;

the validity of a deed is impeached in an action, the solicitor is bound to produce it, if in his possession, in spite of his lien (*m*). A prior equitable title prevails against the lien, even though the solicitor had no notice of it (*n*). Similarly, a lien against a tenant for life is of no avail against a remainderman (*o*). The vendor's solicitor cannot, as against the purchaser, retain the conveyance in respect of his costs of acting for the vendor in the transaction of sale (*a*). The mortgagor's solicitor, as against the mortgagee, has no lien on the mortgage deed (*b*); nor has the mortgagee's solicitor, as against the mortgagor, a lien on the title deeds after the debt has been repaid and the reconveyance executed (*c*). The solicitor preparing a marriage settlement on the instructions of the husband has no lien upon it, as against the trustees of the settlement, for his unpaid bill of costs, but is bound to deliver it up to them on their requesting him to do so (*d*). Where costs have been incurred with a solicitor in an action claiming the delivery of deeds, after the deeds have been given up to him, he cannot exercise the lien against the successful party (*e*). In accordance with the same principle, the solicitor has no lien over a will in respect of costs due from the testator (*f*); nor has he a lien over papers deposited with him for a particular purpose by a person who is not his client (*g*). A solicitor who is also one of the trustees has no lien over a trust fund (*h*), although there is a lien over alimony paid to a solicitor as the agent of the wife (*i*).

1339. The lien is not taken away, in the case of a company, by

Effect of bankruptcy etc.

compare *Simmonds* v. *Great Eastern Rail. Co.* (1868), 3 Ch. App. 797; see title DISCOVERY, INSPECTION, AND INTERROGATORIES, Vol. XI., p. 86.

(*m*) *Balch* v. *Symes* (1823), Turn. & R. 87.

(*n*) *Pelly* v. *Wathen* (1851), 1 De G. M. & G. 16, C. A.; *Hollis* v. *Claridge* (1813), 4 Taunt. 807; *Symons* v. *Blake* (1835), 2 Cr. M. & R. 416; *Marsh* v. *Bathoe* (1744), Ridg. *temp.* H. 256.

(*o*) *Ex parte Nesbitt* (1805), 2 Sch. & Lef. 279; *Re Mayhew* (1859), 7 W. R. 351; compare *Re Stannard's Estate*, [1897] 1 I. R. 415.

(*a*) *Esdaile* v. *Oxenham* (1824), 3 B. & C. 225.

(*b*) *Hutchison* v. *Joyce* (1836), 2 Jo. Ex. Ir. 122; *Taylor* v. *Gorman* (1844), 7 I. Eq. R. 259; *Young* v. *English* (1843), 7 Beav. 10; *Pratt* v. *Vizard* (1833), 5 B. & Ad. 808; contrast *Brunton* v. *Electrical Engineering Corporation*, [1892] 1 Ch. 434.

(*c*) *Wakefield* v. *Newbon* (1844), 6 Q. B. 276; *Re Llewellin, a Solicitor*, [1891] 3 Ch. 145; *Re Mosely* (1867), 15 W. R. 975; and see *Sheffield* v. *Eden* (1878), 10 Ch. D. 291, C. A., where the solicitor was also mortgagee; *Re Nicholson, Ex parte Quinn* (1884), 53 L. J. (CH.) 302, where the solicitor acted for both parties.

(*d*) *Re Lawrance, Bowker* v. *Austin*, [1894] 1 Ch. 556; *Fowler* v. *Fowler* (1881), 50 L. J. (CH.) 686.

(*e*) *Morgan* v. *Scott* (1839), 2 I. Eq. R. 128; *Blunden* v. *Desart* (1842), 2 Dr. & War. 405.

(*f*) *Balch* v. *Symes*, *supra*.

(*g*) *Re Mayhew* (1859), 7 W. R. 351.

(*h*) *Re Clark, Ex parte Newland* (1877), 4 Ch. D. 515.

(*i*) *Ex parte Bremner* (*Sarah*) (1866), L. R. 1 P. & D. 254; *Cross* v. *Cross* (1880), 43 L. T. 533; *Leete* v. *Leete* (1879), 48 L. J. (P.) 61; see title HUSBAND AND WIFE, Vol. XVI., p. 520.

SECT. 9. Lien.

its winding up (*k*), by the bankruptcy (*l*) or death (*m*) of the client, or by a change in his administrators (*n*). Nor is it destroyed by a change in the solicitor's firm (*o*) or by its dissolution (*p*); or by the solicitor's death (*q*) or refusal to proceed (*r*).

Change of solicitors.

1340. In the event of a change of solicitors in the course of an action, the former solicitor's lien is not taken away, but his rights in respect of his lien may be modified according as he discharges himself or is discharged by the client (*s*). If he is discharged by the client otherwise than for misconduct, he cannot, so long as his costs are unpaid, be compelled to produce or hand over the papers (*t*). If, on the other hand, he discharges himself, he may be ordered to hand over the papers to the new solicitor, on the latter undertaking to hold them without prejudice to his lien, to return them intact after the action is over, and to allow the former solicitor access to them in the meantime (*a*).

The priorities of successive solicitors employed by the same

(*k*) *Re Meter Cabs, Ltd.*, [1911] 2 Ch. 557; *Re Rapid Road Transit Co.*, [1909] 1 Ch. 96; *Belaney* v. *Ffrench* (1873), 8 Ch. App. 918; see title COMPANIES, Vol. V., p. 247; compare *ibid.*, p. 525. As to the rights of the liquidator, see *ibid.*, pp. 573 *et seq.*

(*l*) *Re Hemsworth, Ex parte Underwood* (1845), De G. 190; *Re Leah, Ex parte Jabet* (1860), 6 Jur. (N. S.) 387, C. A.; *Re May, Ex parte Hawley* (1852), Fonbl. 243; compare *Ross* v. *Laughton* (1813), 1 Ves. & B. 349. But the solicitor, notwithstanding his lien, must produce any documents in his possession for examination by the trustee (*Re Toleman and England, Ex parte Bramble* (1880), 13 Ch. D. 885); see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 117.

(*m*) *Lloyd* v. *Mason* (1845), 4 Hare, 132; *Blunden* v. *Desart* (1842), 2 Dr. & War. 405.

(*n*) *Re Watson* (1884), 53 L. J. (CH.) 305.

(*o*) *Pelly* v. *Wathen* (1849), 7 Hare, 351.

(*p*) *Vaughan* v. *Vanderstegen* (1854), 2 Drew. 408; *Re Gough, Lloyd* v. *Gough* (1894), 70 L. T. 725.

(*q*) *Kellett* v. *Kelly* (1842), 5 I. Eq. R. 34; *Allen* v. *Jervoise* (1847), 11 I. Eq. R. 583; *Redfarn* v. *Sowerby* (1818), 1 Swan. 84; *Magrath* v. *Muskerry* (*Lord*) (1787), 1 Ridg. Parl. Rep. 469.

(*r*) *Re Williams* (1860), 28 Beav. 465; *Re Smith* (1861), 4 L. T. 43; *Scott* v. *Fleming* (1845), 9 Jur. 1085. As to the effect of his refusal to proceed, see the text, *infra*.

(*s*) *Re Rapid Road Transit Co.*, [1909] 1 Ch. 96.

(*t*) *Re Faithfull, Re London, Brighton and South Coast Rail. Co.* (1868), L. R. 6 Eq. 325; *Re Moss* (1866), L. R. 2 Eq. 345; *Re Austin, Ex parte Yalden* (1876), 4 Ch. D. 129, C. A.; *Re Brook, Pilcher* v. *Arden* (1877), 7 Ch. D. 318, C. A.; *Newington Local Board* v. *Eldridge* (1879), 12 Ch. D. 349, C. A.; *Kettlewell* v. *Barstow* (1872), 20 W. R. 621; *Steele* v. *Scott* (1828), 2 Hog. 14. In administration actions and other proceedings of a representative character, such as a winding-up, papers which have come to the solicitor's hands since the commencement of the action (*Re Capital Fire Insurance Association* (1883), 24 Ch. D. 408, C. A.), and for the purpose of carrying on the action (*Re Boughton, Boughton* v. *Boughton* (1883), 23 Ch. D. 169, followed in *Boden* v. *Hensby*, [1892] 1 Ch. 101), must be handed over subject to his lien, to be returned when the judge directs.

(*a*) *Robins* v. *Goldingham* (1872), L. R. 13 Eq. 440; *Griffiths* v. *Griffiths* (1843), 2 Hare, 587; *Hutchinson* v. *Norwood* (2) (1886), 54 L. T. 842; *Bluck* v. *Lovering & Co.* (1886), 35 W. R. 232; *Commerell* v. *Poynton* (1818), 1 Swan. 1; *Colegrave* v. *Manley* (1823), Turn. & R. 400; *Rawlinson* v. *Moss* (1861), 7 Jur. (N. S.) 1053; *Robins* v. *Goldingham* (1872), L. R. 13 Eq. 440; *Re Wontner & Sons, Ex parte Scheyer* (1888), 52 J. P. 183. As to the London agent discharging himself, see *Re Smith* (1842), 4 Beav

Priorities.

client in regard to lien are regulated as follows: (1) In the winding up of companies (*b*), and in a debenture-holder's action, the rights of the respective solicitors to payment, and consequently to a lien upon the documents, rank *pari passu* (*c*); (2) in an action in the Chancery Division, the rule is that the solicitor who actually conducts the action to its conclusion has the first lien upon any money recovered or preserved, but, subject to this lien, the court will grant the solicitor employed at an earlier stage of the action a charging order in respect of his costs (*d*). Where the second solicitor receives the whole of the costs, he must pay over the full amount of the first solicitor's claims, without deduction in respect of any set-off to which he may be entitled to as between himself and his client (*e*). The fact that the second solicitor pays off the first solicitor's claim does not give the second solicitor any lien in respect of the amount so paid (*f*). Where the subject of a lien is converted into money and the amount paid into court, the liens are satisfied out of the fund according to their priorities (*g*).

The delivery over of papers "subject" or "without prejudice" to a lien gives the person handing the papers over no priority (*h*); if it is intended to preserve the lien as a prior charge, an undertaking to that effect must be insisted upon (*i*).

Discharge of lien.

1341. The lien is discharged (*j*) in one or other of the following ways, namely:—

(1) By the solicitor receiving payment of the costs in respect of which it arises (*k*); it is not, however, discharged by the solicitor obtaining judgment (*l*) or a charging order (*m*) for his costs.

309; *Willson* v. *Emmett* (1854), 19 Beav. 233; *Re H.* (*a Solicitor*), *Walker* v. *Beanlands* (1866), 15 W. R. 168; *Webster* v. *Le Hunt* (1861), 9 W. R. 804. As to London agents generally, see pp. 844 *et seq.*, *post.*

(*b*) *Re Audley Hall Cotton Spinning Co.* (1868), L. R. 6 Eq. 245; *Re Dominion of Canada Plumbago Co.* (1884), 27 Ch. D. 33, C. A.; see, further, title COMPANIES, Vol. V., p. 247, note (*e*).

(*c*) *Batten* v. *Wedgwood Coal and Iron Co.* (1884), 28 Ch. D. 317.

(*d*) *Cormack* v. *Beisly* (1858), 3 De G. & J. 157, C. A.; *Re Wadsworth, Rhodes* v. *Sugden* (1886), 34 Ch. D. 155; *Re Knight, Knight* v. *Gardner*, [1892] 2 Ch. 368. As to charging orders, see pp. 824 *et seq.*, *post.*

(*e*) *Re Bernard, Ex parte Bailey and Hope* (1851), 14 Beav. 18. As to the rights of the solicitors *inter se*, see *Mornington* v. *Wellesley* (1857), 4 Jur. (N. S.) 6, where, the second solicitor having accepted a gross sum without taxation, it was held that the first solicitor, having obtained no charging order, had no claim against the fund, but only against the second solicitor. As to set-off generally, see title SET-OFF AND COUNTERCLAIM, Vol. XXV., pp. 484 *et seq.*

(*f*) *Irving* v. *Viana* (1827), 2 Y. & J. 70; *Christian* v. *Field* (1842), 2 Hare, 177.

(*g*) *Re Walker, Meredith* v. *Walker* (1893), 68 L. T. 615.

(*h*) *Batten* v. *Wedgwood Coal and Iron Co., supra*; *Re Capital Fire Insurance Association* (1883), 24 Ch. D. 408, C. A.

(*i*) *Re Gloucester Rail. Co.* (1860), 8 W. R. 175; *Re Audley Hall Cotton Spinning Co., supra*; *Re Armstrong* (1886), 30 Sol. Jo. 181.

(*j*) As to the discharge or extinguishment of lien generally, see title LIEN, Vol. XIX., pp. 28 *et seq.*

(*k*) *Re Emma Silver Mines, Re Turner* (1875), 24 W. R. 54.

(*l*) *Re Aikin's Estate*, [1894] 1 I. R. 225; compare *Hector* v. *Jolliffe* (1842), 6 Jur. 120; see title LIEN, Vol. XIX., p. 28, note (*g*); as to the effect of judgments generally, see title JUDGMENTS AND ORDERS, Vol. XVIII., p. 209.

(*m*) *Re Lumley* (1892), 37 Sol. Jo. 83; see pp. 824 *et seq.*, *post.*

SECT. 9. Lien.

(2) By the solicitor parting with possession (*n*) of the documents over which the lien is claimed, unless he has done so for a particular purpose, as, for instance, where he sends a conveyance to be executed (*o*) or hands papers to an arbitrator to enable him to draw up his award (*p*), or where after dissolution of a firm a former partner takes away deeds which are subject to a lien (*q*).

(3) By waiver, where the solicitor conducts himself in a manner inconsistent with the retention of his lien, as, for instance, where he acts for the client in obtaining a loan on the security of documents upon which he has a lien (*r*), or where he takes a security for his costs (*s*); there is, however, no waiver where the solicitor expressly reserves his lien (*t*).

(4) By proving in bankruptcy for the amount of the costs (*u*).

SUB-SECT. 3.—*Common Law Lien on Property or Funds Recovered.*

Particular lien on property recovered.

1342. A solicitor has at common law (*x*), and apart from any order of the court (*y*) or statute (*a*), a lien over property recovered or preserved or the proceeds of any judgments obtained (*b*) for the client by his exertions (*c*). This lien is a particular lien (*d*); it is not, therefore, available for the general balance of account between the solicitor and the client (*e*), but extends only to the costs of recovering or preserving the property in question (*f*), including the

(*n*) *Re Phœnix Life Assurance Co., Howard and Dollman's Case* (1863), 1 Hem. & M. 433; see, however, p. 818, *ante*.

(*o*) *Watson* v. *Lyon* (1855), 7 De G. M. & G. 288, C. A.

(*p*) *Whalley* v. *Halley* (1829), 8 L. J. (O. S.) (K. B.) 6.

(*q*) *Re Carter, Carter* v. *Carter* (1885), 55 L. J. (CH.) 230.

(*r*) *Fitzgerald* v. *Bermingham* (1842), 1 Con. & Law. 405; *Hicks* v. *Keate* (1839), 3 Jur. 1024.

(*s*) *Re Taylor, Stileman and Underwood*, [1891] 1 Ch. 590, C. A.; *Bissell* v. *Bradford and District Tramways Co.* (1893), 9 T. L. R. 337; *Balch* v. *Symes* (1823), Turn. & R. 87; *Re Norman (Douglas) & Co.*, [1898] 1 Ch. 199; *Re Morris*, [1908] 1 K. B. 473, C. A.; *Tyler* v. *Drayton* (1825), 2 Sim. & St. 309; *Cowell* v. *Simpson* (1809), 16 Ves. 275; *Robarts* v. *Jefferys* (1830), 8 L. J. (O. S.) (CH.) 137.

(*t*) See the cases cited in note (*s*), *supra*.

(*u*) *Re Tarleton, Ex parte Hornby* (1819), Buck, 351; *Re Aubusson, Ex parte Solomon* (1821), 1 Gl. & J. 25; compare the text, *supra*.

(*x*) As to his statutory lien, see pp. 823 *et seq.*, *post*.

(*y*) *Lloyd* v. *Mason* (1845), 4 Hare, 132; compare *Re Wright's Trust, Wright* v. *Sanderson*, [1901] 1 Ch. 317, C. A.

(*a*) *Re Clarke's Settlement Fund*, [1911] W. N. 39, *per* JOYCE, J., at p. 40.

(*b*) *Ex parte Morrison* (1868), L. R. 4 Q. B. 153, *per* BLACKBURN, J., at p. 156.

(*c*) *Bozon* v. *Bolland* (1839), 4 My. & Cr. 354; *Re Wadsworth, Rhodes* v. *Sugden* (1886), 34 Ch. D. 155, C. A., *per* KAY, L.J., at p. 157; *M'Bride* v. *Clarke* (1839), 1 I. Eq. R. 203; *Ex parte Price* (1751), 2 Ves. Sen. 407. It is really a claim to the equitable interference of the court to protect the solicitor (*Barker* v. *St. Quintin* (1844), 12 M. & W. 441; *Ross* v. *Buxton* (1889), 42 Ch. D. 190, *per* STIRLING, J., at p. 200).

(*d*) As to particular lien generally, see title LIEN, Vol. XIX., pp. 10 *et seq.*; *Re Downes, Verity* v. *Wylde* (1859), 4 Drew. 427.

(*e*) *Mackenzie* v. *Mackintosh* (1891), 64 L. T. 706, C. A.; contrast *Worrall* v. *Johnson* (1820), 2 Jac. & W. 214.

(*f*) *Lann* v. *Church* (1820), 4 Madd. 391; *Bozon* v. *Bolland, supra*; *Stephens* v. *Weston* (1824), 3 B. & C. 535; *Smith* v. *Betty*, [1903] 2 K. B. 317, C. A. If part of the costs has already been paid by the client, the lien extends only to the balance (*Cain* v. *Adams* (1836), 5 L. J. (K. B.) 252). Apparently, the costs must have been incurred in the action in which the property is in fact recovered or preserved (*Hall* v. *Laver* (1842), 1 Hare, 571; *Re Bayly's Estate, Ex parte Humphrey* (1860), 12 I. Ch. R. 315).

costs of protecting the solicitor's right to such costs (*g*), and of establishing the lien (*h*). This lien may be asserted by the solicitor, though his right to recover the costs may be barred by lapse of time (*i*).

Extent of lien.

1343. The lien does not attach to real property (*k*), but, with this exception, it applies to property of every description (*l*), such as, for instance, money payable to the client under a judgment (*m*), or an award (*n*), including costs ordered to be paid to the client (*o*), or the proceeds of an execution in the hands of the sheriff (*p*), money paid into court, whether as security for costs (*q*) or by way of defence (*r*), or otherwise (*s*), money received by way of compromise (*t*), or money payable by way of royalties on a patent (*u*). The property must, however, have been recovered or preserved in consequence of the solicitor's exertions (*x*), and the solicitor must have been acting on behalf of the person against whom the lien is claimed (*a*). The lien can be exercised against the client only (*b*), and it attaches to the property only to the extent of the client's interest therein (*c*). The solicitor has no higher right than his client (*d*), and is liable to all the equities between his client and

(*g*) *Lucas* v. *Peacock* (1846), 9 Beav. 177.

(*h*) *Re Meter Cabs, Ltd.*, [1911] 2 Ch. 557.

(*i*) *Higgins* v. *Scott* (1831), 2 B. & Ad. 413; see titles LIEN, Vol. XIX., pp. 3, 6; LIMITATION OF ACTIONS, Vol. XIX., p. 42.

(*k*) *Shaw* v. *Neale* (1858), 6 H. L. Cas. 581.

(*l*) Compare pp. 824 *et seq.*, *post.*

(*m*) *Slater* v. *Sunderland Corporation* (1863), 33 L. J. (Q. B.) 37.

(*n*) *Ormerod* v. *Tate* (1801), 1 East, 464; *Cowell* v. *Betteley* (1834), 10 Bing. 432; *Jones* v. *Turnbull* (1837), 2 M. & W. 601.

(*o*) *Ex parte Bryant* (1815), 1 Madd. 49; *Aspinall* v. *Stamp* (1824), 3 B. & C. 108; *O'Brien* v. *Lewis* (1863), 3 De G. J. & Sm. 606, C. A.; compare *Pounset* v. *Humphreys* (1837), Coop. Pr. Cas. 142.

(*p*) *Griffin* v. *Eyles* (1789), 1 Hy. Bl. 122 (where the execution debtor had given the sheriff notice to retain the money in his hands, and was applying to the court to set aside the execution); *Re Bank of Hindustan, China, and Japan, Ex parte Smith* (1867), 3 Ch. App. 125.

(*q*) *Hall* v. *Hall*, [1891] P. 302, C. A.

(*r*) See *Emden* v. *Carte* (1881), 19 Ch. D. 311, C. A.

(*s*) *M'Bride* v. *Clarke* (1839), 1 I. Eq. R. 203.

(*t*) *Ross* v. *Buxton* (1889), 42 Ch. D. 190, *per* STIRLING, J., at p. 195; see p. 823, *post.*

(*u*) *Re Graydon, Ex parte Official Receiver*, [1896] 1 Q. B. 417.

(*x*) *Townsend* v. *Reade, Dooley* v. *Reade* (1835), 4 L. J. (CH.) 233; *Hodgens* v. *Kelly* (1826), 1 Hog. 388; compare *Stretton* v. *London and North Western Rail. Co.* (1855), 16 C. B. 40. A second solicitor, who pays the costs of the solicitor actually recovering the property, does not succeed to the latter's lien over the property (*Irving* v. *Viana* (1827), 2 Y. & J. 70).

(*a*) *Chick* v. *Nicholls* (1877), 26 W. R. 231; *Re Clark, Ex parte Newland* (1876), 4 Ch. D. 515; compare *Wickens* v. *Townsend* (1830), 1 Russ. & M. 361, applied in *Re Birt, Birt* v. *Burt* (1883), 22 Ch. D. 604. It is immaterial whether the solicitor acted for the plaintiff or for the defendant (*Townsend* v. *Reade, Dooley* v. *Read, supra*).

(*b*) *Francis* v. *Francis* (1854), 5 De G. M. & G. 108, C. A. The death (*Lloyd* v. *Mason* (1845), 4 Hare, 132) or the bankruptcy of the client does not affect a lien which has already attached. The lien is available against an infant (*Re Wright's Trust. Wright* v. *Sanderson*, [1901] 1 Ch. 317, C. A.) or lunatic (*Ex parte Price* (1751), 2 Ves. Sen. 407).

(*c*) *Re Downes, Verity* v. *Wylde* (1859), 4 Drew. 427; *Chick* v. *Nicholls, supra.*

(*d*) *Re Harrald, Wilde* v. *Walford* (1884), 53 L. J. (CH.) 505, C. A.; *Re Union Cement and Brick Co.* (1872), 26 L. T. 240.

SECT. 9. Lien.

Effect of set-off.

the other parties interested in the property (*e*). In particular, a set-off (*f*) for damages or costs between parties may be allowed, notwithstanding the solicitor's lien for costs (*g*) in the particular cause or matter in which the set-off is sought (*h*). As regards damages, the set-off necessarily arises in respect of different actions (*i*); but as regards costs (*k*) the set-off is confined to interlocutory costs (*l*), and to the costs of separate issues (*m*) or parties (*n*) in the same proceedings, and does not extend to the costs of independent proceedings (*o*), or separate actions (*p*), even though in the latter case a consolidation order may have been made (*q*).

Enforcement of lien.

1344. By virtue of his lien the solicitor has a right to ask for the intervention of the court for its protection whenever he finds, after recovering or preserving the property for the client, that there is a probability of the client depriving him of his costs (*a*). He is, therefore, entitled to apply to the court for an injunction against his client, restraining the client from receiving payment without notice to himself (*b*), or, if the fund is in court, for an order for payment thereout of his costs (*c*). He may also give notice of his lien

(*e*) *Taylor* v. *Popham*, *Monke* v. *Taylor* (1808), 15 Ves. 72; *Bawtree* v. *Watson* (1838), 2 Keen, 713; *Gwynn* v. *Krous* (1845), 7 I. Eq. R. 274.

(*f*) As to set-off generally, see title SET-OFF AND COUNTERCLAIM, Vol. XXV., pp. 484 *et seq.*

(*g*) *M'Cormack* v. *Ross*, [1894] 2 I. R. 545. The court has a discretion as to whether the set-off is to be allowed subject to the lien or otherwise (*Edwards* v. *Hope* (1885), 14 Q. B. D. 922, C. A.; *Blakey* v. *Latham* (1889), 41 Ch. D. 518).

(*h*) R. S. C., Ord. 65, r. 14. There is no similar rule in the case of appeals to the House of Lords, and there is, therefore, no right of set-off unless at the hearing a special order is made (*Russell* v. *Russell*, [1898] A. C. 307).

(*i*) *Goodfellow* v. *Gray*, [1899] 2 Q. B. 498, C. A., following *Blakey* v. *Latham*, *supra*; compare *Ward* v. *Haddrill*, [1904] 1 K. B. 399.

(*k*) Costs and damages may be set off against each other in the same action where the plaintiff, though he recovers damages, is ordered to pay the defendant's costs (*Bawtree* v. *Watson*, *supra*; compare *Pringle* v. *Gloag* (1879), 10 Ch. D. 676), or where the defendant fails on the claim, but succeeds on the counterclaim (*Meynall* v. *Morris* (1911), 104 L. T. 667).

(*l*) *Cattell* v. *Simons* (1843), 6 Beav. 304; *Byron* v. *Metropolitan Saloon Omnibus Co.* (1859), 4 Drew. 546; *Jenner* v. *Morris*, *Webster* v. *Jenner* (1863), 11 W. R. 943; *Throckmorton* v. *Crowley* (1866), L. R. 3 Eq. 196.

(*m*) *Taylor* v. *Popham*, *Monke* v. *Taylor*, *supra*; *Robarts* v. *Buèe* (1878), 8 Ch. D. 198.

(*n*) *Lees* v. *Reffitt* (1835), 3 Ad. & El. 707; *M'Cormack* v. *Ross*, *supra*; *George* v. *Elston* (1835), 1 Bing. (N. C.) 513.

(*o*) *Hassell* v. *Stanley*, [1896] 1 Ch. 607; *Re Bassett*, *Ex parte Lewis*, [1896] 1 Q. B. 219; *Re Adams*, *Ex parte Griffin* (1880), 14 Ch. D. 37, C. A.; *Barker* v. *Hemming* (1880), 5 Q. B. D. 609, C. A.; *Re Davies*, *Ex parte Cleland* (1867), 2 Ch. App. 808; *Re Harrald*, *Wilde* v. *Walford* (1884), 53 L. J. (CH.) 505, C. A.; *Re Dickinson*, *Bute* (*Marquis*) v. *Walker*, *Ex parte Hoyle*, *Shipley* v. *Hoyle*, [1888] W. N. 94.

(*p*) *David* v. *Rees*, [1904] 2 K. B. 435, C. A.; *Bake* v. *French*, [1907] 1 Ch, 428; *Johnston* v. *MacKenzie*, [1911] 2 I. R. 118; *Edwards* v. *Hope* (1885). 14 Q. B. D. 922, C. A.; *Blakey* v. *Latham*, *supra*; *Wright* v. *Mudie* (1823), 1 Sim. & St. 266; *Cowell* v. *Betteley* (1834), 10 Bing. 432 (awards); *Collett* v. *Preston* (1852), 15 Beav. 458.

(*q*) *Bake* v. *French*, *supra*.

(*a*) *Mercer* v. *Graves* (1872), L. R. 7 Q. B. 499; *Hough* v. *Edwards* (1856), 1 H. & N. 171.

(*b*) *Lloyd* v. *Jones* (1879), 40 L. T. 514; *Hobson* v. *Shearwood* (1845), 8 Beav. 486.

(*c*) *Moore* v. *Smith* (1851), 14 Beav. 393.

to the party liable to his client, who thereupon becomes liable to the solicitor if he subsequently pays the client without regard to the solicitor's lien (*d*). If the money in respect of which the lien is claimed is already in the solicitor's hands, he may retain thereout the amount of his costs, and pay over the balance to the client (*e*).

Effect of compromise of action.

1345. The solicitor's lien may be affected by the compromise of a suit, and the court does not, for the purpose of preserving it, interfere in a *bonâ fide* compromise (*f*), whether the damages sought to be affected are liquidated (*g*) or unliquidated (*h*). It must, however, be clear that the compromise is made honestly and not with the intention of cheating the solicitor of his proper charges (*i*). If the compromise is a collusive one entered into between the plaintiff and the defendant specifically for the purpose of depriving the solicitor of his lien, the court interferes for the solicitor's protection; in this case he may apply summarily for payment of his costs by either of the parties to the collusive scheme (*k*). Where a valid compromise of an action has been entered into involving payment of a sum of money to the plaintiff, the defendant, if he receives express notice from the plaintiff's solicitor of his claim to a lien for his costs, must not disregard the notice and make the payment to the plaintiff (*l*).

SUB-SECT. 4.—*Statutory Lien and Charging Orders.*

Extent of the jurisdiction.

1346. The court has power (*m*), in any proceedings, to make a charging order in favour of the solicitor employed to conduct the

(*d*) *Ormerod* v. *Tate* (1801), 1 East, 464; *Read* v. *Dupper* (1795), 6 Term Rep. 361; *Ross* v. *Buxton* (1889), 42 Ch. D. 190 (where the defendants' solicitors were held liable for disregarding the notice); compare *Ex parte Morrison* (1868), L. R. 4 Q. B. 153. Similarly, a release by the client after notice does not affect the lien (*Ex parte Bryant* (1815), 1 Madd. 49; *Ormerod* v. *Tate*, *supra*). The solicitor cannot claim payment direct to himself in the first instance (*Lloyd* v. *Mansell* (1853), 22 L. J. (Q. B.) 110; *Re* —— (1853), 1 W. R. 150). The solicitor cannot take proceedings if he has already allowed the other party to pay his client (*Morse* v. *Cook* (1824), 13 Price, 473).

(*e*) See *Watson* v. *Maskell* (1834), 1 Bing. (N. C.) 366; and compare *Miller* v. *Atlee* (1849), 3 Exch. 799.

(*f*) *M'Pherson* v. *Allsop* (1839), 8 L. J. (EX.) 262; *Quested* v. *Callis* (1842), 1 Dowl. (N. S.) 888; *Brunsdon* v. *Allard* (1859), 2 E. & E. 19; *Ex parte Morrison*, *supra*; *Morse* v. *Cook*, *supra*.

(*g*) *Brunsdon* v. *Allard*, *supra*.

(*h*) *Re Tovery* v. *Payne*, *Ex parte Hart* (1830), 1 B. & Ad. 660.

(*i*) *Chapman* v. *Haw* (1808), 1 Taunt. 341; *Jordan* v. *Hunt* (1855), 3 Dowl. 666; *The Hope* (1883), 8 P. D. 144, 146, C. A.; *Reynolds* v. *Reynolds* (1909), 26 T. L. R. 104, C. A.; but see *Price* v. *Crouch* (1891), 60 L. J. (Q. B.) 767.

(*k*) *Re Williams* v. *Lloyd*, *Ex parte Games* (1864), 3 H. & C. 294; *Gould* v. *Davis* (1831), 1 Cr. & J. 415; *Ex parte Morrison*, *supra*; *Young* v. *Redhead* (1833), 2 Dowl. 119; *Re Margetson and Jones*, [1897] 2 Ch. 314, 321; *Price* v. *Crouch*, *supra*.

(*l*) *Ross* v. *Buxton*, *supra*, *per* STIRLING, J., at p. 202.

(*m*) The power of the court is discretionary (*Re Born*, *Curnock* v. *Born*, [1900] 2 Ch. 433; *Re Turner*, *Wood* v. *Turner*, [1907] 2 Ch. 539, C. A.; *Re Cockrell's Estate*, [1912] 1 Ch. 23), and the solicitor must make out a *primâ facie* case that he cannot obtain payment in any other way (*Harrison* v. *Harrison* (1888), 13 P. D. 180, C. A., followed in *Croghan* v. *Maffett* (1891), 28 L. R. Ir. 97). If the judgment debtor becomes bankrupt a charging order in favour of the judgment creditor's solicitor will not be made by the bankruptcy court against the dividend payable to the judgment creditor (*Re Cook*, *Ex parte Cripps*, [1899] 1 Q. B. 863); see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 239. The court does not

SECT. 9. Lien.

proceedings (*n*) against any property recovered or preserved through the solicitor's instrumentality (*o*), in respect of his taxed costs, charges and expenses in such proceedings (*p*), and the charge thus created is only defeated by a conveyance to a *bonâ fide* purchaser for value without notice (*q*). The court may order the costs to be taxed and the amount of them to be raised and paid out of the property by sale or otherwise (*r*). No order, however, may be made where the costs, charges or expenses are barred by any Statute of Limitation (*s*); nor will an order be made in favour of a solicitor who has already accepted from his client a mortgage or other security for his costs in a pending action to which his client is a party, since the acceptance of the security is inconsistent with the solicitor's right to payment otherwise (*a*). To bring a case within the power conferred upon the court the property must have been recovered or preserved in a proceeding in a court of justice (*b*). Any class of property may be the subject of a charging order (*c*), such

make a charging order where there is already an order of the court in existence directing payment to the solicitor's London agent (*Re Viney's Trust* (1868), 18 L. T. 851).

(*n*) Where there is a change of solicitors during the proceedings, the latest in order of employment has priority (*Re Knight, Knight* v. *Gardner*, [1892] 2 Ch. 368, following *Re Wadsworth, Rhodes* v. *Sugden* (1885), 29 Ch. D. 517; *Cormack* v. *Beisley* (1858), 3 De G. & J. 157, C. A.).

(*o*) This does not include money paid into court as security for costs by the plaintiff, which the plaintiff becomes entitled to take out of court when the action results in his favour (*Re Wadsworth, Rhodes* v. *Sugden, supra; Re Turner, Wood* v. *Turner*, [1907] 2 Ch. 126, 539, C. A.); see also *Pierson* v. *Knutsford Estates Co.* (1884), 13 Q. B. D. 666, C. A., where the question was raised, but not decided, as to whether a charging order could be made against property which was not the direct subject-matter of the litigation.

(*p*) *Ex parte Thompson* (1860), 3 L. T. 317; *Wilson* v. *Round* (1863), 4 Giff. 416; *Shevlin* v. *M'Grane* (1886), 17 L. R. Ir. 271; *Re Hill, a Solicitor* (1886), 33 Ch. D. 266, C. A.

(*q*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28; compare title RECEIVERS, Vol. XXIV., p. 383. As to the position of a London agent, see pp. 844 *et seq.*, *post*; as to the effect of the making of a winding-up order upon a solicitor's lien for costs against a limited company, see title COMPANIES, Vol. V., p. 525.

(*r*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28. Before a sale is ordered the proceedings must have come to an end and the costs must have been directed to be paid (*Re Green, Green* v. *Green* (1884), 26 Ch. D. 16, C. A.), and notice must be given to persons interested in the property who were not parties (*Rowley* v. *Southwell, Southwell* v. *Rowley* (1889), 61 L. T. 805, where substituted service was allowed).

(*s*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28.

(*a*) *Groom* v. *Cheesewright*, [1895] 1 Ch. 730, 733; *Re Pinkerton, Pinkerton* v. *Easton* (1873), L. R. 16 Eq. 490; *Re Humphreys, Ex parte Roberts* (1897), 77 L. T. 501; *Westacott* v. *Bevan*, [1891] 1 Q. B. 774 (amount recovered on claim reduced by amount recovered on counterclaim); *Goodfellow* v. *Gray*, [1899] 2 Q. B. 498, C. A.

(*b*) *Macfarlane* v. *Lister* (1887), 37 Ch. D. 88, C. A.; *Re Humphreys, Ex parte Lloyd-George and George*, [1898] 1 Q. B. 520, C. A.; *Birchall* v. *Pugin* (1875), L. R. 10 C. P. 397; compare *M'Aleavey* v. *M'Aleavey* (1882), 9 L. R. Ir. 165 (award). It is immaterial that the advice was a friendly action (*Baile* v. *Baile* (1872), L. R. 13 Eq. 497).

(*c*) *Foxon* v. *Gascoigne* (1874), 9 Ch. App. 654, *per* MELLISH, L.J., at p. 660; *Pelsall Coal and Iron Co.* v. *London and North-Western Rail. Co.* (No. 3) (1892), 8 Ry. & Can. Tr. Cas. 146 (wagons subject to lien which was reduced by solicitor's exertion).

as, for instance, a sum secured to a wife on the dissolution of her marriage (*d*); money paid into court by way of defence (*e*) or under R. S. C., Order 14 (*f*), or as the proceeds of the sale of a ship, under an order made in an Admiralty action (*g*); sums recovered by a receiver in a debenture-holder's action as the result of proceedings taken by his solicitors (*h*); assets of a company preserved by a scheme approved by the court as regards the company's solicitor's costs of the winding up and reconstruction (*i*); money payable as the result of a compromise of an action (*j*); the estate of a deceased testator as regards the executor's costs (*k*); money payable to a beneficiary in an administration action (*l*); investments successfully defended against a claim to follow them (*m*); costs payable to the client under a judgment (*n*); or costs ordered to be repaid by the Court of Appeal as the result of an appeal (*o*). The solicitor may by the charging order acquire priority over other creditors, even though they were not parties to the proceedings in question (*p*). Thus, a solicitor who has obtained a charging order in his favour has priority over a judgment creditor who has obtained a garnishee order against the same fund (*q*). A solicitor bringing an action on behalf of an undischarged bankrupt is entitled, as

(*d*) *Harrison* v. *Harrison* (1888), 13 P. D 180, C. A.; see title HUSBAND AND WIFE, Vol. XVI., p. 589. As to a solicitor's lien on alimony, see *ibid.*, p. 520.

(*e*) *Emden* v. *Carte* (1881), 19 Ch. D. 311, C. A., following *Berdan* v. *Greenwood* (1878), 3 Ex. D. 251, C. A. The court before which an action is tried has no jurisdiction to grant a charging order against money paid into court under an order of the Bankruptcy Court (*Pierson* v. *Knutsford Estates Co.* (1884), 13 Q. B. D. 666, C. A.).

(*f*) *Moxon* v. *Sheppard* (1890), 24 Q. B. D. 627; *Hunt* v. *Austin* (1882), 9 Q. B. D. 598, C. A.

(*g*) *The Heinrich* (1872), L. R. 3 A. & E. 505; compare *The Philippine* (1867), L. R. 1 A. & E. 309; but contrast *The Livietta* (1883), 8 P. D. 209.

(*h*) *Re Horne* (*W. C.*) *& Sons, Ltd.*, *Horne* v. *Horne* (*W. C.*) *& Sons, Ltd.*, [1906] 1 Ch. 271; distinguished in *Re Drew* (1913), 135 L. T. Jo. 322; *Twynam* v. *Porter* (1870), L. R. 11 Eq. 181; *Turnbull* v. *Richardson* (1885), 1 T. L. R. 244, C. A.; *Pelsall Coal and Iron Co.* v. *London and North Western Rail. Co.* (1892), 8 T. L. R. 629.

(*i*) *Re Clayton* (*John*), *Ltd.* (1905), 92 L. T. 223; see also *Re Freehold Land and Brickmaking Co.*, *Ex parte Massey* (1870), L. R. 9 Eq. 36.

(*j*) *Re Turner*, *Wood* v. *Turner*, [1907] 2 Ch. 539, C. A.; *M'Larnon* v. *Carrickfergus Urban District Council*, [1904] 2 I. R. 44; *Ross* v. *Buxton* (1889), 42 Ch. D. 190; *The Paris*, [1896] P. 77; *Rowlands* v. *Williams* (1885), 53 L. T. 135; reversed without affecting this point (1885), *Times*, 12th November, C. A.; *Twynam* v. *Porter*, *supra*.

(*k*) *Catlow* v. *Catlow* (1877), 2 C. P. D. 362; *Ex parte Tweed*, [1899] 2 Q. B. 167, C. A.; *The Paris*, *supra*; *Johnston* v. *McKenzie*, [1911] 2 I. R. 118.

(*l*) *Smith* v. *Winter*, *Ex parte Hartley* (1870), 18 W. R. 447.

(*m*) *Porter* v. *West* (1880), 50 L. J. (CH.) 231.

(*n*) *Dallow* v. *Garrold* (1881), 14 Q. B. D. 543, C. A.

(*o*) *Guy* v. *Churchill* (1887), 35 Ch. D. 489, C. A.

(*p*) *Hamer* v. *Giles*, *Giles* v. *Hamer* (1879), 11 Ch. D. 942, explained in *Jackson* v. *Smith*, *Ex parte Digby* (1884), 53 L. J. (CH.) 972; *Dennis* v. *Addy*, [1894] 1 I. R. 511; *Haymes* v. *Cooper*, *Cooper* v. *Jenkins* (1864), 33 Beav. 431; *The Heinrich*, *supra*; *Wilson* v. *Round* (1863), 4 Giff. 416; contrast *Keeson* v. *Luxmore* (1889), 61 L. T. 199.

(*q*) *Shippey* v. *Grey* (1880), 49 L. J. (Q. B.) 524, C. A.; *Hamer* v. *Giles*, *Giles* v. *Hamer*, *supra*; *The Jeff Davis* (1865), L. R. 2 A. & E. 1; *Birchall* v. *Pugin* (1875), L. R. 10 C. P. 397; *Dallow* v. *Garrold*, *supra*; but see *North* v. *Stewart* (1890), 15 App. Cas. 452.

SECT. 9. **Lien.**

against the trustee in bankruptcy, to a charging order in respect of costs incurred down to the time when the trustee intervened (*r*).

Real property.

Real property may be charged in favour of the solicitor, not only as against his client, but also as against all persons interested in the property, upon the principle of salvage (*s*); and the order may be made against the property of an infant (*t*), or against property settled upon a married woman without power of anticipation (*a*).

Partnership property.

A solicitor who has recovered or preserved the assets of the firm in a partnership action is entitled to a lien in priority to debts due from the partnership (*b*), including rent due to a landlord who has not distrained (*c*). A charging order is not, however, made in the absence of creditors, nor unless the solicitor is able to satisfy the court that he cannot otherwise obtain payment of his costs (*d*).

Who may apply for charging order.

1347. The charging order is made on the application of the solicitor interested (*e*), or of his legal personal representative (*f*), or an assignee of the costs (*g*), as the case may be. A charging order will not as a general rule be made *ex parte* except in special circumstances (*h*). The court will, if necessary, protect the lien by

(*r*) *Emden* v. *Carte* (1881), 19 Ch. D. 311, C. A.; compare *Re Seaman, Wilson* v. *Hood* (1864), 33 L. J. (EX.) 204; *Ex parte Sleeman* (1864), 12 W. R. 748.

(*s*) *Faithfull* v. *Ewen* (1878), 7 Ch. D. 495, C. A.; *Charlton* v. *Charlton* (1883), 49 L. T. 267, not following *Berrie* v. *Howitt* (1869), L. R. 9 Eq. 1; *Shevlin* v. *M'Grane* (1886), 17 L. R. Ir. 271; *Greer* v. *Young* (1883), 24 Ch. D. 545, C. A.; *Bailey* v. *Birchall* (1865), 2 Hem. & M. 371; *Wilson* v. *Round* (1863), 4 Giff. 416; *Scholey* v. *Peck*, [1893] 1 Ch. 709; *Re Fiddey, Jones* v. *Frost* (1872), 7 Ch. App. 773; *Cole* v. *Eley*, [1894] 2 Q. B. 180, 350, C. A.; *Reynolds* v. *Reynolds* (1909), 26 T. L. R. 104, C. A.; *Bulley* v. *Bulley* (1878), 8 Ch. D. 479; *Dennis* v. *Addy*, [1894] 1 I. R. 511; contrast *Lloyd* v. *Jones* (1879), 40 L. T. 514. But the refusal of a mandatory injunction for the pulling down of buildings in an action relating only to an easement is not a preservation of property entitling the solicitor of the defendant to a charging order (*Foxon* v. *Gascoigne* (1874), 9 Ch. App. 654). The interest of a mortgagee may be charged (*Scholefield* v. *Lockwood* (1868), L. R. 7 Eq. 83; *Keenan* v. *Armstrong* (1891), 27 L. R. Ir. 371).

(*t*) *Pritchard* v. *Roberts* (1874), L. R. 17 Eq. 222; compare *Bonser* v. *Bradshaw* (1863), 4 Giff. 260; *Baile* v. *Baile* (1872), L. R. 13 Eq. 497; *Greer* v. *Young, supra; Re Brook, Pilcher* v. *Arden* (1877), 7 Ch. D. 318, C. A. As to the right of the infant on attaining full age to adopt or repudiate the transaction, see title INFANTS AND CHILDREN, Vol. XVII., p. 140.

(*a*) *Re Keane, Lumley* v. *Desborough* (1871), L. R. 12 Eq. 115; see title HUSBAND AND WIFE. Vol. XVI., pp. 366, 367.

(*b*) *Jackson* v. *Smith, Ex parte Digby* (1884), 53 L. J. (CH.) 972; *Re Nicholas and Paine, Ex parte Lovett* (1889), 61 L. T. 87; *Ridd* v. *Thorne*, [1902] 2 Ch. 344; and see *Harrison* v. *Cornwall Minerals Rail. Co.* (1884) 53 L. J. (CH.) 596.

(*c*) *Re Suffield and Watts, Ex parte Brown* (1888), 20 Q. B. D. 693, C. A.

(*d*) *Jackson* v. *Smith, Ex parte Digby, supra.* As to costs of a solicitor obtaining admission of a creditor's proof in bankruptcy, see title BANKRUPTCY AND INSOLVENCY, Vol II., p. 239.

(*e*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28. The order will be made though he has ceased to act for the client, provided that he has not discharged himself improperly (*Clover* v. *Adams* (1881), 6 Q. B. D. 622; *Re Wadsworth, Rhodes* v. *Sugden* (1885), 29 Ch. D. 517). The parties to an action cannot apply for an order (*Harrison* v. *Cornwall Minerals Rail. Co., supra*). An application to set aside a charging order made *ex parte* should be made promptly (*Re Deakin, Ex parte Daniell*, [1900] 2 Q. B. 489, C. A.).

(*f*) *Baile* v. *Baile, supra.*

(*g*) *Briscoe* v. *Briscoe*, [1892] 3 Ch. 543.

(*h*) *The Birnam Wood*, [1907] P. 1, C. A. The court may allow substituted service of the application (*Hunt* v. *Austin* (1882), 9 Q. B. D. 598, C. A.).

injunction, which may in a proper case be granted *ex parte* (*i*), restraining the client from receiving the money or alienating the property which forms the security for the lien until a charging order can be obtained (*k*). A delay in making the application does not preclude the court from exercising its discretion in favour of the solicitor, unless other rights in respect of the property sought to be charged have meantime arisen (*l*).

Court making the order.

1348. The order may be made by any judge of the division of the High Court in which the action is tried (*m*), or where the judgment relied upon is that of the Court of Appeal, either by the Court of Appeal or by a judge of the division in which the action was originally tried (*n*). In the King's Bench Division the order is usually made by the judge in chambers (*o*). In the Chancery Division the order is made by the judge sitting either in court or in chambers (*p*), and in the Probate, Divorce and Admiralty Division by the judge in chambers (*q*). The judge in bankruptcy has no power to make a charging order in the exercise of his bankruptcy jurisdiction, but he may do so by virtue of his jurisdiction as a judge of the High Court, and may direct the power to be exercised in chambers by a registrar (*r*). There seems to be no reason why a charging order should not be made by a county court where the solicitor applying for the order was employed to conduct the action there (*s*).

The charging order when granted may direct the costs of the application to be taxed as between solicitor and client and added to the amount for which it is made (*t*).

(*i*) *Gerrard* v. *Dawes*, *Re Dawes*, *Dryden* v. *Dawes* (1809), 18 W. R. 32; but see *Heap* v. *Jackson*, [1886] W. N. 192.

(*k*) *Birch* v. *Podmore*, cited (1829), 1 Jur. (N. S.) 123; S. C., cited *sub nom.* *Bovill* v. *Podmore* (1829), 7 De G. M. & G. 27; *Lloyd* v. *Jones* (1879), 40 L. T. 514.

(*l*) *Re Born*, *Curnock* v. *Born*, [1900] 2 Ch. 433; *Roche* v. *Roche* (1890), 29 L. R. Ir. 339, C. A.; *Re Cumming* (1860), 2 De G. F. & J. 376, C. A.

(*m*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28; *Re Deakin*, *Ex parte Daniell*, [1900] 2 Q. B. 489, C. A. (where, however, the earlier cases, holding that the application should be made to the judge who tried the action (*Re Fiddey* (*a Solicitor*), *Heinrich* v. *Sutton* (1871), 6 Ch. App. 865; *Higgs* v. *Schrader* (1878), 3 C. P. D. 252; *Owen* v. *Henshaw* (1877), 7 Ch. D. 385), were not cited).

(*n*) *Re Deakin*, *Ex parte Daniell*, *supra*; *Guy* v. *Churchill* (1887), 35 Ch. D. 489, C. A.; *Catlow* v. *Catlow* (1877), 2 C. P. D. 362.

(*o*) R. S. C., Ord. 54, r. 12; *Clover* v. *Adams*, *supra*; see title EXECUTION, Vol. XIV., pp. 105, note (*g*), 107, note (*a*).

(*p*) The application may be made either by summons or petition (*Hamer* v. *Giles*, *Giles* v. *Hamer* (1879), 11 Ch. D. 942 (where it was also held that the order need only be intituled in the action)); see also *Porter* v. *West* (1881), 50 L. J. (CH.) 231; *Re Fiddey* (*a Solicitor*), *Jones* v. *Frost* (1872), 7 Ch. App. 773. The other parties to the action should not be served if their interests are not affected (*Brown* v. *Trotman* (1879), 12 Ch. D. 880).

(*q*) *The Birnam Wood*, [1907] P. 1, C. A.

(*r*) *Re Wood*, *Ex parte Fanshawe*, [1897] 1 Q. B. 314; but see *Re Deakin*, *Ex parte Daniell*, *supra*, where it was suggested that the judge in bankruptcy would have jurisdiction if the property was recovered or preserved in bankruptcy proceedings.

(*s*) The words in the Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28, are "any court of justice"; compare *Re Wood*, *Ex parte Fanshawe*, *supra*, *per* VAUGHAN WILLIAMS, J., at p. 316. Such orders are in practice frequently made.

(*t*) *Waterland* v. *Serle* (1897), 32 L. J. 582, C. A. Contrast *Mildmay* v.

Part VI.—Liabilities of Solicitors as Officers of the High Court.

SECT. 1. In General.

SECT. 1.—*In General.*

Disciplinary jurisdiction.

1349. The court possesses a disciplinary jurisdiction over solicitors, as being its officers (*a*). This jurisdiction, though it has been extended by statute (*b*), and by the Rules of the Supreme Court (*c*), is inherent in the court (*d*), and is based upon the doctrine of contempt (*e*). It is exercisable summarily by writ of attachment (*f*) or by committal (*g*).

Criminal contempt.

1350. A solicitor is guilty of criminal contempt (*h*) where he is guilty of conduct, whether in or out of court (*i*), amounting to a contemptuous interference with the administration of justice (*k*), as, for instance, where he insolently defies the judge in open court (*l*), or uses improper language to the judge (*m*), or to the solicitor of the opposite party (*n*); where he writes to the Press with

Quicke (1877), 6 Ch. D. 553, where the costs of appearing on further consideration were not allowed.

(*a*) Compare *Re Haynes, Ex parte National Mercantile Bank* (1880), 15 Ch. D. 42, C. A., *per* JAMES, L.J., at p. 52. The jurisdiction is exercisable by the High Court or the Court of Appeal (Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 87). Where an order is made by a judge in chambers, the appeal lies to a Divisional Court and not to the Court of Appeal (*Haxby* v. *Wood Advertising Agency, Ltd.*, [1913] W. N. 331, following *Re Marchant*, [1908] 1 K. B. 998, C. A. As to whether a solicitor exercises a public office, see *Bebb* v. *Law Society* (1913), 29 T. L. R. 634, *per* JOYCE, J., at p. 635.

(*b*) For examples, see Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 31; Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4 (4).

(*c*) For an example, see R. S. C., Ord. 31, r. 23.

(*d*) As to contempt in inferior courts, see *Re Pater, R.* v. *Middlesex Justices* (1864), 5 B. & S. 299; *R.* v. *Lefroy* (1873), L. R. 8 Q. B. 134; *Willis* v. *Maclachlan* (1876), 1 Ex. D. 376; County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 162; Army Act (44 & 45 Vict. c. 58), s. 129.

(*e*) *R.* v. *Almon* (1765), Wilm. 243, 254; 2 Hawk. P. C., c. 22, ss. 6—12.

(*f*) As to attachment and committal, see, generally, title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., pp. 307 *et seq.*

(*g*) Committal is the proper remedy for breach of an undertaking (*D.* v. *A. & Co.*, [1900] 1 Ch. 484; see *Callow* v. *Young* (1887), 56 L. T. 147).

(*h*) As to criminal contempt generally, see title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., pp. 280 *et seq.* As to the distinction between the different classes of contempt as regards the right of appeal, see *Scott* v. *Scott*, [1913] A. C. 417.

(*i*) An inferior court cannot commit for contempt out of court (*R.* v. *Lefroy, supra*; *R.* v. *Brompton County Court Judge*, [1893] 2 Q. B. 195).

(*k*) *R.* v. *Almon* (1765), Wilm. 243, 254, approved in *Re Martin, Ex parte Van Sandau* (1844), 1 Ph. 445, and in *Re Johnson* (1887), 20 Q. B. D. 68, C. A.

(*l*) *Watt* v. *Ligertwood* (1874), L. R. 2 Sc. & Div. 361.

(*m*) *Re Pollard* (1868), L. R. 2 P. C. 106; *Re Pater, R.* v. *Middlesex Justices* (1864), 5 B. & S. 299.

(*n*) *Re Johnson, supra* (where the altercation took place in the corridors of the Royal Courts of Justice after leaving the presence of the judge in chambers); contrast *Re Clements, Costa Rica Republic* v. *Erlanger* (1877), 46 L. J. (CH.) 375, C. A., where the altercation took place in the solicitor's office.

reference to the merits of a pending case in which he is professionally interested (*o*); or where he prepares a special case for the opinion of the court based upon a fictitious statement of facts (*p*). A solicitor who commences or defends legal proceedings on behalf of a client, whilst he himself is in prison, or who permits a solicitor in prison to use his name for the purpose, is guilty of contempt (*q*).

Contempt in procedure.

1351. A solicitor is also liable to punishment for contempt in procedure (*r*), as, for instance, where he fails to perform an undertaking given by him in his capacity as an officer of the court (*s*), or where he neglects without reasonable excuse to give notice to his client of any order against him for interrogatories, discovery, or inspection (*t*). In many cases the act done by the solicitor which calls for the intervention of the court is not in itself a contempt; the court in the first instance makes an order against the solicitor, and it is his disobedience to the order which constitutes the actual contempt (*a*). In particular, where the court has ordered a solicitor to pay costs for misconduct as such, or to pay (*b*) a sum of money in his character as an officer of the court, the solicitor, on making default, is liable to attachment and imprisonment for a period not exceeding one year (*c*). The court, however, will not intervene summarily where the solicitor acted in his private capacity (*d*), such as, for instance, as a trustee (*e*), or arbitrator (*f*), or even where he merely acted in the ordinary course of business as a solicitor (*g*): the act must have been done by him as an officer of the court (*h*).

(*o*) *Daw* v. *Eley* (1868) L. R. 7 Eq. 49; and see the cases cited in title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., p. 285, note (*b*).

(*p*) *Re Elsam* (1824), 3 B. & C. 597; compare *Coxe and Phillips* (1736), Lee *temp.* Hard. 237; *Bishop* v. *Willis* (1749), 5 Beav. 83, n.

(*q*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 31; see title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., p. 294.

(*r*) As to contempt in procedure, see, generally, title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., pp. 297 *et seq.*, 301 *et seq.*

(*s*) See p. 830, *post.*

(*t*) R. S. C., Ord. 31, r. 23; see title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., p. 306.

(*a*) *Re a Solicitor* (1877), 36 L. T. 113; see p. 830, *post*; title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., pp. 298 *et seq.*

(*b*) As to the form of the order as affecting the remedy by attachment, see title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., p. 298.

(*c*) Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4 (4); see title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., p. 301. The court has a discretion to refuse the attachment (Debtors Act, 1878 (41 & 42 Vict. c. 54), s. 1). An appeal against the order for attachment lies to the Divisional Court (*Re Marchant*, [1908] 1 K. B. 998; *Haxby* v. *Wood Advertising Agency, Ltd.*, [1913] W. N. 331).

(*d*) *Re Chitty* (1833), 2 Dowl. 421.

(*e*) *Re Blanchard, Re Le Doulcet's Mortgage* (1861) 7 Jur. (N. S.) 505; *Pearson* v. *Sutton* (1814), 5 Taunt. 364.

(*f*) *Re Anon.* (1849), 19 L. J. (EX.) 219.

(*g*) *Re Ditchman, Ex parte Bull* (1833), 3 Deac. & Ch. 116; *Ex parte Cowie* (1835), 3 Dowl. 600; *Brazier* v. *Bryant* (1834), 2 Dowl. 600; compare *Meux* v. *Lloyd* (1857), 2 C. B. (N. S.) 409; *Re an Attorney* (1856), 4 W. R. 617 (where the client had already sued the solicitor).

(*h*) *Re Anon.* (1849), *supra*; *Re Phelps and Dodd* (1839), 3 Jur. 479.

SECT. 2. **Liability upon Undertakings given as a Solicitor.**

SECT. 2.—*Liability upon Undertakings given as a Solicitor.*

Enforcement of undertakings.

1352. Where a solicitor, in the course of business which he is conducting for his client with third parties in the way of his profession, gives an undertaking incidental thereto, the parties having the right to enforce the undertaking may be entitled to employ the summary procedure of an application to the court under its summary jurisdiction over its own officers (*i*). To entitle them to do so, it must be shown that the undertaking is given by the solicitor personally (*k*), and not merely as agent on behalf of his client (*l*); the undertaking must also be given by the solicitor, not as an individual (*m*), but in his professional capacity as a solicitor (*n*).

Basis of jurisdiction.

The jurisdiction is based upon the right of the court to require its officers to observe a high standard of conduct; it is immaterial that no misconduct on the part of the solicitor is suggested (*o*). The solicitor cannot, therefore, defend himself on the ground that his undertaking is not enforceable as a contract against him (*a*), or on the ground that the application has been delayed (*b*).

What undertakings enforceable.

The undertaking must be clear in its terms (*c*); the whole of the agreement to which it relates must be before the court (*d*); and the undertaking must be one which is not impossible *ab initio* for the solicitor to perform (*e*). An undertaking will, however, be enforced against the solicitor although, after it is given, the client

An order for an injunction may extend to the defendant's solicitor; see title INJUNCTION, Vol. XVII., pp. 282, 283.

(*i*) As to a verbal guarantee by a solicitor, see also title GUARANTEE, Vol. XV., p. 456. As to the procedure, see title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., pp. 305 *et seq.*

(*k*) *Burrell* v. *Jones* (1819), 3 B. & Ald. 47; *Appleton* v. *Binks* (1804), 5 East, 148; *Re Fairthorne* (1846), 1 Saund. & C. 40; *Brandon* v. *Smith* (1853), 1 W. R. 130; *Iveson* v. *Conington* (1823), 1 B. & C. 160; *Re Bentley, Ex parte Bentley* (1833), 2 Deac. & Ch. 578; *Hall* v. *Ashurst* (1833), 1 Cr. & M. 714; *Leedham* v. *Baxter* (1856), 4 W. R. 241.

(*l*) *Re an Attorney, Burnett* v. *Proois* (1870), 22 L. T. 543; *Re Williams* (1849), 12 Beav. 510; *Lewis* v. *Nicholson* (1852), 18 Q. B. 503; *Downman* v. *Williams* (1845), 7 Q. B. 103, Ex. Ch.; compare *Walker* v. *Arlett* (1831), 1 Dowl. 61.

(*m*) *Northfield* v. *Orton* (1832), 1 Dowl. 415; *Re Bateman* (1833), 2 Dowl. 161; *Re Kearns* (1847), 11 Jur. 521; *Ex parte Clifton* (1836), 5 Dowl. 218; *Ex parte Evans* (1840), 4 Jur. 991; *Re Webb* (1845), 14 L. J. (Q. B.) 244; *Russel* v. *Reece* (1847), 2 Car. & Kir. 669; *Allaway* v. *Duncan* (1867), 16 L. T. 264; *Ex parte Watts* (1832), 1 Dowl. 512.

(*n*) *United Mining and Finance Corporation, Ltd.* v. *Becher*, [1910] 2 K. B. 296, *per* HAMILTON, J., at p. 307, not following *Peart* v. *Bushell* (1827), 2 Sim. 38, and *Re a Solicitor, Ex parte Hales*, [1907] 2 K. B. 539; see title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., p. 306. An undertaking by a partner is binding on his firm (*Alliance Bank* v. *Tucker* (1867), 17 L. T. 13), provided that he is acting within his authority in giving it (*Hasleham* v. *Young* (1844), 5 Q. B. 833).

(*o*) *United Mining and Finance Corporation, Ltd.* v. *Becher, supra.*

(*a*) *Re Hilliard* (1845), 2 Dow. & L. 919; *Senior* v. *Butt* (1827), 5 L. J. (O. S.) (K. B.) 136; *Evans* v. *Duncombe* (1831), 1 Cr. & J. 372; *Re Paterson* (1832), 1 Dowl. 468; compare *Re Kearns* (1847), 11 Jur. 521.

(*b*) *Re Swan* (1846), 15 L. J. (Q. B.) 402.

(*c*) *Thompson* v. *Gordon* (1846), 15 M. & W. 610.

(*d*) *Gilbert* v. *Cooper* (1848), 17 L. J. (CH.) 265.

(*e*) *Peart* v *Bushell, supra;* but see *United Mining and Finance Corporation, Ltd.* v. *Becher, supra, per* HAMILTON, J., at p. 306.

dies (*f*) or instructs the solicitor not to perform it (*g*), or changes his solicitor (*h*). If performance of the undertaking has been waived the undertaking will not be enforced afterwards (*i*). Similarly, if the undertaking is conditional, the condition must be fulfilled before the undertaking will be enforced (*k*).

Illustrations.

1353. Undertakings may be given by a solicitor in connexion with legal proceedings which he is conducting on behalf of a client (*l*). Thus, the solicitor for the defendant may give his personal undertaking to enter an appearance for his client (*m*): if he fails to do so, he is then liable to attachment (*m*), though the court may, instead of granting the order for attachment at once, order him to fulfil his obligation by entering the appearance (*n*). If at the time when the undertaking was given the solicitor was duly authorised by his client, the subsequent attempted withdrawal of authority by the client does not excuse the solicitor (*o*). If, on the other hand, the solicitor had no authority from his client to give the undertaking, and the client refuses to authorise him to enter the appearance, he may be either attached or sued for damages for breach of warranty of authority (*p*). Again, the solicitor may, in the course of the proceedings, give his personal undertaking not to interfere with a witness (*q*), or he may undertake to stamp a document (*r*). Where an action is compromised or settled, he may bind himself personally to carry out the terms of the compromise (*a*). Thus, he may

(*f*) *Hellings* v. *Jones* (1825), 3 Bing. 70; see *Bailey* v. *Daniell* (1834), Hayes & Jo. 586.

(*g*) *Re Kerley, Son and Verden*, [1901] 1 Ch. 467, C. A.; see title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., p. 306, note (*b*).

(*h*) *Williams* v. *Williams and Partridge* (1910), 54 Sol. Jo. 506, C. A.

(*i*) *Miller* v. *James* (1823), 8 Moore (C. P.), 208; compare *Staite* v. *Haddon* (1841), 9 Dowl. 995; see title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., p. 306, note (*b*).

(*k*) *Hill* v. *Fletcher* (1850), 5 Exch. 470; *Leedham* v. *Baxter* (1856), 4 W. R. 241.

(*l*) If the undertaking is in connexion with an order of court, it is immaterial that the undertaking is not embodied in the order (*Williams* v. *Williams and Partridge*, *supra*).

(*m*) R. S. C., Ord. 12, r. 18; see *Jacob* v. *Magnay* (1842), 12 L. J. (Q. B.) 93; *Morris* v. *James* (1838), 6 Dowl. 514; see titles CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., p. 306; PRACTICE AND PROCEDURE, Vol. XXIII., p. 114.

(*n*) Compare *Swyny* v. *Harland*, [1894] 1 Q. B. 707, C. A. As to neglect by a solicitor to give his client notice of an order for interrogatories, discovery, or inspection, see title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., p. 306.

(*o*) *Re Kerly, Son and Verden, supra; The Crimdon*, [1900] P. 171. The client cannot, after authorising his solicitor to enter appearance, withdraw his authority after the undertaking has been given (*Re Kerly, Son and Verden, supra, per* FARWELL, J., at p. 472); but a solicitor who accepts service without undertaking to appear is not liable to attachment for not entering appearance (*The Anna and Berta* (1891), 64 L. T. 332).

(*p*) *Yonge* v. *Toynbee*, [1910] 1 K. B. 215, C. A.

(*q*) *Lawford* v. *Spicer* (1856), 4 W. R. 497.

(*r*) *Re Coolgardie Goldfields, Ltd., Re Cannon, Son and Morten* (*Solicitors*), [1900] 1 Ch. 475; and as to an undertaking as to damages on the grant of an interlocutory injunction where the plaintiff is out of the jurisdiction, see title INJUNCTION, Vol. XVII., p. 285.

(*a*) *Leedham* v. *Baxter* (1856), 4 W. R. 241; compare *Re Aylwin* (1904), 20 T. L. R. 252, where the solicitor, who had proved for a sum of money

SECT. 2. Liability upon Undertakings given as a Solicitor.

undertake that his client shall consent to a reference (*b*), or that the debt (*c*), including the costs (*d*), shall be paid. After judgment he may undertake not to issue execution in consideration of payment of the judgment debt being accelerated (*e*).

Undertaking to repay costs.

Where an order is made for a stay of execution pending appeal, the applicant to pay the taxed costs of the successful party to his solicitor on his personal undertaking to repay them should the appeal be successful, the undertaking given by the solicitor may likewise be enforced in a summary manner (*f*), as in the absence of this undertaking the court might have stayed execution or directed the money to be paid into court to abide the event of the appeal (*g*). Where, however, the solicitor, though asked to give an undertaking to repay costs in the event of the decision being reversed, refuses, and the costs in the court below are duly paid, the court has no power, if the decision is reversed on appeal, to order the solicitor to repay such costs to the successful appellant; the remedy in these circumstances is against the respondent client and not against the solicitor (*h*).

Undertakings apart from litigation.

1354. The undertaking need not, however, be confined to matters arising in the course of legal proceedings (*i*). Thus, a solicitor may give his personal undertaking to pay rent (*k*) or any other debt (*l*) due from his client; and, when acting on behalf of a mortgagee, may bind himself personally to the mortgagee's solicitor to pay his costs (*m*).

Right of indemnity.

1355. If the solicitor, in performing an undertaking given on his client's authority, suffers loss, he may recover such loss in an action against his client (*n*). He cannot, however, claim the benefit of execution proceedings taken against his client which he has been forced to satisfy (*o*).

SECT. 3.—*Liability to Pay Costs.*

Liability to client.

1356. The court has power to order a solicitor to pay any costs occasioned by his misconduct or default in the course of legal proceedings (*a*) to the person injured thereby or to indemnify his

on the bankruptcy of his client, who was a lunatic, undertook, on a motion being made by the official solicitor as committee, to pay the money into court.

(*b*) *Ex parte Hughes* (1822), 5 B. & Ald. 482.

(*c*) *Harper* v. *Williams*, (1843), 4 Q. B. 219.

(*d*) *Iveson* v. *Conington* (1823), 1 B. & C. 160; *Re Woodfin and Wray* (1882), 51 L. J. (CH.) 427; compare *Hall* v. *Ashurst*, (1833), 1 Cr. & M. 714; *Re Bentley, Ex parte Bentley* (1833), 2 Deac. & Ch. 578.

(*e*) *Re Commonwealth Land, Building, Estate and Auction Co., Ex parte Hollington* (1873), 43 L. J. (CH.) 99.

(*f*) *Swyny* v. *Harland*, [1894] 1 Q. B. 707, C. A.; *Dotesio* v. *Biss* (No. 2), (1912), 56 Sol. Jo. 736, C. A.

(*g*) See *A.-G.* v. *Emerson* (1889), 24 Q. B. D. 56, C. A.

(*h*) *Hood Barrs* v. *Crossman and Prichard*, [1897] A. C. 172.

(*i*) *United Mining and Finance Corporation, Ltd.* v. *Becher*, [1910] 2 K. B. 296.

(*k*) *Burrell* v. *Jones* (1819), 3 B. & Ald. 47.

(*l*) *Re Pass* (1887), 35 W. R. 410.

(*m*) *Re Gee* (1846), 10 Jur. 694.

(*n*) See title AGENCY, Vol. I., pp. 196, 197.

(*o*) *Kite* v. *Mileman* (1833), 2 Moo. & S. 616.

(*a*) The misconduct must be connected with the proceedings (*Re Gregg*,

client in respect of his liability to pay them (*b*). Thus, a solicitor may be ordered to indemnify his client against costs where he defends an action to which there is to his knowledge no defence (*c*); where he appeals in his own interest, and not on behalf of his client (*d*); where he improperly continues proceedings after the lunacy of his client (*e*); where he fails to get an error in a decree of the court corrected (*f*); and, generally, wherever costs have been incurred improperly and without reasonable cause, or, though properly incurred, have proved fruitless to the client by reason of the solicitor's conduct (*g*). Where a solicitor institutes proceedings without authority, he may be ordered to pay the costs of his alleged client as between solicitor and client (*h*).

Liability to opposite party.

1357. A solicitor may be ordered to pay costs direct to the opposite party where he institutes or defends proceedings without authority from his client (*i*) or on behalf of a non-existent client (*k*), or where

Re Prance (1869), L. R. 9 Eq. 137). The evidence of misconduct or default must be clear (*Dickinson* v. *Jacobs* (1862) 5 L. T. 757; compare *Clark* v. *Girdwood* (1877), 7 Ch. D. 9, C. A.).

(*b*) An appeal lies against any such order (*Re Bradford* (1883), 15 Q. B. D. 635, C. A.).

(*c*) *Wilkins* v. *Greer* (1884), 28 Sol. Jo. 535; compare *Aubrey* v. *Aspinall* (1822), Jac. 441; *Thomas* v. *Vandermoolen* (1818), 2 B. & Ald. 197; *Bones* v. *Punter* (1819), 2 B. & Ald. 777; *Scott* v. *Hitchcock* (1904), 20 T. L. R. 759.

(*d*) *Harbin* v. *Masterman*, [1896] 1 Ch. 351, C. A.

(*e*) *Beall* v. *Smith* (1873), 9 Ch. App. 85; *Harbley* v. *Gilbert* (1843), 13 Sim. 596; see *Yonge* v. *Toynbee*, [1910] 1 K. B. 215, C. A. It is otherwise where he believes his client to be of sound mind (*Re Armstrong* (*George*) *& Sons*, [1896] 1 Ch. 536).

(*f*) *Re Bolton* (1846), 9 Beav. 272; *Black* v. *Creighton* (1828), 2 Mol. 552; *Taylor* v. *Gorman* (1842), 4 I. Eq. R. 550; compare *White* v. *Hillacre* (1838), 3 Y. & C. (EX.) 278.

(*g*) R. S. C., Ord. 65, r. 11; *Shorter* v. *Tod-Heatly*, [1894] W. N. 21; *Hill* v. *Hart-Davis* (1884), 26 Ch. D. 470, C. A.; *Furness* v. *Davis* (1885), 51 L. T. 854; *Re Dartnall, Sawyer* v. *Goddard*, [1895] 1 Ch. 474, C. A. The rule extends to cases where the costs are payable out of a fund (*Brown* v. *Burdett* (1887), 37 Ch. D. 207, C. A.; see also *Re Ormston, Goldring* v. *Lancaster* (1888), 59 L. T. 594, C. A.; *Re Scowby, Scowby* v. *Scowby*, [1897] 1 Ch. 741, C. A.).

(*h*) *Newbiggin-by-the-Sea Gas Co.* v. *Armstrong* (1879), 13 Ch. D. 310, C. A.; *Martindale* v. *Lawson* (1838), Coop. Pr. Cas. 83; *Allen* v. *Bone* (1841), 4 Beav. 493, followed in *Atkinson* v. *Abbott* (1855), 3 Drew. 251, and *Crossley* v. *Crowther* (1851), 9 Hare, 384; *Jerdein* v. *Bright* (1862), 6 L. T. 279. But the alleged client may ratify the solicitor's act (*Norton* v. *Cooper, Re Manby and Hawksford, Ex parte Bittleston* (1856), 3 Sm. & G. 375; compare *Hambidge* v. *De la Crouée* (1846), 3 C. B. 742).

(*i*) *Jenkins* v. *Fereday* (1872), L. R. 7 C. P. 358; *Re Savage* (1880), 15 Ch. D. 557; *Nurse* v. *Durnford* (1879), 13 Ch. D. 764; *Re Gray, Gray* v. *Coles* (1891), 65 L. T. 743; *Fricker* v. *Van Grutten*, [1896] 2 Ch. 649, C. A., followed in *Geilinger* v. *Gibbs*, [1897] 1 Ch. 479; *Porter* v. *Fraser* (1912), 29 T. L. R. 91; *Newbiggin-by-the-Sea Gas Co.* v. *Armstrong, supra*; *Wright* v. *Castle* (1817), 3 Mer. 12; *Malins* v. *Greenway* (1847), 10 Beav. 564; *Schjott* v. *Schjott* (1881), 19 Ch. D. 94, C. A.; *Hall* v. *Bennett* (1824), 2 Sim. & St. 78; *Bayley* v. *Buckland* (1847), 1 Exch. 1. The same principle applies to continuing proceedings after the authority is revoked

(*k*) For note (*k*) see p. 834, *post*.

SECT. 3. Liability to Pay Costs.

he brings the wrong party before the court (*l*); where he brings a speculative action without taking reasonable care to satisfy himself that the plaintiff has a fair prospect of success (*m*); where he issues a writ on behalf of a client resident abroad and gives his client's address as in England (*n*); where he proceeds after his client has been ordered to give security for costs and before security has been given (*o*); where he fails to attend proceedings in chambers, and the judge does not think it expedient to proceed (*p*); where he fails to file an affidavit which has been used in the proceedings (*q*); where, on an account being taken in chambers, he acts unreasonably in adjourning items to the judge (*r*); where the trial of the action cannot proceed owing to his neglect to attend or send a representative, or to deliver any papers necessary for the use of the court which according to the practice ought to be delivered (*s*); where a case in which judgment has gone by default owing to the solicitor's negligence is restored to the list (*t*). Similarly, a solicitor may be liable for costs where a fraudulent adjudication in bankruptcy is set aside (*u*), or where an order for the appointment of a receiver is obtained through suppression of the facts, even though innocent (*a*). Where prohibition is granted against proceedings in an inferior court, the court may order the costs to be paid by the plaintiff's solicitor, provided that the rule has been

(*Freeman* v. *Fairlie* (1838), 8 L. J. (CH.) 44; *Yonge* v. *Toynbee*, [1910] 1 K. B. 215, C. A.). Where the solicitor is aware of his want of authority the liability to pay costs is a liability incurred by means of fraud, and he is, therefore, not released therefrom by his discharge in bankruptcy (*Jenkins* v. *Fereday* (1872), L. R. 7 C. P. 358); see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 270, note (*p*).

(*k*) *Hoskins* v. *Phillips* (1847), 16 L. J. (Q. B.) 339; compare *Ruthin Corporation* v. *Adams* (1835), 7 Sim. 345.

(*l*) *Martinson* v. *Clowes* (1885), 33 W. R. 555, C. A.; *Nurse* v. *Durnford* (1879), 13 Ch. D. 764; *Peed* v. *Cussen* (1830), Hayes, 66; *Wilson* v. *Wilson* (1820), 1 Jac. & W. 457; *Pinner* v. *Knights* (1843), 6 Beav. 174; *Fergus Navigation and Embankment Co.* v. *Kingdon* (1861), 4 L. T. 262; *Tabbernor* v. *Tabbernor* (1836), 2 Keen, 679. The court may make the order though notice of discontinuance has been given (*Gold Reef of Western Australia, Ltd.* v. *Dawson*, [1897] 1 Ch. 115); but application must be made promptly (*McNally* v. *Knox* (1861), 5 L. T. 186; *Collins* v. *Johnson* (1855), 16 C. B. 588; *Wilson* v. *Wilson*, *supra*).

(*m*) *Warren* v. *London Road Car Co.* (1907), 52 Sol. Jo. 13; compare *Re Jones* (1870), 6 Ch. App. 497.

(*n*) *Re a Solicitor, Karpeles* v. *Friedlander* (1889), 53 J. P. 264.

(*o*) *Ladywell Mining Co.* v. *Huggons*, [1885] W. N. 55.

(*p*) R. S. C., Ord. 54, r. 7, Ord. 65, r. 27 (13); Land Transfer Rules, 1903, r. 305; compare *Ridley* v. *Tiplady* (1855), 20 Beav. 44.

(*q*) *Taylor* v. *Gates* (1895), 72 L. T. 436, C. A.

(*r*) *Upton* v. *Brown* (1882), 20 Ch. D. 731, C. A.

(*s*) R. S. C., Ord. 65, r. 5; *Barnard* v. *Scoles* (1889), 37 W R. 668; compare *Somerville* v. *Jamieson* (1853), 1 W. R. 123; *Courtney* v. *Stock* (1842), 2 Dr. & War. 251. As to the papers which ought to be delivered, see R. S. C., Ord. 36, r. 30; *Lewis* v. *Cory*, [1906] W. N. 95, C. A.

(*t*) *De Roufigny* v. *Peale* (1811), 3 Taunt. 484; *Birch* v. *Williams* (1876), 24 W. R. 700; compare *Williams* v. *Jones* (1855), 4 W. R. 99; *White* v. *Sandell* (1835), 3 Dowl. 798.

(*u*) *Ex parte Arrowsmith* (1807), 14 Ves. 209.

(*a*) *Schmitten* v. *Faulks*, [1893] W. N. 64; compare *Simmons* v. *Rose*, *Weeks* v. *Ward*, *Re Ward* (1862), 31 Beav. 1.

moved for in that form and notice has been given to the solicitor so as to give him an opportunity of showing cause (*b*).

A solicitor who obtains a special jury for a client without means may be ordered to pay the jury fees personally (*c*).

Solicitor-litigant.

1358. A solicitor who is ordered to pay costs as an unsuccessful litigant is not subject to the summary jurisdiction of the court (*d*). The jurisdiction, however, applies where the action, though brought in the name of a client, is in reality brought by the solicitor on his own behalf (*e*).

SECT. 4.—*Liability to Third Persons.*

Extent of liability.

1359. The solicitor's liability to third persons is not confined to costs thrown away, but extends to such loss as is the natural and probable consequence of his conduct (*f*). Thus, where a fund in court is paid out to the wrong person, the solicitor who acted on behalf of the recipient is liable to replace the fund if he knew or ought to have known the true state of facts (*g*); if, however, he merely ratifies the use of his name by the solicitor who acted in the transaction, he is only liable for such part of the fund as he actually received for costs (*h*). Similarly, a solicitor who assumes the position of receiver without authority is liable for all moneys, such as rents, lost to the estate through his neglect (*i*); and a solicitor who, as representing the party having the conduct of a sale under order of the court, is responsible for procuring the investment of the purchase-money when paid into court, is liable to make good to the person entitled the loss of interest occasioned

(*b*) *Robinson* v. *Emanuel* (1874), L. R. 9 C. P. 414; *Rogers* v. *London, Chatham and Dover Rail. Co.* (1877), 26 W. R. 192.

(*c*) *Monserratt* v. *Scott*, [1899] 2 I. R. 551; *Bakewell* v. *Cornish* (1884), *Times*, 24th November.

(*d*) *Re Hope* (1872), 7 Ch. App. 523; *Farley* v. *Buckler* (1893), *Times*, 30th October; *Re Apelt, Ex parte Byrne* (1889), 6 Morr. 102; compare *Tilney* v. *Stansfield* (1880), 28 W. R. 582.

(*e*) *Cockle* v. *Whiting* (1829), 1 Russ. & M. 43; *Re Jones* (1870), 6 Ch. App. 497; *Dungey* v. *Angove* (1794), 2 Ves. 304; *Re Hook, Cook* v. *Rosslyn (Earl)* (1861), 3 Giff. 175.

(*f*) *Marsh* v. *Joseph*, [1897] 1 Ch. 213, C. A.; contrast *Davys* v. *Richardson* (1888), 21 Q. B. D. 202, C. A.; see also p. 742, *ante*; title MALICIOUS PROSECUTION AND PROCEDURE, Vol. XIX., pp. 673, note (*s*), 694, note (*s*), 695, 697.

(*g*) *Re Dangar's Trusts* (1889), 41 Ch. D. 178, discussing and following *Ezart* v. *Lister* (1842), 5 Beav. 585, *Todd* v. *Studholme* (1857), 3 K. & J. 324, *Dixon* v. *Wilkinson* (1859), 4 De G. & J. 508, *Simmons* v. *Rose, Weeks* v. *Ward, Re Ward* (1862), 31 Beav. 1, and *Re Spencer* (1869), 21 L. T. 808; *Slater* v. *Slater* (1888), [1897] 1 Ch. 222, n.; *Brydges* v. *Branfill* (1841), 12 Sim. 369. The liability extends to all cases of misfeasance (*Re Dangar's Trusts, supra, per* STIRLING, J., at p. 196), and of nonfeasance (*Dixon* v. *Wilkinson, supra, per* TURNER, L.J., at p. 522; *Batten* v. *Wedgwood Coal and Iron Co.* (1886), 31 Ch. D. 346; distinguished in *Re Dangar's Trusts, supra*); but, in the absence of fraud, the exercise of the summary jurisdiction is discretionary and should only be exercised where the court sees that no injustice will be done to the solicitor thereby (*Dixon* v. *Wilkinson, supra*). The costs of enforcing the liability must be paid by the solicitor (*Slater* v. *Slater, supra*).

(*h*) *Marsh* v. *Joseph, supra*.

(*i*) *Wood* v. *Wood* (1828), 4 Russ. 558.

SECT. 4. Liability to Third Persons.

by his failure to procure the investment, though he is entitled to a set-off in respect of any gain resulting from a fall in the price of securities (*k*).

Principles applicable.

1360. Except in the cases in which the court intervenes under its summary jurisdiction, a solicitor's liability to third persons for acts done by him in his professional capacity (*l*) depends upon the application of the ordinary rules of agency (*m*). If he acts without authority, he may be sued for breach of warranty of authority (*n*). If, on the other hand, he acts under the authority of his client, he is not, as a general rule, personally liable in matters of contract, such as, for example, the payment of witnesses' expenses (*o*) or sheriff's fees (*p*). He may, however, make himself liable by special contract, whether express (*q*) or to be implied from the circumstances of the case (*r*), as where he asks for a particular officer to be employed to levy execution (*s*). In particular, he is personally liable to persons who are directly employed by him, and to whom he occupies the position of a principal, such as, for example, another solicitor employed as his London (*t*) or country (*a*) agent, a shorthand writer engaged to take notes of a trial (*b*), or a law stationer (*c*). As regards the fees of counsel employed by him, he is under no legal liability to pay them (*d*); and the court does not, under its summary jurisdiction, order him to do so (*e*).

Contract.

(*k*) *Batten* v. *Wedgwood Coal and Iron Co.* (1886), 31 Ch. D. 346; see *MacDougall* v. *Knight*, [1887] W. N. 68, C. A.

(*l*) Where he contracts ostensibly as a principal without disclosing the fact that he is acting for a client, as where he contracts in his own name to purchase property, he is, of course, personally liable (*Saxon* v. *Blake* (1861), 29 Beav. 438; contrast *Clark* v. *Rivers* (*Lord*) (1867), L. R. 5 Eq. 91).

(*m*) See title AGENCY, Vol. I., pp. 219 *et seq.*

(*n*) *Yonge* v. *Toynbee*, [1910] 1 K. B. 215, C. A.; see p. 742, *ante*.

(*o*) *Robins* v. *Bridge* (1837), 3 M. & W. 114; *Simmons* v. *Liberal Opinion*, [1911] 1 K. B. 966, C. A.; *Lee* v. *Everest* (1857), 2 H. & N. 285.

(*p*) *Maybery* v. *Mansfield* (1846), 9 Q. B. 754; *Seal* v. *Hudson* (1847), 4 Dow. & L. 760; *Cole* v. *Terry* (1861), 5 L. T. 347; *Royle* v. *Busby* (1880), 6 Q. B. D. 171, C. A. But he is liable to the clerk of the peace for the fees of entering an appeal at sessions (*Langridge* v. *Lynch* (1876), 34 L. T. 695); see title MAGISTRATES, Vol. XIX., p. 645, note (*p*).

(*q*) *Hallet* v. *Mears* (1810), 13 East, 15; *Evans* v. *Phillpotts* (1840), 9 C. & P. 270; *Ormerod* v. *Foskett* (1796), Peake, Add. Cas. 77. But a promise to pay without consideration is not binding on the solicitor (*Bates* v. *Sturges* (1832), 2 Moo. & S. 172).

(*r*) *Fendall* v. *Noakes* (1839), 3 Jur. 726.

(*s*) *Foster* v. *Blakelock* (1826), 5 B. & C. 328; *Walbank* v. *Quarterman* (1846), 3 C. B. 94; *Maile* v. *Mann* (1848), 2 Exch. 608; *Newton* v. *Chambers* (1844), 8 Jur. 244.

(*t*) *Waller* v. *Holmes* (1860), 1 John. & H. 239.

(*a*) *Scrace* v. *Whittington* (1823), 2 B. & C. 11, more fully reported 3 Dow. & Ry. (K. B.) 195. The custom in the country by which a solicitor who employs another on behalf of his client is personally liable to the latter forms an exception to the ordinary law of agency (*ibid.*). It was held in one case that the custom does not apply to an Irish solicitor employed by an English one (*Hyndman* v. *Ward* (1899), 15 T. L. R. 182).

(*b*) *Cocks* v. *Bruce, Searl and Good* (1904), 21 T. L. R. 62.

(*c*) *Ex parte Hartop* (1806), 12 Ves. 349, 352.

(*d*) See title BARRISTERS, Vol. II., pp. 390 *et seq.*

(*e*) *Re Angell, Angell* v. *Oodeen* (1860), 6 Jur. (N. S.) 1373.

SECT. 4. Liability to Third Persons.

In matters of tort, such as, for example, trespass (*f*), false imprisonment (*g*), conversion (*h*), or fraud (*i*), a solicitor is personally liable where from his conduct it is clear that he has acted as a principal and is or has made himself a party to the tort complained of (*k*). By statute (*l*) a solicitor acting for a vendor or mortgagor is liable to an action for damages, and is also guilty of a misdemeanour, if he conceals from the purchaser or mortgagee any instrument material to the title, or any incumbrance (*m*), or falsifies any pedigree on which the title depends, in order to induce the purchaser or mortgagee to accept the title with intent to defraud.

Tort.

SECT. 5.—*Liability to Client.*

SUB-SECT. 1.—*To Pay over Money Received.*

1361. Under the summary jurisdiction of the court a solicitor may be ordered to pay over to his client all moneys which he has received for or on account of his client (*n*). To give rise to the jurisdiction five conditions must be fulfilled, namely:—

Conditions to be fulfilled:

(1) The person applying for the order must be the client (*o*) of the solicitor (*p*), and it is not sufficient to show that the solicitor, whilst acting for a third person, received money on the applicant's behalf (*q*). No order therefore is made where the existence of any relation between the parties as solicitor and client has always

(1) Application of client.

(*f*) *Sedley* v. *Sutherland* (1800), 3 Esp. 202; *Carrett* v. *Smallpage* (1808), 9 East, 330; *Sowell* v. *Champion* (1837), 6 Ad. & El. 407; *Williams* v. *Smith* (1863), 14 C. B. (N. S.) 596. As to the solicitor's liability for the acts of the sheriff, see title EXECUTION, Vol. XIV., pp. 19, 20.

(*g*) *Barker* v. *Braham* (1773), 2 Wm. Bl. 866; *Hood* v. *Phillips* (1842), 6 Beav. 176; compare title MALICIOUS PROSECUTION AND PROCEDURE, Vol. XIX., pp. 673, note (*s*), 694, note (*s*), 695.

(*h*) *Symonds* v. *Atkinson* (1856), 1 H. & N. 146. As to the solicitor's liability as a constructive trustee, see title TRUSTS AND TRUSTEES.

(*i*) *Pasley* v. *Freeman* (1789), 3 Term Rep. 51; *Bellairs* v. *Tucker* (1884), 13 Q. B. D. 562; *Phosphate Sewage Co.* v. *Hartmont* (1877), 5 Ch. D. 394, C. A.; *Bagnall* v. *Carlton* (1877), 6 Ch. D. 371, C. A.

(*k*) A solicitor acting for a company is not an officer of the company for the purpose of misfeasance proceedings, unless remunerated by fixed salary (see title COMPANIES, Vol. V., p. 478; *Re Harper's Ticket Issuing and Recording Machine, Ltd.* (1912), 29 T. L. R. 63), but he is an officer for the purpose of registering mortgages; see title COMPANIES, Vol. V., p. 364.

(*l*) Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 65) (commonly called Lord St. Leonards' Act), s. 24, as extended by Law of Property Amendment Act, 1860 (23 & 24 Vict. c. 38), s. 8.

(*m*) This applies only to existing incumbrances (*Smith* v. *Robinson* (1879), 13 Ch. D. 148).

(*n*) *Re Dudley* (1883), 12 Q. B. D. 44, C. A., following *Re Freston* (1883), 11 Q. B. D. 545, C. A., and explaining *Re Ball* (1873), L. R. 8 C. P. 104; R. S. C., Ord. 52, r. 25. A failure to obey the order is a default within the meaning of the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4 (4) (*Re Rush* (1870), L. R. 9 Eq. 147; *Re White* (1870), 23 L. T. 387); compare title MORTGAGE, Vol. XXI., p. 217.

(*o*) Or his personal representative (*Re Aitkin* (1820), 4 B. & Ald. 47).

(*p*) *Re Fenton* (1835), 3 Ad. & El. 404.

(*q*) *Re Hinton, Tylee* v. *Webb* (1851), 14 Beav. 14; *Dixon* v. *Wilkinson* (1859), 4 De G. & J. 508, C. A.

SECT. 5. Liability to Client.

been denied by the applicant (*r*), or has already been disproved by him in an action brought by the solicitor for his costs (*s*). Where, however, one solicitor is employed by another as agent, he may be ordered, on the application of his principal's client, to pay over the moneys received by him in that capacity (*t*).

(2) Relation of solicitor and client.

(2) The relation of solicitor and client must have existed at the time when the money in question was received by the solicitor (*a*).

(3) Receipt on behalf of client.

(3) The money in question must have been received by the solicitor on behalf of the applicant, or, in other words, the solicitor must have been acting as solicitor for the applicant in the transaction in which he received it (*b*). This question becomes important where the solicitor is acting for the party from whom he receives the money as well as for the applicant; if he receives it as solicitor for the other party, who is equally his client, and not for the applicant, no order is made (*c*).

(4) Receipt in capacity as solicitor.

(4) The money must have been received by the solicitor in his capacity as an officer of the court (*d*). The court has no jurisdiction where the money comes into his hands in any other capacity, such as, for instance, as a borrower (*e*) or lender (*f*), or steward of a manor (*g*), or, if the client is a company, as a member of its committee of management (*h*). Hence, the order will not be made if the money was received by the solicitor before he was admitted and while he was still an articled clerk (*i*), though an unqualified person who purports to act as a solicitor and who receives the money as such, and not merely as agent for a duly qualified solicitor (*k*), is amenable to the jurisdiction on the ground of estoppel (*l*). If the money is paid to a member of a firm of solicitors, no order is made against his co-partners (*m*) unless

(*r*) *Re Marshall* (1857), 5 W. R. 200.

(*s*) *Ex parte Maxwell* (1835), 4 Dowl. 87.

(*t*) *Ex parte Edwards* (1881), 8 Q. B. D. 262, C. A.; *Re an Attorney, Walker* v. *Pearce* (1862), 7 L. T. 285; *Re a Solicitor* (1875), 1 Ch. D. 445. In this case the liability of the agent depends upon his fiduciary position, and not upon his position as an officer of the court (*Litchfield* v. *Jones* (1887), 36 Ch. D. 530).

(*a*) *Re Strong* (1886), 32 Ch. D. 342, C. A.

(*b*) *Dixon* v. *Wilkinson* (1859), 4 De G. & J. 508, C. A.

(*c*) *Re Hinton, Tylee* v. *Webb* (1851), 14 Beav. 14; *Dixon* v. *Wilkinson, supra; Ex parte Faith* (1841), 9 Dowl. 973; *Re Butler* (1866), 1 Ch. App. 607; compare *Lewes* v. *Morgan* (1817), 5 Price, 42.

(*d*) *Re Aitkin* (1820), 4 B. & Ald. 47; compare *Re Berwick* (*Lord*), *Berwick* (*Lord*) v. *Lane* (1900), 81 L. T. 722.

(*e*) *Re Bryant* (1884), 50 L. T. 450; *Ex parte Faith, supra; Re Y., a Solicitor* (1910), 54 Sol. Jo. 459.

(*f*) *Ex parte Schwalbanker* (1832), 1 Dowl. 182 (where the solicitor advanced money on bills and refused to account for the alleged balance).

(*g*) *Re an Attorney* (1855), 3 W. R. 515.

(*h*) *Re Harvey* (1859), 27 Beav. 330.

(*i*) *Ex parte Deane* (1834), 2 Dowl. 533.

(*k*) *Re Hurst and Middleton, Ltd., Middleton* v. *The Co.*, [1912] 2 Ch. 520, C. A.

(*l*) *Re Hulm and Lewis*, [1892] 2 Q. B. 261; distinguished in *Re Hurst and Middleton, Ltd., Middleton* v. *The Co., supra;* but see *Nash* v. *Goode and Parry* (1841), 9 Dowl. 929.

(*m*) *Re Lawrence, Crowdy and Bowlby, Ex parte Burdon* (1854), 2 Sm. & G. 367; *Re Lawrence, Crowdy and Bowlby, Chater* v. *Maclean* (1855), 3 Eq. Rep. 375.

it is shown that the money has come into the hands of the firm (*n*).

(5) The solicitor must have refused without lawful excuse to pay the money over to the client (*o*). The order is not made where its effect would be to defeat the solicitor's lien (*p*), provided that the lien claimed is valid (*q*), or where the client's right to the money depends upon the existence of a special agreement which the solicitor disputes (*r*). On the other hand, the solicitor cannot refuse to pay over the money on the ground that it is claimed by third persons (*s*), or (*t*) that the client's right to receive it is barred by the Statute of Limitations (*u*).

(5) Refusal to pay.

1362. The client is not precluded from obtaining relief by the fact that the solicitor has subsequently been struck off the rolls (*a*), or adjudicated bankrupt (*b*), unless before the application he has received his discharge (*c*). The acceptance of a part of the amount due is not a waiver of the client's right to apply summarily for payment of the balance (*d*). If, however, he takes a promissory note from the solicitor for the whole amount, he cannot afterwards apply (*e*). If he sues the solicitor for the amount due, he cannot, while the action is pending, apply summarily (*f*), unless he first discontinues the action (*g*). After judgment, however, he may so apply (*h*), unless the proceedings have terminated in the solicitor's favour (*i*).

Extent of client's right.

1363. For the purpose of the jurisdiction, it is immaterial whether the money was received from a third person to be paid to

Source of money immaterial.

(*n*) *Re Ford and Thomas* (1840), 8 Dowl. 684; *Re a Solicitor* (1878), 22 Sol. Jo. 496.

(*o*) *Re Becke* (1854), 18 Beav. 462.

(*p*) *Re Millard* (1831), 1 Dowl. 140; R. S. C., Ord. 52, r. 25.

(*q*) *Re Cullen* (1859), 27 Beav. 51.

(*r*) *Hodson* v. *Terrall* (1833), 2 Dowl. 264.

(*s*) *Re Becke, supra; Re Emma Silver Mining Co., Re Turner* (1875), 24 W. R. 54; compare *Re Walmsley* (1835), 2 Ad. & El. 575, where the solicitor himself had an interest.

(*t*) *Ex parte Sharpe* (1837), 5 Dowl. 717; see title LIMITATION OF ACTIONS, Vol. XIX., p. 42; but see *Re Triston* (1850), 1 L. M. & P. 74.

(*u*) 21 Jac. 1, c. 16.

(*a*) *Re Strong* (1886), 32 Ch. D. 342, C. A.; *Simes* v. *Gibbs* (1838), 6 Dowl. 310.

(*b*) *Re Wray, a Solicitor* (1887), 36 Ch. D. 138, C. A.; *Re Deere* (1875), 10 Ch. App. 658; *Re Edye* (1891), 63 L. T. 762.

(*c*) *Ex parte Culliford* v. *Warren* (1828), 8 B. & C. 220; *Baron* v. *Martell* (1827), 9 Dow. & Ry. (K. B.) 390; *R.* v. *Edwards* (1829), 9 B. & C. 652. It is otherwise if the solicitor has been guilty of fraud (*Re Bonner* (1833), 4 B. & Ad. 811); and see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 270.

(*d*) *Re Fereday*, [1895] 2 Ch. 437, distinguishing *Harvey* v. *Hall* (1873), L. R. 16 Eq. 324. But there may be a special agreement (*Haigh* v. *Jones* (1843), 1 Dow. & L. 81).

(*e*) *Anon.* (1825), 3 L. J. (O. S.) (K. B.) 106.

(*f*) *Re an Attorney* (1856), 4 W. R. 617.

(*g*) *Anon.* (1841), 5 Jur. 678; compare *Re Robinson* (1859), 5 Jur. (N. S.) 1021.

(*h*) *Re Grey* (*H. A.*), [1892] 2 Q. B. 440, C. A., not following *Re Davies* (1865), 15 L. T. 161.

(*i*) *Sittingbourne and Sheerness Rail. Co.* v. *Lawson* (1886), 2 T. L. R. 605, C. A.

SECT. 5. **Liability to Client.**

the client or whether it was received from the client to be applied for a purpose which has not been carried out. Thus, the money may have been received by the solicitor from the sheriff as the proceeds of an execution levied on behalf of the client (*k*), or from a banker as the proceeds of a cheque payable to the client and indorsed to the solicitor for collection (*l*), or from a mortgagee as the sum advanced (*m*), or from a mortgagor in repayment of a mortgage held by the client (*n*). The money may have been received by the solicitor from the client himself, as, for instance, to pay into court (*o*), or to pay off a mortgage (*p*), or it may represent the balance of a sum paid to the solicitor for the expenses of litigation after deducting the whole of the costs incurred (*q*). In particular, upon taxation of a bill of costs under the common order for that purpose (*r*), the solicitor may be ordered to pay the balance found to be due (*s*).

SUB-SECT. 2.—*To Deliver up Papers.*

Conditions to be fulfilled.

1364. The court, under its summary jurisdiction, may order a solicitor to deliver up to his client all deeds and papers in his possession belonging to the client (*t*). For this purpose it is necessary to show that the relation of solicitor and client has existed between the parties (*a*), that the papers are the property of the

(*k*) *Ex parte Edwards* (1881), 8 Q. B. D. 262, C. A.; compare *Re an Attorney, Walker* v. *Pearce* (1862), 7 L. T. 285.

(*l*) *Mawhood* v. *Milbanke* (1851), 15 Beav. 36; compare *Re M., a Solicitor* (1878), 1 L. R. Ir. 188, C. A.

(*m*) *Ex parte Cripwell* (1837), 5 Dowl. 689; compare *Lewes* v. *Morgan* (1817), 5 Price, 42.

(*n*) Compare *Re Aitkin* (1820), 4 B. & Ald. 47.

(*o*) *Re Lawrence, Crowdy and Bowlby, Ex parte Burdon* (1854), 2 Sm. & G. 367.

(*p*) *Re Cullen* (1859), 27 Beav. 51.

(*q*) *Ex parte Wortham* (1851), 4 De G. & Sm. 415; compare *Re Parkinson, R.* v. *Gershon* (1887), 56 L. T. 715.

(*r*) See pp. 784 *et seq.*, *ante*.

(*s*) *Re Rush* (1870), L. R. 9 Eq. 147, also reported *sub nom. Re A. B.*, 39 L. J. (CH.) 159; *Re White* (1870), 23 L. T. 387. The costs of the taxation are included (*Re a Solicitor*, [1895] 2 Ch. 66). The same principle is applied to the case of costs found upon taxation to be due from the solicitor to another solicitor whom he has employed as his agent (*Re Barfield* (1871), 24 L. T. 248). As to the costs of taxation generally, see pp. 807, 808, *ante*.

(*t*) *Re Murray* (1826), 1 Russ. 519; *Re* —— (1826), 4 L. J. (O. S.) (CH.) 207; *Ex parte Uxbridge* (*Earl*) (1801), 6 Ves. 425; *Re Lowe* (1807), 8 East, 237; *Re Rice* (1837), 2 Keen, 181; *Ex parte Horsfall* (1827), 7 B. & C. 528; *Anderson* v. *Passman* (1835), 7 C. & P. 193; *Baber* v. *Harris* (1839), 7 Dowl. 589; *Re Thomson* (1855), 20 Beav. 545; *Ex parte Willand* (1851), 11 C. B. 544; *Ex parte Cobeldick* (1883), 12 Q. B. D. 149, C. A.; R. S. C., Ord. 52, r. 5. The procedure by originating summons is inapplicable (*Re Holloway* (*a Solicitor*), *Ex parte Pallister*, [1894] 2 Q. B. 163, C. A.). As to the client's property in such papers, see p. 740, *ante*. The application for the order is made in chambers in the Chancery Division; see title PRACTICE AND PROCEDURE, Vol. XXIII., pp. 190, 191.

(*a*) *Ex parte Maxwell* (1835), 4 Dowl. 87; *Ex parte Smart* (1835), 1 Har. & W. 526; *Ex parte Morris* (1837), 1 Jur. 151; *Ex parte Crisp* (1834), 2 Dowl. 455; *Re Thornton* (1833), 2 Dowl. 156; compare *Miers* v. *Evans* (1839), 3 Jur. 170. The application may be made by the client's personal representatives (*Re Campbell* (1853), 3 De G. M. & G. 585, C. A.).

client (*b*) solely, and not jointly with other persons who do not take part in the application (*c*), and that the papers are held by the solicitor as such (*d*), and not as a party (*e*) or trustee (*f*). The papers must be in the possession of the solicitor (*g*), or of his agent, in which case the solicitor cannot resist the order on the ground that the agent claims to hold them under a lien (*h*). A demand for their delivery must have been made upon the solicitor by the client (*i*), or his personal representative (*k*), or by some person authorised to give a receipt on his behalf (*l*). The order will be refused where the solicitor claims a lien over the papers (*m*), unless the client pays into court or gives security for an amount sufficient to meet the solicitor's charges (*n*), or unless the solicitor is guilty of misconduct (*o*).

(*b*) *Ex parte Cobeldick* (1883), 12 Q. B. D. 149, C. A.

(*c*) *Re Gregory and Hitch* (1842), 6 Jur. 282; *Phillips* v. *Dickson* (1860), 8 C. B. (N. S.) 391; compare *Duncan* v. *Richmond* (1817), 7 Taunt. 391.

(*d*) *Ex parte Cobeldick, supra*; *Ex parte Nicholls* (1842), 2 Dowl. (N. S.) 423.

(*e*) *Ex parte Moxon* (1830), 1 Dowl. 6; *Re Chitty* (1833), 2 Dowl. 421; *Re Cardross* (*Lord*) (1839), 5 M. & W. 545.

(*f*) *Pearson* v. *Sutton* (1814), 5 Taunt. 364; but see *Ex parte Holdsworth* (1838), 4 Bing. (N. C.) 386.

(*g*) The solicitor is liable if he has parted with the papers for the purpose of evading the order (*Re Gregg, Re Prance* (1869), L. R. 9 Eq. 137).

(*h*) *Re Andrew* (1861), 7 H. & N. 87; but see *Re Williams* (1861), 3 De G. F. & J. 104, C. A.

(*i*) See the cases cited *supra*.

(*k*) *Ex parte Du Faur* (1837), 3 Hodg. 135; but see *Ex parte Crisp* (1834), 2 Dowl. 455. Where the solicitor dies, the summary jurisdiction does not apply as against his personal representative (*Ex parte Nicholls, supra*).

(*l*) *Doe* d. *Hickman* v. *Hickman* (1840) 8 Dowl. 833; *Re Dicas* (1831), 9 L. J. (O. S.) (CH.) 183.

(*m*) *Ex parte Cobeldick, supra*; *Re Broomhead* (1847), 5 Dow. & L. 52; *Richards* v. *Platel* (1841), Cr. & Ph. 79; *Re Davies* (1843), 7 Jur. 589; compare *Re Teague* (1848), 11 Beav. 318; *Ex parte Jarman* (1877), 4 Ch. D. 835; *Turner* v. *Letts* (1855), 7 De G. M. & G. 243, C. A.

(*n*) *Re Galland* (1885), 31 Ch. D. 296, C. A. (where it was suggested that the jurisdiction was extended by R. S. C., Ord. 50, r. 8); *Newington Local Board* v. *Eldridge* (1879), 12 Ch. D. 349, C. A.; *Re South Essex Equitable Investment and Advance Co.* (1882), 46 L. T. 280; *Balch* v. *Symes* (1823), Turn. & R. 87; *Clutton* v. *Pardon* (1823), Turn. & R. 301, 304; *Mills* v. *Finlay* (1839), 1 Beav. 560; *Re Bevan and Whitting* (1864), 33 Beav. 439; *Re Jewitt* (No. 2) (1864), 34 Beav. 22; *Hughes* v. *Mayre* (1789), 3 Term Rep. 275; compare *Re Broomhead, supra*. The order is not, however, made unless the client shows that it is necessary in his own interest that he should have the papers (*Re Galland, supra*; *Re South Essex Equitable Investment and Advance Co., supra*; *Richards* v. *Platel, supra*; *Blunden* v. *Desart* (1842), 2 Con. & Law. 111).

(*o*) *Potts* v. *Dutton* (1845), 8 Beav. 493.

Part VII.—Partnerships between Solicitors.

SECT. 1. In General.

SECT. 1.—*In General.*

Qualification.

1365. Every member of a partnership (*p*) between solicitors must be a duly qualified and certificated solicitor; the admission of a partner who does not possess the necessary qualifications renders the members of the firm who are duly qualified liable to be prosecuted for knowingly acting as agents for a person not duly qualified to act as a solicitor (*q*), since every partner is an agent of the firm and of his co-partners for the purpose of the business of the partnership (*r*). Moreover, such a partnership is illegal (*s*).

Solicitors sometimes undertake business jointly, although not regularly bound to one another as partners under a firm name; in these circumstances they are to be treated as partners to a limited extent, and in the absence of provision to the contrary will be jointly entitled to the profits and jointly bound to bear the losses and any damages or consequences which may flow from their so acting (*t*).

SECT. 2.—*Profits of Offices and Premiums.*

Profits of offices.

1366. *Primâ facie* the profits of offices held by particular members of the firm do not belong to the firm (*u*); but the articles of partnership may specifically otherwise provide (*a*). Where there is no specific provision made, it is a question of construction for the court as to whether or not they are covered by the general provisions of the articles (*b*). The test in construing such words as "all other offices compatible with the partnership" is whether such offices must be or are generally held by solicitors (*c*).

The premiums paid by clerks in respect of articles to one member of a firm, in the absence of provision to the contrary in the

(*p*) As to partnership generally, see title PARTNERSHIP, Vol. XXII., pp. 1 *et seq.* As to the liability of partners to a client for the acts of co-partners, see pp. 758 *et seq.*, *ante*.

(*q*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 32; Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 26.

(*r*) Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 5.

(*s*) *Williams* v. *Jones* (1826), 5 B. & C. 108; see title PARTNERSHIP, Vol. XXII., p. 16, note (*x*); but an agreement to pay a portion of the profits to an unqualified person is not illegal (*Candler* v. *Candler* (1821), Jac. 225, 231; *Bunn* v. *Guy* (1803), 4 East, 190); see title PARTNERSHIP, Vol. XXII., p. 16, note (*x*).

(*t*) Partnership Act, 1890 (53 & 54 Vict. c. 39), ss. 1, 32 (b); *Robinson* v. *Anderson* (1855), 7 De G. M. & G. 239, C. A.; *Webster* v. *Bray* (1849), 7 Hare, 159; *Ord* v. *Johnston* (1855), 1 Jur. (N. S.) 1063.

(*u*) *Alston* v. *Sims* (1855), 1 Jur. (N. S.) 438.

(*a*) *Clarke* v. *Richards* (1835), 1 Y. & C. (EX.) 351; *Sterry* v. *Clifton* (1850), 9 C. B. 110; see title PARTNERSHIP, Vol. XXII., p. 16, note (*x*); see also *Fox* v. *R.* (1859), 1 E. & E. 729, 746, Ex. Ch.

(*b*) *Collins* v. *Jackson*, *Jackson* v. *Collins* (1862), 31 Beav. 645; *Smith* v. *Mules* (1852), 9 Hare, 556.

(*c*) *Smith* v. *Mules*, *supra*.

partnership deed or of agreement to the contrary by the partners amongst themselves, are profits of the partnership (*d*).

SECT. 3.—*Goodwill.*

Goodwill.

1367. Although a solicitor's business is purely a personal one and there can therefore be no goodwill, strictly speaking, attaching to it (*e*), except by means of introductions or the possession of client's papers, yet in partnership deeds the goodwill is always treated as an asset and provision made as to how it is to be dealt with either in the event of death or dissolution of the firm (*f*). A contract entered into by a practising solicitor to transfer his business to another for valuable consideration and to refrain from himself practising within certain limits is valid (*g*). The goodwill is assets in the hands of an administrator, who may assign it for value (*h*), and it can be disposed of by will. Where, however, under the partnership deed an annuity is payable to the widow of a deceased partner, this annuity is not, if the husband dies insolvent, assets of his estate, but belongs to the widow in her own right (*i*).

Effect of dissolution.

Unless otherwise provided by the partnership deed, the interest of a partner in the business of a solicitor ceases upon his death and merges into the interests of the surviving partners (*k*). Upon the dissolution of a solicitor partnership without any sale or assignment of the goodwill of the business and without any provision as to the use of the firm name, each of the partners is entitled to carry on business under that name, provided that he does not by so doing expose his former partners to any risk of liability, which must depend upon the circumstances of each case (*l*).

(*d*) *Re Harper, Ex parte Bayley* (1829), 9 B. & C. 691; see p. 713, *ante*.

(*e*) *Arundell* v. *Bell* (1883), 52 L. J. (CH.) 537, C. A.

(*f*) As to the rights and duties of the partners generally on the dissolution of the partnership, see title PARTNERSHIP, Vol. XXII., pp. 97 *et seq.*; *Ray* v. *Flower Ellis* (1912), 56 Sol. Jo. 724, C. A.

(*g*) *Bunn* v. *Guy* (1803), 4 East, 190; see also *Austen* v. *Boys* (1858), 2 De G. & J. 626. An agreement by a retiring partner to permit the use of his name is equally valid (*Aubin* v. *Holt* (1855) 2 K. & J. 66); see title PARTNERSHIP, Vol. XXII., p. 16, note (*x*).

(*h*) *Smale* v. *Graves* (1850), 3 De G. & Sm. 706; *Spicer* v. *James* (1830), cited 3 De G. & Sm. 713.

(*i*) *Re Flavell, Murray* v. *Flavell* (1883), 25 Ch. D. 89, C. A.; see *Candler* v. *Candler* (1821), Madd. & G. 141.

(*k*) *Farr* v. *Pearce* (1818), 3 Madd. 74.

(*l*) *Burchell* v. *Wilde*, [1900] 1 Ch. 551, C. A.; see also *Gray* v. *Smith* (1889), 43 Ch. D. 208, C. A.; *Chappell* v. *Griffith* (1885), 2 T. L. R. 58; *Banks* v. *Gibson* (1865), 34 Beav. 566; *Levy* v. *Walker* (1879), 10 Ch. D. 436, C. A. Agreements of partnership or clerkship between solicitors may contain stipulations restraining one of the parties after the termination of the agreement from practising within a specified area in competition with the other (see *Edmundson* v. *Render* (1904), 90 L. T. 814; *Edmundson* v. *Render*, [1905] 2 Ch. 320; *Woodbridge & Sons* v. *Bellamy*, [1911] 1 Ch. 326, C. A.; *Freeman* v. *Fox* (1911), 55 Sol. Jo. 650. As to restraint of trade generally, see title TRADE AND TRADE UNIONS, Vol. XXVII., pp. 548 *et seq.*

Part VIII.—London Agents.

SECT. 1. **Scope of Country Certificate.**

SECT. 1.—*Scope of Country Certificate.*

Scope of country certificate.

1368. A solicitor holding only a country practising certificate (*m*) is not entitled to carry on business within ten miles of the General Post Office, London (*n*); he may at any time, however, by payment of the extra dutyand, in litigious matters, by providing himself with an address for service within three miles of the principal entrance to the Royal Courts of Justice, Strand, London (*a*), carry on a London business. A solicitor who has only a country certificate must, if he desires systematically (*b*) to do work in London of either a contentious or a non-contentious character, employ a London agent (*c*); and the employment of a London agent is within the scope of his authority (*d*).

SECT. 2.—*Relations between London Agent and Country Solicitor's Client.*

Relation between client and London agent.

1369. The relation of solicitor and client does not exist between the London agent and the client, since there is no privity of

(*m*) See p. 721, *ante*.

(*n*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 1, Sched., title "Certificate." As to the meaning of "carry on business," see *Re Horton* (1881), 8 Q. B. D. 434, where it was held that the phrase pointed to a series of acts and not to an isolated transaction.

(*a*) R. S. C., Ord. 4, r. 1. A country solicitor with an office in town is not entitled to charge for letters passing between the two offices in cases where he conducts the town portion of the business personally (*Re Harle, a Solicitor* (1868), 19 L. T. 305). Nor are agency charges allowed, whether for correspondence or otherwise, where there are common partners in the London and country firms (*Re Borough Commercial and Building Society*, [1894] 1 Ch. 289, C. A.), except as regards parliamentary business (*Re Milward & Co., Solicitors*, [1899] W. N. 251).

(*b*) A solicitor with a country certificate is not prohibited from coming up to London in connexion with an isolated transaction, such as the taxation of a bill of costs (*Re Horton, supra*).

(*c*) Similarly, a solicitor, practising in any part of the country may employ a solicitor practising in some other district (*Re Bishop, Ex parte Langley, Ex parte Smith* (1879), 13 Ch. D. 110, C. A.), or abroad (*Re Maugham, a Solicitor* (1885), 2 T. L. R. 115, C. A.), as his agent for a special purpose. A country solicitor is the "client" of his London agent within the meaning of a covenant not to transact business with any person who has been a client of the London agent (*Reid* v. *Burrows*, [1892] 2 Ch. 413).

(*d*) *Solley* v. *Wood* (1852), 16 Beav. 370. Any two solicitors may make an agreement as to charging or sharing costs on agency terms (*Re Gedye* (1857), 23 Beav. 347; *Re Taylor* (1854), 18 Beav. 165; *Gordon* v. *Dalzell* (1852), 15 Beav. 351; *Ward* v. *Lawson* (1872), 8 Ch. App. 65; *Foley* v. *Smith* (1851), 20 L. J. (CH.) 621); as to taxation in such a case, see *Deere* v. *Robinson* (1849), 7 Hare, 283. A solicitor-trustee making any such agreement as regards the business of the trust must account to the trust estate for any profit which he may make (*Burge* v. *Brutton* (1843), 2 Hare, 373).

contract between them (*e*). The London agent is not, therefore, responsible to the client for negligence (*f*) or misconduct (*g*). Nor is the client responsible to the London agent for payment of costs due to the London agent (*h*). As against the client (*i*), the London agent has no lien for the general balance of his account with the country solicitor (*k*), though, as regards the costs of any particular transaction, he may have a lien over any moneys received or any documents coming into his hands in connexion therewith (*l*). This lien cannot be enforced by means of a charging order (*m*); and in any event does not extend beyond the rights of the country solicitor, and is only available against the client in so far as the country solicitor himself remains unpaid (*n*). If, therefore, the client has paid the country solicitor without notice of the London agent's claim, the lien is extinguished (*o*); where, however, payment is made after notice, the London agent succeeds to the lien of the country solicitor as at the date of notice (*p*). The client has equally no right to claim taxation of the London agent's bill (*q*); nor is he entitled, where moneys are received on his behalf by the London agent in the ordinary course of business, to maintain an action against the London agent to enforce payment to himself (*r*). He may, however, in a proper case apply under the summary jurisdic- of the court for an order for payment against the London agent as an officer of the court (*s*), as, for instance, where the London agent had no authority either from the client or from the country

(*e*) *Robbins* v. *Fennell* (1847), 11 Q. B. 248; *Cobb* v. *Becke* (1845), 6 Q. B. 930. Nor is there privity of contract between the London agent and any other agent, such as an auctioneer employed by the country solicitor (*Hannaford* v. *Syms* (1898), 79 L. T. 30).

(*f*) Compare *Robertson* v. *Fleming* (1861), 4 Macq. 167, H. L.

(*g*) *Gray* v. *Kirby* (1834), 2 Dowl. 601; *Ex parte Jones* (1833), 2 Dowl. 161.

(*h*) *Waller* v. *Holmes* (1860), 1 John. & H. 239; *Farewell* v. *Coker* (1728), 2 P. Wms. 460; *Re Baker, a Solicitor* (1907), 52 Sol. Jo. 173. As to the custom in the country by which a solicitor who employs another pledges his personal credit, see note (*a*), p. 836, *ante*.

(*i*) As to his lien against the country solicitor, see the text, *infra*.

(*k*) *Moody* v. *Spencer* (1822), 2 Dow. & Ry. (K. B.) 6; *Peatfield* v. *Barlow* (1869), L. R. 8 Eq. 61; *Waller* v. *Holmes*, *supra*.

(*l*) *Farewell* v. *Coker*, *supra*; *Dicas* v. *Stockley* (1836), 7 C. & P 587; *Ward* v. *Hepple* (1808), 15 Ves. 297; *Cockerel* v. —— (1740), Barn. (CH.) 264; *Bray* v. *Hine* (1818), 6 Price, 203; *Tardrew* v. *Howell* (1861), 3 Giff. 381; *Jeyes* v. *Jeyes* (1876), 45 L. J. (CH.) 245.

(*m*) *Macfarlane* v. *Lister* (1887), 37 Ch. D. 88, C. A.

(*n*) *Peatfield* v. *Barlow*, *supra*; *Moody* v. *Spencer*, *supra*; compare *Quarrington* v. *White* (1837), 6 L. J. (C. P.) 253.

(*o*) *Vyse* v. *Foster* (1875), 10 Ch. App. 236; *Waller* v. *Holmes*, *supra*; *Re Andrew* (1861), 7 H. & N. 87; compare *Cockayne* v. *Harrison* (1873), L. R. 15 Eq. 298.

(*p*) *Waller* v. *Holmes*, *supra*.

(*q*) *Wildbore* v. *Bryan*, *Ex parte Wildbore* (1820), 8 Price, 677.

(*r*) *Gray* v. *Kirby*, *supra*; *Cobb* v. *Becke*, *supra*; *Robbins* v. *Fennell*, *supra*; *Re Knox*, *Ex parte Baker* (1837), 1 Jur. 894.

(*s*) See p. 838, *ante*. The London agent may be imprisoned under the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4 (3), as a person acting in a fiduciary capacity, but not under *ibid.*, s. 4 (4) (*Litchfield* v. *Jones* (1887), 36 Ch. D. 530).

SECT. 2. Relations between London Agent and Country Solicitor's Client.

solicitor to receive the money (*t*), or where he wrongfully claims a lien (*a*).

SECT. 3.—*Relations between London Agent and Country Solicitor.*

Responsibility of country solicitor.

1370. The country solicitor stands to the London agent in the relation of principal (*b*). He is therefore responsible to his client for the London agent's negligence (*c*) or misconduct (*d*). In accordance with the same principle, he is responsible to the London agent for his costs (*e*), and as against him the London agent has a general lien over any moneys and documents coming to his hands in any particular transaction for all his costs and disbursements, whether incurred in the same or any other transaction (*f*). The country solicitor, therefore, bears any loss which may arise from the client's failure to pay (*g*); on the other hand, he is entitled to retain for his own benefit any collateral advantage accruing from the business undertaken, such as, for instance, interest paid on the amount of costs remaining unpaid (*g*).

Remuneration of London agent.

1371. Though special agreements are sometimes made, the usual terms upon which the London agent acts are that the country solicitor shall pay him all disbursements, including counsel's fees (which in strictness ought to be provided before the papers are laid before counsel), and half the profit charges, except in respect of letters and copies of documents, when rather more than the half is charged by the London agent to cover the cost of postage, stationery etc. (*h*). In cases where documents are prepared and copied in the country for use in London for any purpose for which it is necessary for the London agent to qualify himself to bear any responsibility, it is customary and proper for him to charge a fee for perusal of the papers.

Interest.

The relation between the London agent and the country solicitor is not the common relation of a solicitor to an ordinary client (*i*), and the country solicitor cannot therefore be charged with interest on

(*t*) *Robbins* v. *Fennell* (1847), 11 Q. B. 248.

(*a*) *Re Johnson, Ex parte Edwards* (1881), 8 Q. B. D. 262, C. A.; see title AGENCY, Vol. I., p. 172.

(*b*) See the cases cited *infra*.

(*c*) *Asquith* v. *Asquith*, [1885] W. N. 31; *Collins* v. *Griffin* (1734), Barnes, 37; *Withers* v. *Parker* (1860), 5 H. & N. 725, Ex. Ch.

(*d*) *Simmons* v. *Rose, Weeks* v. *Ward, Re Ward* (1862), 31 Beav. 1; *Re Newen, Carruthers* v. *Newen*, [1903] 1 Ch. 812; *Gray* v. *Kirby* (1834), 2 Dowl. 601; see also *Prestwich* v. *Poley* (1865), 18 C. B. (N. S.) 806.

(*e*) *Waller* v. *Holmes* (1860), 1 John. & H. 239; *Ward* v. *Lawson* (1890), 43 Ch. D. 353, C. A. A usage to this effect has been recognised by the courts; see title CUSTOM AND USAGES, Vol. X., p. 284. Such costs should be included as part of his own bill, and not as disbursements (*Re Pomeroy and Tanner*, [1897] 1 Ch. 284).

(*f*) *White* v. *Royal Exchange Assurance* (1822), 1 Bing. 20; *Lawrence* v. *Fletcher* (1879), 12 Ch. D. 858; *Ex parte Steele* (1809), 16 Ves. 161, 164; *Re Jones and Roberts*, [1905] 2 Ch. 219, C. A.; *Tardrew* v. *Howell, Parry* v. *Howell* (1861), 3 Giff. 381.

(*g*) *Ward* v. *Lawson* (1890), 43 Ch. D. 353, C. A.

(*h*) *Ibid.* Two-thirds is not unusual.

(*i*) *Ward* v. *Eyre* (1880), 15 Ch. D. 130, C. A., *per* JAMES, L.J., at p. 136.

disbursements in the same way as the lay client (*k*). The country solicitor, however, may tax his London agent's bill (*l*); but he is not, for the purpose of enabling him to evade the provisions of the Solicitors Act, 1843 (*m*), with regard to the time within which he must take action (*n*), entitled to treat the agency bills as a running account (*o*). Only those bills which have been delivered within twelve months can be taxed in the absence of special circumstances applying between the town and country solicitors. Thus, the non-payment of counsel's fees charged in the bill, where the country solicitor has not provided the requisite funds, does not constitute a special circumstance for the purpose of entitling the client to taxation where he would not otherwise be entitled (*p*).

Taxation.

SECT. 4.—*Relations between London Agent and Opposite Parties.*

1372. As regards the opposite parties to any litigation in which the London agent is employed, he has authority to bind both the country solicitor (*a*) and the client (*b*) in all matters connected with his employment. Thus, he has authority to waive any irregularity in the proceedings (*c*), to consent to any order being made (*d*), or to compromise the action (*e*); and payment to him of the amount due s valid as against the client (*f*). All notices and summonses in the action should be served upon him (*g*), except that he has no authority to receive notice of appeal from a county court (*h*), even though the action was originally remitted from the High Court (*i*).

Authority of London agent.

(*k*) *Ward* v. *Eyre* (1880), 5 Ch. D. 130, C. A. As to interest on disbursements, see p. 809, *ante*.

(*l*) *Jones* v. *Roberts* (1837), 8 Sim. 397; *Re Boord, Toghill* v. *Grant* (1840), 2 Beav. 261; *Re Smith* (1841), 4 Beav. 309; *Smith* v. *Dimes* (1849), 4 Exch. 32, followed in *Re Wilde*, [1910] 1 Ch. 100; *Re Curnot and Parkinson* (1871), 40 L. J. (CH.) 608; compare *Ward* v. *Lawson* (1872), 8 Ch. App. 65; and see *Re Gedye* (1857), 23 Beav. 347; *Foley* v. *Smith* (1851), 20 L. J. (CH.) 621.

(*m*) 6 & 7 Vict. c. 73.

(*n*) See pp. 784 *et seq.*, *ante*.

(*o*) *Re Nelson, Son and Hastings* (1885), 30 Ch. D. 1, C. A.

(*p*) *Ibid.*; but see *Re Romer and Haslam*, [1893] 2 Q. B. 286, C. A. As to taxation of part of a bill, see *Storer & Co.* v. *Johnson* (1890), 15 App. Cas. 203.

(*a*) *Withers* v. *Parker* (1860), 5 H. & N. 725, Ex. Ch.

(*b*) *Griffiths* v. *Williams* (1787), 1 Term Rep. 710; *Solley* v. *Wood* (1852), 16 Beav. 370.

(*c*) *Griffiths* v. *Williams, supra.*

(*d*) *Withers* v. *Parker, supra.*

(*e*) *Re Newen, Carruthers* v. *Newen*, [1903] 1 Ch. 812, following *Withers* v. *Parker, supra.*

(*f*) *Hanley* v. *Cassan* (1847), 11 Jur. 1088.

(*g*) R. S. C., Ord. 4, rr. 1, 3; Ord. 12, r. 10; *Prestney* v. *Colchester Corporation* (1883), 24 Ch. D. 376, C. A.; *Griffiths* v. *Williams, supra*; Service on the country solicitor is irregular (*Petty* v. *Daniel* (1886), 34 Ch. D. 172).

(*h*) *Powell* v. *Thomas*, [1891] 1 Q. B. 97; followed in *Jackson* v. *Margrett* (1893), 68 L. T. 91.

(*i*) *Malley* v. *Shepley* (1892), 5 R. 78 (where the London agent's name and address were indorsed on the writ, but the particulars lodged with the registrar gave the country solicitor's address as the address for service).

SECT. 4. Relations between London Agent and Opposite Parties.

The London agent must act strictly as agent for the country solicitor; he has no authority to institute proceedings as solicitor for the client (*k*); nor has he any authority to proceed after his authority has been withdrawn by the country solicitor (*l*). Similarly, the death of the country solicitor puts an end to his authority (*m*), except for formal purposes, such as signing judgment (*n*).

Personal liability.

1373. The London agent is not, as a general rule, liable to pay costs to the opposite party (*a*); he may, however, be made personally liable when he is guilty of misconduct, as, for instance, when he files a scandalous affidavit, even though drawn by the country solicitor (*b*).

Part IX.—Discipline.

SECT. 1.—*Grounds for Striking Solicitor off the Rolls.*

Power of the court.

1374. The court, in the exercise of its disciplinary jurisdiction (*c*), has power to strike a solicitor off the rolls upon various grounds specified by statute (*d*), and also upon the ground of misconduct (*e*). In the latter case the court may, in lieu of striking the solicitor off the rolls, suspend him from practice (*f*).

Statutory grounds:

1375. The statutory grounds for striking a solicitor off the rolls are:—

(1) Defect in articles etc.

(1) That there is some defect in his articles, service, admission, or enrolment (*g*). In this case the application to strike the solicitor off the rolls must be made within twelve months from the time of his admission, unless such admission was procured by fraud (*h*).

(2) Acting for unqualified person.

(2) That he has wilfully and knowingly acted as agent in any action or suit in any court or matter in bankruptcy for any person not qualified to act as a solicitor, or has permitted or suffered his name to be used by any unqualified person to enable him to undertake solicitor's business for his own benefit, or has sent any

(*k*) *Wray* v. *Kemp* (1884), 26 Ch. D. 169; *Re Scholes & Sons* (1886), 32 Ch. D. 245; *Nurse* v. *Durnford* (1879), 13 Ch. D. 764; *Re Savage* (1880), 15 Ch. D. 557; *Re Summerville* (1885), 31 Ch. D. 160, C. A.

(*l*) *Freeman* v. *Fairlie* (1839), 8 L. J. (CH.) 44; *Malins* v. *Greenway* (1847), 10 Beav. 564; compare *Richards* v. *Scarborough Market Co.* (1853), 17 Beav. 83.

(*m*) *Harris* v. *Nunn* (1886), 21 L. J. 440.

(*n*) *Taunton* v. *Goforth* (1825), 6 Dow. & Ry. (K. B.) 384; *Davies* v. *Bower* (1863), 7 L. T. 739.

(*a*) *Becke* v. *Cattell* (1841), 3 Man. & G. 480.

(*b*) *Re Booth, Ex parte Wake* (1833), 3 Deac. & Ch. 246; compare *Ruthin Corporation* v. *Adams* (1835), 7 Sim. 345.

(*c*) As to attachment, see pp. 828 *et seq.*, *ante*. As to removing a solicitor's name from the rolls at his own request, see p. 720, *ante*.

(*d*) See the text, *infra*.

(*e*) See p. 849, *post*.

(*f*) See p. 851, *post*. In less serious cases the court may think it sufficient punishment to order the solicitor to pay the costs of the proceedings; see *Re a Solicitor, Ex parte Law Society* (1913), 29 T. L. R. 354; *Re a Solicitor, Ex parte Law Society* (1910), 55 Sol. Jo. 49.

(*g*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37; see *Re Myres* (1846), 8 Q. B. 515.

(*h*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 29.

process to such unqualified person for the like purpose (*i*). Where a solicitor permits an unqualified person to use his name contrary to this provision, the court has no discretion to inflict a less punishment on the solicitor than that of striking him off the rolls (*k*).

(3) That he has been guilty of a corrupt practice in connexion with an election, whether parliamentary (*l*) or municipal (*m*). (3) Corrupt practices.

1376. Apart from statute, a solicitor may be struck off the rolls on the following grounds, namely:— Other grounds:

(1) That he has been convicted of a criminal offence. It is not necessary that the offence should be of a pecuniary character or that it should have been committed by him in his practice as a solicitor, provided that the offence is of such a character as to make it expedient for the protection of the public and the profession that he should be suspended from practice or struck off the rolls (*n*). Thus, he may be struck off the rolls where he has been convicted of feloniously shooting with intent to murder (*o*), or of allowing houses belonging to him to be used as brothels (*p*). Where the solicitor is to the satisfaction of the court proved guilty of misconduct of a criminal nature (*q*), he may be struck off the rolls, although no criminal charge has been brought against him (*r*); if he has been tried and convicted, the same result will follow, although his conviction has been quashed on technical grounds (*s*). On the other hand, a verdict against the solicitor in civil proceedings for libel is not in itself sufficient (*t*). (1) Conviction of crime.

Where an application has been made to the statutory committee of the Law Society, and the same matter of complaint is being inquired into before magistrates, it is proper that the application to the court to deal with the findings of the committee should stand over until the magisterial inquiry has been concluded, and an order to this effect will be made on the solicitor giving an

(*i*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 32. As to what amounts to a breach of this provision, see p. 855, *post*.

(*k*) *Re Burton and Blinkhorn*, [1903] 2 K. B. 300; *Re Kelly*, [1895] 1 Q. B. 180, not following *Re Lamb* (1889), 23 Q. B. D. 477, C. A.; *Re Two Solicitors and an Unqualified Person, Ex parte Incorporated Law Society* (1909), 53 Sol. Jo. 342, C. A.

(*l*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 38 (7); see title ELECTIONS, Vol. XII., p. 485.

(*m*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 23; see title ELECTIONS, Vol. XII., p. 525.

(*n*) *Re a Solicitor, Ex parte the Law Society* (1911), 55 Sol. Jo. 670; and see *Re Hill* (1868), L. R. 3 Q. B. 543; *R.* v. *Southerton* (1805), 6 East, 126, 143; *Re King* (1846), 8 Q. B. 129; *Re Hall* (1857), 4 W. R. 686; *Re Weare*, [1893] 2 Q. B. 439, C. A. If the solicitor has already been suspended, he is not struck off the rolls on his subsequent conviction for the same offence (*Re a Solicitor, Ex parte Incorporated Law Society* (1889), 37 W. R. 598, C. A.).

(*o*) *Re Cooper* (1898), 67 L. J. (Q. B.) 276.

(*p*) *Re Weare, supra*.

(*q*) *Re* —— (1838), 3 Nev. & P. (Q. B.) 389.

(*r*) *Stephens* v. *Hill* (1842), 10 M. & W. 28.

(*s*) *Re Garbett* (1856), 18 C. B. 403; compare *Re King, supra*.

(*t*) *Ex parte* —— (1833), 2 Dowl. 110.

SECT. 1.
Grounds for Striking Solicitor off the Rolls.

undertaking in writing not to practise until the committee's report has been dealt with by the court (*u*).

(2) Professional misconduct.

(2) That he has been guilty of professional misconduct (*v*). For this purpose it is not sufficient to show that the solicitor's conduct was such as to support an action for want of skill; his conduct must be judged by the rules and standard of his profession, and it must be shown that he has done something which would be reasonably regarded as disgraceful or dishonourable by solicitors of good repute and competency (*w*). Thus, he is guilty of professional misconduct if he wilfully misleads the court in the course of the conduct of a case (*x*); if he falsely represents that an injunction has been granted (*y*); if he knowingly takes a multitude of wrong or unnecessary steps for the purpose of running up costs or making costs in the knowledge that the opposite party would have to pay them (*z*); if he deals improperly with a fund in court by enabling the same to be paid out to a person not entitled (*a*); if he is guilty of a fraudulent breach of trust (*b*); if he betrays the confidence of his client (*c*); if he institutes criminal proceedings for the purpose of extorting money (*d*); if he assists a criminal to escape out of the country with the view of enabling him to avoid arrest, and thus defeat the ends of justice (*e*); if he systematically solicits debt-collecting business through the agency of a company which he has promoted, and which he finances and controls with that object, without disclosing his connexion with the company (*f*).

(*u*) *Re a Solicitor, Ex parte Law Society* (1907), 51 Sol. Jo. 212; see title COURTS, Vol. IX., pp. 75 *et seq.*, 80, note (*x*).

(*v*) The court will not strike a solicitor off the roll on account of an irregularity in the service of his clerkship and misconduct prior to his admission (*Re Page* (1823), 1 Bing. 160; *Re* —— (1831), 2 B. & Ad. 766).

(*w*) *Re a Solicitor, Ex parte Law Society*, [1912] 1 K. B. 302, applying *Allinson* v. *General Council of Medical Education and Registration*, [1894] 1 Q. B. 750, 763, C. A.; *Re a Solicitor, Ex parte Law Society* (1913), 29 T. L. R. 354, following *Re a Solicitor, Ex parte Law Society*, [1912] 1 K. B. 302; compare *Smith* v. *Matham* (1824), 4 Dow. & Ry. (K. B.) 738).

(*x*) *Re Hill* (1868), L. R. 3 Q. B. 543; *Stephens* v. *Hill* (1842), 10 M. & W. 28; *Re Cooke, a Solicitor* (1889), 33 Sol. Jo. 397, C. A. Merely acting without authority is not sufficient (*Re* ——, *an Attorney* (1853), 2 W. R. 58).

(*y*) *Kimpton* v. *Eve* (1813), 2 Ves. & B. 349, 352.

(*z*) *Re Cooke, a Solicitor, supra, per* Lord ESHER, M.R.

(*a*) *Re Collins, Wheatley* v. *Bastow* (1855), 7 De G. M. & G. 558, C. A.

(*b*) *Re Chandler* (1856), 22 Beav. 253; *Thompson* v. *Finch* (1856), 8 De G. M. & G. 560, C. A.; *Re Hall, Dolland* v. *Johnson* (1856), 2 Jur. (N. S.) 633; *Thorndike* v. *Hunt, Browne* v. *Butter* (1859), 5 Jur. (N. S.) 879; *Re a Solicitor* (*B.*), *Ex parte Law Society* (1911), 28 T. L. R. 59; and compare *Re* —— (1846), 10 Jur. 198; but see *Goodwin* v. *Gosnell, Ex parte Hill* (1846), 10 Jur. 422, where the solicitor replaced the fund in obedience to the order of the court.

(*c*) *Cholmondeley* (*Earl*) v. *Clinton* (*Lord*) (1815), 19 Ves. 261.

(*d*) *Re a Solicitor* (1892), 27 L. J. 121; *Re* ——, *an Attorney* (1853), 2 W. R. 58; but see *Ex parte Warren* (1835), 1 Har. & W. 113; *Smith* v. *Gillett* (1835), 3 Dowl. 364 (both cases of civil proceedings).

(*e*) *Re Vallance* (1889), 24 L. J. 638; compare *R.* v. *Vaughan* (1743), 1 Wils. 22.

(*f*) *Re a Solicitor, Ex parte Law Society*, [1912] 1 K. B. 302 (where the solicitor was suspended for twelve months); *Re a Solicitor, Ex parte Law Society* (1913), 29 T. L. R. 354 (where the solicitor, having become aware

SECT. 1. Grounds for Striking Solicitor off the Rolls.

If he enters into any arrangement or understanding with solicitors representing interests adverse to those of his client, whereby they are to share profits, whether under the name of "agency" or otherwise, and does not disclose the arrangement or understanding to the client (*g*); or if he carries on business in association with an unqualified person (*h*).

(3) That he has been guilty of conduct showing him to be unfit to be a solicitor (*i*). Thus, a solicitor who carries on the business of a bookmaker and distributes circulars which may get into the hands of infants and married women and induce them to enter into betting transactions with him, may be struck off the rolls, in spite of the fact that he has ceased to practise as a solicitor and has not taken out a certificate for several years (*k*).

(3) Improper conduct.

1377. The court may, instead of striking the solicitor off the rolls, order him to be suspended from practice for a period stated in the order (*l*). Thus, a solicitor has been suspended from practice for using the name of a trustee in bankruptcy, without having obtained his consent, for the purpose of claiming specific performance of an agreement in which the trustee had an interest (*m*); for receiving money due upon a mortgage without informing his client, and continuing to pay him interest (*n*); for improperly indorsing a summons as if it had been attended before the judge (*o*); for deliberately allowing his client to make an affidavit setting forth a false date or other false statement of fact (*p*); for borrowing money on inadequate or no security from a young and inexperienced client, who has not been separately advised (*q*); for failing to pay counsel's fees when he has been provided with money specifically for the purpose (*r*).

Suspension.

1378. It is not necessarily misconduct justifying suspension for a solicitor to give a misleading or incorrect address in this country of a foreigner resident abroad for the purpose of evading an order for security for costs; but the court may order him to indemnify

Acts not amounting to misconduct.

that his conduct was unprofessional, at once severed his connexion with the company, and was ordered to pay the costs).

(*g*) *Re Four Solicitors, Ex parte Incorporated Law Society*, [1901] 1 K. B. 187.

(*h*) See pp. 855, 856, *post*.

(*i*) But see *Re* —— (1843), 12 L. J. (Q. B.) 331.

(*k*) *Re a Solicitor, Ex parte Incorporated Law Society* (1905), 22 T. L. R. 127.

(*l*) Suspension from practice by a colonial court is not *per se* a sufficient reason (*Re a Solicitor, Ex parte Incorporated Law Society*, [1898] 1 Q. B. 331, refusing to follow *Re Collins* (1856), 18 C. B. 272); on this subject see, generally, title BARRISTERS, Vol. II., p. 373, note (*i*).

(*m*) *Re Gray, Ex parte Incorporated Law Society* (1869), 20 L. T. 730.

(*n*) *Re Blake* (1860), 3 E. & E. 34.

(*o*) *Re De Medina* (1862), 10 W. R. 627.

(*p*) *Re Gray, supra; Re Davies* (*W. R.*) (1898), 14 T. L. R. 332, C. A.; see *Re Stewart* (1868), L. R. 2 P. C. 88; and compare *Re Mant* (1861), 5 L. T. 254.

(*q*) *Re a Solicitor, Ex parte Incorporated Law Society*, [1894] 1 Q. B. 254.

(*r*) *Re Farman* (1883), 18 L. J. 352; *Re a Solicitor, Ex parte Incorporated Law Society* (1894), 10 R. 576; compare *Re a Solicitor, Ex parte Law Society* (1910), 55 Sol. Jo. 49, where the solicitor was ordered to pay costs.

SECT. 1.
Grounds for Striking Solicitor off the Rolls.

the person damnified and to pay the costs of the proceedings (*s*); nor is it necessarily misconduct that a solicitor has been guilty of delay in paying over money collected by him on his client's behalf, if there is no finding that he intended to misappropriate it (*t*), even although it may ultimately be lost owing to the solicitor's bankruptcy (*u*).

Court guided by circumstances.

1379. The line between cases in which the court does and those in which it does not interfere is a very fine one, and every case must depend upon its own circumstances (*v*). Where the remedy against the solicitor is by attachment under its summary jurisdiction, the court does not as a rule interfere by suspending or striking the solicitor off the rolls (*w*).

SECT. 2.—*Procedure.*

Preliminary inquiry.

1380. The preliminary inquiry in cases where complaints are made by persons against solicitors for improper conduct in their dealings as such is made by a committee of the Law Society, consisting of not less than three and not more than seven members of that society, nominated by the Master of the Rolls (*x*).

Application.

1381. When it is sought to strike a solicitor off the rolls or to require him to answer allegations in an affidavit an application must be sent in writing by the person complaining to the Law Society as registrar of solicitors, together with an affidavit setting forth fully the matters of which he complains (*y*). The matter then comes before the committee for its consideration, and if the committee thinks the affidavit makes out a *primâ facie* case (*z*), a copy of the application and the affidavit must be sent by the Law Society to the solicitor, together with a notice fixing a date for the hearing of the complaint (*a*). The notice of the date of hearing (which must be sent also to the applicant) must require both parties to furnish to the Law Society and to each other a list of the documents which each of them intends to use: such list must be

(*s*) *Re a Solicitor* (1889), 5 T. L. R. 339.

(*t*) *Re a Solicitor* (1895), 11 T. L. R. 169, *per* WILLS, J.; *Guilford* v. *Sims* (1853), 13 C. B. 370. Where the misappropriation is fraudulent, it is not a defence that the solicitor has subsequently repaid the money (*Re H., an Attorney* (1875), 31 L. T. 730; *Re Martin* (1843), 6 Beav. 337; *Re ——, an Attorney* (1863), 9 L. T. 299).

(*u*) *Re Sparks* (1864), 17 C. B. (N. S.) 727.

(*v*) See in particular *Goodwin* v. *Gosnell, Ex parte Hill* (1846), 10 Jur. 422; *Re Whitehead* (1885), 28 Ch. D. 614, C. A.; *Re Davies* (*W. R.*) (1898), 14 T. L. R. 332, C. A.; *Re a Solicitor, Ex parte Law Society* (1910), 55 Sol. Jo. 49; *Re Stewart* (1868), L. R. 2 P. C. 88.

(*w*) *Ex parte Townley* (1834), 3 Dowl. 39; *Ex parte Grant* (1835), 3 Dowl. 320.

(*x*) Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 12. This committee is frequently referred to as the Statutory Committee.

(*y*) Rules of 1889, Part I., r. 1 (Stat. R. & O. Rev., Vol. XI., Solicitor, England, p. 9). The contents of this affidavit and of the application which it is made to support are privileged (*Lilley* v. *Roney* (1892), 61 L. J. (Q. B.) 727).

(*z*) As to the discretion of the committee, see p. 853, *post*.

(*a*) Rules of 1889, Part I., r. 2 (Stat. R. & O. Rev., Vol. XI., Solicitor, England, p. 9).

furnished by the applicant at least fourteen days before the date fixed for the hearing, and by the solicitor within seven days after he has received the applicant's list (*b*). On receipt of this notice each party may inspect the other's documents, and on giving three days' notice may take copies at his own expense (*c*).

Who may apply.

1382. The right to apply to the committee of the Law Society is not limited to persons aggrieved; application may be made by any person who alleges facts showing misconduct on the part of the solicitor, and is willing to make an affidavit as to them (*d*).

Application by solicitor himself.

The application may also be made at the solicitor's own instance, in which case the committee may require him to give notice, by advertisement or otherwise, that he has made such application and of the date of the hearing (*e*). Such an application is made either because threats have been uttered to the solicitor about specific matters of conduct which he is anxious to have cleared up by a committee consisting of experts in his own profession or because he desires to be called to the Bar or to adopt some other profession with which his status of a solicitor is inconsistent. In this latter event the application must also be supported by an affidavit of the applicant and must be accompanied by letters in support, written by two practising solicitors to whom he is personally known (*f*).

Hearing.

1383. At the hearing (which takes place at the Law Society's Hall, Chancery Lane, London), either party may appear in person or by counsel or solicitor. The committee may, if it thinks fit, appoint and pay a solicitor to represent it in preparing the case for hearing, the funds being provided by the Society (*g*). The absence of either party will not prevent the committee from proceeding with the matter if it thinks it attributable to negligence or to an intention to avoid or delay proceedings (*h*). In the event of the committee so proceeding it may take evidence of any fact by affidavit, including the affidavit in which the complaint was made (*i*).

Witnesses.

The hearing is conducted in all respects like the trial of an action, the chairman swearing the witnesses, who are examined and cross-examined in the usual manner (*k*), and the same rules as to admissibility of evidence apply. Where either party desires to compel the attendance of a witness application must be made to the committee, which may, if it thinks fit, authorise the party

(*b*) Rules of 1889, Part I., r. 3 (Stat. R. & O. Rev., Vol. XI., Solicitor, England, p. 10). The committee has power to dispense with strict compliance with the rules as to notices, services, time etc., and service may be made by registered letter, proof of the proper address being upon it and of due posting being sufficient. For suitable forms, see *ibid.*, Schedule; these should be followed as far as practicable (*ibid.*, Part VI., rr. 1—3; see title COURTS, Vol. IX., p. 55, note (*q*)).

(*c*) Rules of 1889, Part I., r. 4.

(*d*) *Re a Solicitor* (1890), 25 Q. B. D. 17, C. A.

(*e*) Rules of 1889, Part I., r. 6.

(*f*) Instructions issued by the Law Society, 20th May, 1909.

(*g*) Rules of 1889, Part I., r. 5; see title BARRISTERS, Vol. II., p. 375.

(*h*) Rules of 1889, Part I., r. 5.

(*i*) *Ibid.*, r. 5A.

(*k*) *Ibid.*, r. 7.

SECT. 2. Procedure.

applying to apply to a judge in chambers for leave to issue the necessary subpœnas; if this leave is granted, then the subpœnas are, upon production of the order, issued at the Central Office (*l*). The notes of the public examination of a solicitor who has been adjudicated bankrupt may be used against him at the hearing before the committee (*m*).

Report of committee.

1384. If the application is made by a complainant, the committee after the hearing makes its report, which must be signed by the chairman and filed at the Central Office; but if it is made by the solicitor, the report is made to the Master of the Rolls and filed with the Law Society or as the Master of the Rolls may direct (*n*). If the report is adverse it is set down for hearing by a Divisional Court (*o*), when the Law Society must forthwith give notice of the date fixed to the applicant and the solicitor (*p*); and if the court imposes any punishment upon the solicitor, it is the duty of the Law Society to make such entry or alteration in the roll as may be necessary (*q*).

Report not condition of further proceedings.

1385. If the committee, after having heard the matter, comes to the conclusion that no case requiring an answer has been made out, it is not bound to report the matter to the court at all; and a mandamus will not lie to compel it to do so (*r*). The applicant, however, is not barred by conclusions of the committee; he may himself bring the matter before the court direct (*s*).

An adverse report by the committee is not a condition precedent to the jurisdiction of the court (*t*); and although great deference will be paid to the report of the committee, the court is not precluded from acting by reason of the fact that the committee has found in favour of the solicitor (*u*). On the application of a dissatisfied applicant, the court goes into the facts as disclosed in the report, and if satisfied that there has been misconduct, in spite of the committee's report, punishes the solicitor (*a*).

(*l*) Rules of 1889, Part I., r. 7A (Stat. R. & O. Rev., Vol. XI., Solicitor, England, p. 10); see also title BARRISTERS, Vol. II., p. 375, note (*n*).

(*m*) *Re a Solicitor* (1890), 25 Q. B. D. 17, C. A.

(*n*) Rules of 1889, Part I., r. 8.

(*o*) *Re Martin* (1875), 24 W. R. 111. The application to the court must be made by counsel; see title BARRISTERS, Vol. II., p. 373, note (*i*).

(*p*) Rules of 1889, Part I., r. 10. An affidavit by the solicitor is admissible when the report comes before the court (*Re Wilson, a Solicitor* (1889), 5 T. L. R. 654).

(*q*) Rules of 1889, Part I., r. 11. The solicitor may, in addition to any other punishment, be ordered to pay the costs of the proceedings, and an action lies on the order of the court (*Godfrey* v. *George*, [1896] 1 Q. B. 48, C. A. (where an unsuccessful application had already been made to attach the solicitor)).

(*r*) *R.* v. *Incorporated Law Society*, [1895] 2 Q. B. 456; *Ex parte Whitfield and the Incorporated Law Society* (1892), 67 L. T. 856.

(*s*) Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 13; *R.* v. *Incorporated Law Society, supra*; see also *Re Weare*, [1893] 2 Q. B. 439, C. A., where it was held that the applicant could go to the court although no application had been made to the committee.

(*t*) *Re Weare, supra.*

(*u*) *Re Davies* (*W. R.*) (1898), 14 T. L. R. 332, C. A.

(*a*) *Ibid.*

1386. Where the solicitor has been exonerated by the committee, he is entitled to apply to the court for the purpose of getting an order for payment of his costs within three months after the date of report (*b*). This application may be made by summons to a judge in chambers (*c*).

SECT. 3.—*Appeal.*

Solicitor's right of appeal.

1387. As the court in making an order striking a solicitor off the rolls for misconduct does so in the exercise of its disciplinary powers over its own officers and not in the exercise of its criminal jurisdiction, an appeal lies from such order to the Court of Appeal (*d*). The solicitor appealing may be required to give security for costs if it is proved that he is insolvent; but if the order appealed against is limited to striking him off the rolls, it is probable that the court would look upon it as so serious a matter, affecting the whole of the solicitor's after life, that it would be slow to prevent him from bringing it to a hearing on account of want of means. Where, however, there are other matters included in the order appealed against, and the solicitor does not make an affidavit stating that he has means, the court may make the order (*e*).

How far complainant may appeal.

1388. From the decision of the committee that a *primâ facie* case has not been made out there is, strictly speaking, no appeal. The proper course is for the complainant to bring the facts which were by him laid before the committee, by way of substantive motion, before the Divisional Court, and to ask such court to come to a different conclusion, which the court has full power to do (*f*). When once there has been a hearing before the Divisional Court, there is an appeal as of right by either party to the Court of Appeal (*g*).

Part X.—Unqualified Persons.

Prohibition against unqualified persons.

1389. No person is entitled to act as a solicitor or in the capacity of a solicitor to conduct any proceedings in the name of any other person in any court of civil or criminal jurisdiction in England and Wales unless he is admitted and enrolled as a solicitor and his name is upon the roll at the time of so acting (*a*). Any unqualified

(*b*) *Re Lilley*, [1892] 1 Q. B. 759, C. A.; *Re Neale, Ex parte Neale* (1893), 10 T. L. R. 18.

(*c*) R. S. C., Ord. 52, r. 24.

(*d*) *Re Hardwick* (1883), 12 Q. B. D. 148, C. A.; *Re Eede* (1890), 25 Q. B. D. 228, C. A.

(*e*) *Re Strong* (1885), 31 Ch. D. 273; and see *Hood Barrs* v. *Heriot*, [1896] 2 Q. B. 375, C. A. (appeal from an order for attachment).

(*f*) *R.* v. *Incorporated Law Society*, [1896] 1 Q. B. 327, C. A., *per* Lord ESHER, M.R., at p. 329; see also *Re Crowdy, Ex parte Incorporated Law Society* (1895), 11 T. L. R. 406; *Re Davies* (*W. R.*) (1898), 14 T. L. R. 161; *R.* v. *Incorporated Law Society*, [1896] 1 Q. B. 327, C. A.; and see p. 854, *ante*.

(*g*) *Re Hardwick*, *supra* (a decision as to the solicitor's right to appeal, which for the reasons given must apply also to the applicant).

(*a*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 2; see also title PRACTICE

PART X. Unqualified Persons.

person who acts as a solicitor is incapable of recovering any fee for his services (*b*). In addition he is guilty of a contempt of court, and is liable to a fine of £50 at the suit of the Law Society (*c*); he may also be indicted for a misdemeanour (*d*) or prosecuted summarily (*e*). Moreover, a solicitor who wilfully and knowingly acts as agent for an unqualified person in any legal proceedings, or allows his name to be used in connexion with legal proceedings by an unqualified person, is liable to be struck off the rolls (*f*); and the unqualified person is liable to be committed to prison for a term not exceeding one year (*g*).

What acts prohibited.

1390. It is immaterial whether the unqualified person acts in his own name or in the name of another, provided that he is acting on his own behalf and for his own profit (*h*). Thus, an agreement between a solicitor and a debt collector (*i*) or an accountant (*k*) to divide the costs recovered from debtors through the medium of legal proceedings is contrary to law, and renders both parties liable

AND PROCEDURE, Vol. XXIII., p. 125, note (*p*). As to the right of an informant or complainant to examine and cross-examine witnesses, though not a solicitor, see title MAGISTRATES, Vol. XIX., p. 596, note (*p*); *Abercrombie* v. *Jordan* (1881), 8 Q. B. D. 187; *Re Hall* (*an Unqualified Person*), *Ex parte Incorporated Law Society* (1893), 69 L. T. 385; *Symonds* v. *Incorporated Law Society* (1884), 49 J. P. 212; *Incorporated Law Society* v. *Bedford* (1885), 49 J. P. 215.

(*b*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 26; Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 26; Attorneys and Solicitors Act, 1874 (37 & 38 Vict. c. 68), s. 12; Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 43 (1); *Verlander* v. *Eddolls* (1881), 51 L. J. (Q. B.) 55. An unqualified person whose name appears on the record as solicitor is amenable to the summary jurisdiction of the court under R. S. C., Ord. 52, r. 25 (see p. 838, *ante*), and may be required to bring into court money received by him in that capacity (*Re Hulm and Lewis*, [1892] 2 Q. B. 261); but he is not so amenable where he merely purports to act on behalf of the duly qualified solicitor on the record (*Re Hurst and Middleton, Ltd., Middleton* v. *The Co.*, [1912] 2 Ch. 520, C. A., distinguishing *Re Hulm and Lewis*, *supra*); see p. 838, *ante*.

(*c*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 26. He is not entitled to be treated as a first-class misdemeanant (*Osborne* v. *Milman* (1887), 18 Q. B. D. 471, C. A.; see title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., p. 294).

(*d*) *R.* v. *Buchanan* (1846), 8 Q. B. 883 (a decision under the Solicitors Act, 1843 (6 & 7 Vict. c. 73), ss. 35, 36, which were repealed by the Statute Law Revision Act, 1874 (No. 2) (37 & 38 Vict. c. 96), but which are practically to the same effect as the Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 26, referred to in notes (*b*), (*c*), *supra*).

(*e*) Attorneys and Solicitors Act, 1874 (37 & 38 Vict. c. 68), s. 12. Penalty, not exceeding £10 (*ibid.*).

(*f*) *Re D., a Solicitor, Ex parte Law Society* (1911), 27 T. L. R. 535; and see *Harper* v. *Eyjolfsson*, [1914] W. N. 23; see pp. 848, 849, *ante*.

(*g*) Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 32; see *Osborne* v. *Milman*, *supra*.

(*h*) *Re Simmons* (1885), 15 Q. B. D. 348; *Re Jackson and Wood* (1823), 1 B. & C. 270; *Scott* v. *Miller* (1859), John. 220, 328; *Re Watts* (*an Unqualified Person*), *Davies* v. *Davies* (1913), 57 Sol. Jo. 534; see title CONTEMPT OF COURT, ATTACHMENT, AND COMMITTAL, Vol. VII., p. 294.

(*i*) *Re a Solicitor, Ex parte Incorporated Law Society* (1890), 63 L. T. 350; *Re a Solicitor, Ex parte Law Society*, [1912] 1 K. B. 302; followed in *Re a Solicitor, Ex parte Law Society* (1913), 29 T. L. R. 354.

(*k*) *Re a Solicitor and Re Simmons* (1886), 21 L. J. N. C. 462.

to punishment (*l*). On the other hand, a solicitor is permitted to employ outside assistance for the purpose of getting work done for which he is responsible throughout, and which would, in the ordinary course, be done by his clerks or servants (*m*). Thus, there is no breach of the law where law stationers act for solicitors in connexion with the carrying in of papers for obtaining probate of wills or the passing of residuary succession legacy or estate duty accounts at Somerset House (*n*), or where process servers, employed by solicitors to effect service of writs, settle affidavits of persons in their own employment, whether of personal service or of failure to effect service for the purpose of enabling the solicitors to obtain an order for substituted service (*o*).

Conveyancing matters.

The prohibition against unqualified persons acting as solicitors applies to the taking of instructions for or preparation of papers on which to found or oppose a grant of probate or letters of administration (*p*), and to conveyancing matters (*q*).

Part XI.—Commissioners for Oaths.

Appointment of commissioners.

1391. The Lord Chancellor may appoint practising solicitors and other fit and proper persons commissioners to administer oaths, including affirmations and declarations (*r*). A commissioner may by virtue of his commission take any affidavit for the purpose of being used in any court in England; but he is forbidden to administer an oath in any proceeding in which he is acting as solicitor or as clerk to any such solicitor or in any matter in which he is interested (*s*).

Officials.

Officers of the court performing duties in relation to the court and

(*l*) But a solicitor may agree with his employer to be paid by salary and to pay over to his employer any surplus which he may receive above and beyond his salary (*Galloway* v. *London Corporation* (1867), L. R. 4 Eq. 90).

(*m*) *Law Society* v. *Waterlow*, *Same* v. *Skinner* (1883), 8 App. Cas. 407, *per* Lord SELBORNE, L.C., at p. 411; *Re Louis*, *Ex parte Incorporated Law Society*, [1891] 1 Q. B. 649, *per* MATHEW, J., at p. 651.

(*n*) *Law Society* v. *Waterlow*, *Same* v. *Skinner*, *supra*.

(*o*) *Re Louis*, *Ex parte Incorporated Law Society*, *supra*.

(*p*) Legal Practitioners Act, 1877 (40 & 41 Vict. c. 62), s. 2. *Ibid.*, s. 3, defines "qualified practitioner" as any serjeant-at-law, barrister-at-law, certificated solicitor, proctor, notary public, certificated conveyancer, special pleader, or draughtsman in equity. The only three of these remaining are barristers (who are precluded by etiquette from acting direct), solicitors, and notaries.

(*q*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 44; Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 10.

(*r*) Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10), ss. 1, 11. As to oaths under the Merchant Shipping Acts, 1854—1889, the Customs Consolidation Act, 1876, the Patents Acts, 1883—1888, and the Pawnbrokers Act, 1872, and Acts amending the same, see Commissioners for Oaths Act, 1891 (54 & 55 Vict. c. 50), s. 1.

(*s*) Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10), s. 1 (2), (3); and see *Northumberland* (*Duke*) v. *Todd* (1878), 7 Ch. D. 777, 780; *Ross* v. *Shearman* (1820), 2 Coop. *temp.* Cott. 152; *Re Bagley*, [1911] 1 K. B. 317 C. A.

PART XI. Commissioners for Oaths.

authorised by the judge may administer oaths and take affidavits required for any purpose connected with their duties (*t*).

Ambassadors etc.

Every British ambassador, envoy, minister, chargé d'affaires, and secretary of embassy or legation exercising his functions in any foreign country, and every British consul-general, consul, vice-consul, acting consul, pro-consul and consular agent exercising his functions, in any foreign place may administer oaths and do notarial acts as effectually as though they were done by a duly qualified person in the United Kingdom, and any document so sworn or attested is receivable in evidence without proof of his seal or signature or of his official character (*a*).

Solicitors.

1392. In London and other large towns the practice is to grant commissions only to solicitors who have been in continuous practice for six years. This rule (which is not a rule of law, but one of practice in the Lord Chancellor's office) is in special cases relaxed in country districts where there is a real need for the services of a commissioner.

Procedure to obtain commission.

The procedure to obtain the commission is as follows:—The applicant leaves at the office of the Law Society, Chancery Lane, London, a petition for his appointment setting forth where and how long he has been engaged in active practice; this must be accompanied by a certificate of fitness signed by two practising barristers, two solicitors, and six householders or persons paying rent of offices. These papers, together with a notice to the registrar of intention to apply, must be left with the Law Society for at least three weeks, and the applicant must state the date of his first practising certificate. The petition when granted must be stamped with a £5 stamp and signed by the Lord Chancellor. The commission, before being acted upon, must again be left with the Law Society for registration and a fee of 1*s.* paid (*b*). The modern form of commission provides for its being exercised so long only as the commissioner practises as a solicitor. Where, however (as was the case before the Judicature Act, 1873 (*c*)), this limitation is absent from the commission, the holder of it can continue to exercise his powers under it, notwithstanding that he may have been struck off the rolls, until it is revoked by the Lord Chancellor (*d*).

(*t*) Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10), s. 2; and see R. S. C., Ord. 38, r. 16.

(*a*) Commissioners for Oaths Act, 1889 (52 & 53 Vict. 10), s. 6.

(*b*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 30.

(*c*) 36 & 37 Vict. c. 66.

(*d*) *Ward* v. *Gamgee* (1891), 7 T. L. R. 752. Persons holding commissions to administer oaths in common law granted to them prior to the 1st November, 1875, are by the words of their commissions entitled "to have, enjoy, and exercise the said office of our commissioner so long as it shall please us." By virtue of the Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10), s. 12 (b), the original powers conferred on existing commissioners are retained by them. Common law commissioners therefore hold their appointments until the same are cancelled by the Lord Chancellor (*Ward* v. *Gamgee, supra*). Solicitors holding commissions to administer oaths granted under stat. (1853) 16 & 17 Vict. c. 78, "London Commissioners to administer Oaths in Chancery," are empowered to act as such only "so long as [they] shall continue to practise as solicitors."

Duties of commissioner.

1393. The commissioner before whom an oath is taken must state truly in the jurat at what place and on what date the affidavit was taken (*e*). He must satisfy himself that the person named as the deponent and the person before him are the same, and that such person is outwardly in a fit state to understand what he is doing (*f*).

Colonial commissions.

1394. Commissions are also issued by various colonial authorities to solicitors practising in England and Wales to administer oaths and take affidavits and examinations for use in the colonies for which they are appointed (*g*).

Part XII.—Perpetual Commissioners.

Appointment and functions.

1395. The Lord Chief Justice of England is authorised to appoint perpetual commissioners for taking the acknowledgments of married women under the Fines and Recoveries Abolition Act, 1833 (*h*), and under the Settled Estates Act, 1877 (*i*). They may be such persons as he may think fit, and are removable by him at his pleasure (*k*). They may be appointed for every county, riding, division, soke or place for which there is a clerk of the peace. Although the appointment is in respect of a particular place, the commissioner may exercise his functions wherever the land to be conveyed may be situate or the married woman to make the acknowledgment may reside (*l*) or the acknowledgment may be taken (*m*). He has a lien upon the deed, certificate etc. for his fees (*n*). A perpetual commissioner who is personally interested in the matter in which the deed has to be acknowledged, or is the

The commissions granted under the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 84, contain the limitation inserted in the old Chancery commissions "so long as [they] shall continue to practise as solicitors." Commissions granted under the Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10), s. 1, contain a similar limitation.

(*e*) *Ibid.*, s. 5.

(*f*) *Bourke* v. *Davis* (1889), 44 Ch. D. 110, 126.

(*g*) The procedure is by petition addressed, in Canada to the Lieutenant-Governor, in other colonies to the Chief Justice of the Supreme Court. The petition should be verified by a statutory declaration, and be accompanied by a certificate of the Law Society as to the applicant's professional standing. The fee for such certificate is 10*s.* 6*d.* for members of the Society, and £1 1*s.* for non-members. As to the special procedure relating to particular colonies, see further, Solomon, Manual for Colonial Commissioners.

(*h*) 3 & 4 Will. 4, c. 74.

(*i*) 40 & 41 Vict. c. 18, s. 51.

(*k*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 81. As to appointments being made by the Lord Chief Justice of England, see Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 26.

(*l*) Fines and Recoveries Act, 1833 (3 & 4 Will, 4, c. 74), s. 82.

(*m*) *Blackmur* v. *Blackmur* (1876), 3 Ch. D. 633.

(*n*) *Ex parte Grove* (1836), 3 Bing. (N. C.) 304. As to his fees, see Regula Generalis, Hilary Term, 1833, fixing 13*s.* 4*d.* for each commissioner for each mile travelled by him.

PART XII. Perpetual Commissioners.

solicitor or a clerk to the solicitor acting in regard to it, is not competent to take the acknowledgment (*o*).

The commission when granted must be entered with the Law Society and a fee of 1*s.* paid (*p*).

(*o*) Rules under the Conveyancing Act, 1882, r. 1 (Stat. R. & O. Rev., Vol. XII., p. 550).

(*p*) Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 30. The minimum period of practice qualifying for a commission is five years, and in all cases it must be shown that there is need for the appointment of an additional commissioner. The application is by petition, which must be accompanied by a certificate, signed by the magistrates, clergy, and principal inhabitants of the neighbourhood, and also a certificate by two or more barristers, stating that the applicant is a fit and proper person to be appointed a perpetual commissioner. These papers are lodged at the office for filing the acknowledgments of married women. The fee on obtaining the commission is £1.

SOMALILAND.

See DEPENDENCIES AND COLONIES.

SORCERY.

See CRIMINAL LAW AND PROCEDURE.

SOUTH AFRICA.

See DEPENDENCIES AND COLONIES.

SOUTH AUSTRALIA.

See DEPENDENCIES AND COLONIES.

SOUTHERN NIGERIA.

See DEPENDENCIES AND COLONIES.

SOUTHERN RHODESIA.

See DEPENDENCIES AND COLONIES.

SOVEREIGN.

See CONSTITUTIONAL LAW.

SOVEREIGNS AND STATES.

See CONSTITUTIONAL LAW; CONFLICT OF LAWS.

SPARKS.

See AGRICULTURE; NEGLIGENCE; RAILWAYS AND CANALS.

SPEAKER IN THE HOUSES OF PARLIAMENT.

See PARLIAMENT.

SPECIAL CASE.

See COURTS; INTOXICATING LIQUORS; MAGISTRATES; PRACTICE AND PROCEDURE.

SPECIAL CONSTABLE.

See POLICE.

SPECIAL DAMAGE.

See DAMAGES.

SPECIAL GRANTS OF ADMINISTRATION.

See EXECUTORS AND ADMINISTRATORS.

SPECIAL INDORSEMENT.

See JUDGMENTS AND ORDERS; PLEADING; PRACTICE AND PROCEDURE.

SPECIAL JURY.

See JURIES; PRACTICE AND PROCEDURE.

SPECIAL LICENCE TO MARRY.

See HUSBAND AND WIFE.

SPECIAL OCCUPANT.

See DESCENT AND DISTRIBUTION; REAL PROPERTY AND CHATTELS REAL.

SPECIAL RESOLUTION.

See COMPANIES.

SPECIAL SESSIONS.

See COURTS; INTOXICATING LIQUORS; MAGISTRATES.

SPECIAL VERDICT.

See JURIES.

SPECIALTY DEBTS.

See BONDS; CONTRACT; EXECUTORS AND ADMINISTRATORS.

SPECIFIC DELIVERY OF CHATTELS.

See SPECIFIC PERFORMANCE; TROVER AND DETINUE.

SPECIFIC DEVISE.

See EXECUTORS AND ADMINISTRATORS; WILLS.

SPECIFIC GOODS.

See SALE OF GOODS.

SPECIFIC LEGACY.

See EXECUTORS AND ADMINISTRATORS; WILLS.

END OF VOL. XXVI.

INDEX.

SHIPPING AND NAVIGATION,
abandonment, rights of seaman under salvage agreement, of, illegality, 573, 574
ship, of, report to be made as to, 658
abroad, death of seaman, provisions relating to, 58
discharge of seaman, 55
duty of master, 56
mortgage or sale of ship, how effected, 30
payment of wages due where seaman left behind, 48, 49
sale of ship, discharge of seamen, 56
absence without leave, liability of seamen in respect of, 60
penalty attaching to offence of, 61
accident, definition of, 114
exception protecting charterer against, 132
liability where occurring in obeying directions of harbour master, 640
lights to be carried by vessels not under command through, 386
accidents of navigation, application of exception as to, extent of, 115
protection of shipowner by exceptions as to, 114, 115
accommodation, seamen, for, provision on British ship, 46
account, liability of co-owners to, 37
managing owners to, 36
acknowledgment, bill of lading as an, 144, 145
act of God, insertion of stipulation as to, reason for, 108
nature of peril known as, 108
non-liability of shipowner for damage caused by, 107
action against owner in respect of collision, essentials to right of, 500
enforcement of general average contribution by, 323
in rem, rights on collision as to, 545
time within which to be commenced, 545
limitation of time for, for damage by collision against harbour authorities, 648
none on failure to give certificate on discharge of seaman, 55
restrictions where taken by seaman or apprentice, 53
salvage, essentials to maintenance of, 581
adjustment, general average contribution, of, how determined, 323, 324
administration of effects of deceased seamen, 58, 59
Admiralty Court Act, 1861, damages for personal injuries under, 544
warrant, privileges granted to yacht owners holding, 661
advance freight, payment subject to insurance, effect of, 313
shipowner's right to, 312
special contract required as to, 134, 135
taking into account of, on completion of voyage, 313
what constitutes, 313, 314
when payable, 311, 312
notes, not negotiable, 51
stipulation in agreement as to, 51
advances to master at port of loading, insurance of, effect of, 313, 314
when on account of freight, 313, 314
advertisement, contract between parties may be contained in, 147, 148
sale of cargo by wharfinger or warehouseman, on, 283
advice, as salvage service, 557, 558
note, nature of, 148
when terms between parties contained in, 147, 148
agent, authority of, to sign bill of lading, extent of, 145
contract of charterparty by, effect of, 88
liability under charterparty not under seal, 89
unauthorised charterparty, 90
lien on bill of lading, 288

SHIPPING AND NAVIGATION—*continued.*
agent, managing owner as, 35
passage broker, of, how appointed, 351
rights and liabilities under charterparty where principal undisclosed or unnamed, 90
of consignee or indorsee as affected by acts of, 165
on payment of light dues, 631
transfer of bill of lading to, 159
agreement as to salvage, *see* salvage agreement.
right to salvage reward as affected by, 566
with crew, certificate as to, 43
delivery of, 43
deposit of, 658, 659
nature of, 41, 42
posting of, 42
production of, half-yearly, 43
rescission of, by court, 43
signature of, 42
agreements, crew, with, deposit of, 658, 659
aground, effect of local rule for steam vessels when, 478
in fairway, duty of persons in charge of vessel when, 498
lights to be shown by vessel when, 403
signals to be given by vessel when, 388
"aground," when vessel on the mud is not, 406
alien master, grant and renewal of pilotage certificate to, 602
mate, grant and renewal of pilotage certificate to, 602
allotment notes, form of, 51
payment of wages by means of, 51, 52
under, when beginning, 52
alterations to ship, registration of, when necessary, 31
"always afloat," stipulation containing qualification, effect of, 181
anchor, *and see* at anchor.
duty of vessel coming to, 489
lights, object of regulations as to, 403
position of, 405
to be shown by vessels, 403, 406
projecting, liability as to, 485, 500
watch, duty to have an, 489, 490
anchoring in fairway, when vessel justified in, 498
anchors, duty of steamship navigating in port as to, 484
vessels may be excused for not dropping, 484, 485
"and/or," as to effect in charterparty, 100
annual survey of passenger steamer, owner's duty as to, 332, 333
"another such light," meaning where an addition to an anchor light, 406
antecedent and subsequent negligence, burden of proof in cases of, 511
instances of alternatives relating to, 511, 512
liabilities, cesser clause as affecting, 133
negligence, subsidiary rule applied and not applied to, instances, 515, 516
anti-scorbutics, carriage by ship, provision as to, 45
appeal, against action of surveyor of ships, 650
decision of pilotage authority, 608, 609
finding of inquiry, 594
salvage award, grounds of, 581, 582
House of Lords, to, as to salvage reward, 581, 582
procedure on, in respect of inquiries or investigations, 594, 595
right where certificate of clearance refused to emigrant ship, 81, 82
appliances, non-existence of, compliance with Sea Regulations affected by, 369, 370
apportionment, agreement between salvors for, binding effect of, 573
salvage reward, of, 582—586
as between independent salvors, 584
master, crew and passengers, 583
officers and men of Government services, 584
owners, 582, 583

SHIPPING AND NAVIGATION—*continued.*
apportionment, salvage reward, of, as between separate sets of salvors, 584, 585
binding nature of agreement for, 573
how made, 582, 583
to whom made, 582
apprentice, binding of, provisions as to, 41
deductions from wages of, liability, 50
desertion or absence without leave, liability, 61
apprenticeship indentures, deposit of, 658, 659
execution of, 41
rescission of, 43
approaching vessel, navigating officer's duty to observe bearing of, 429
vessels, rules governing behaviour of, 425 *et seq.*, 433 *et seq.*
wrongful act of one of two, effect of, 426
appurtenances, mortgage of ship and her, effect of, 24
arbitration clause, stipulation in charterparty as to, 136
arrest, enforcement of bottomry bond by, 73
exemption of Crown ships as to, 533
mail ship as to, 355, 356
transport from, 560, 561
foreign ships, at instance of English part-owner, when permitted, 37
majority and minority owners, respective powers as to, 36, 37
necessaries, for, 67, 68
non-payment of tonnage rates, on, 639
persons on mail ships, of, procedure, 355, 356
statutory powers of, 546
arrival in dock, stipulation in charterparty as to, 183, 184
of ship, at port of discharge, what amounts to, 260, 261
consignee's duty to discover, 263, 264
articles of the Sea Regulations, 1910, *see* Sea Regulations, 1910.
"ascertained," meaning when referring to position of vessel in fog etc., 421, 422
assault, seaman's liability for, 60, 61
assessment, salvage reward, of, by the court, 575
value of property salved, 576, 577
salved property, of, place of, 587
value of ship, cargo and freight, of, deductions allowed on, 587, 588
assignment, freight, of, effect of, 301—303
salvage or wages by seaman, effect of, 54
assistance, duty to render after collision, 371, 372
failure to render, 371, 372
associates of salvors, rights of, 565
shares of, in salvage reward, 583
assortment, delivery to owner where goods landed for, 281
"at all times of the tide," qualification of stipulation by, effect on loading, 181
at anchor, collision with vessel, liability, 515, 516
duty to keep clear of vessel, 488
meaning of, 404
method of bringing vessel up equivalent to being, 405
precautions to be taken against driving when, 490
"at or near the stern," when anchor light is, 405
average, *and see* general average.
adjuster, duty of shipowner to employ, 325
contribution, cargo owner's right to, 74
meaning of, 311
award, salvage, finality of, 589
badge, emigrant runner, of, liability for misuse of, 352
bail bond, on arrest by minority owners, amount of, 37
bailee, shipowner's liability as, 326
ballast, stipulation for provision of, as affecting time for loading, 185
banker, indorsement of bill of exchange by seller to, effect of, 162
bankruptcy of mortgagor, as affecting rights of mortgagee, 27
barometer, provision by harbour authority, 645
barge, *see dumb* barge.
barratry, acts of master amounting to, 112, 113
exception as to, meaning and effect of, 112
owner cannot be guilty of, 112

SHIPPING AND NAVIGATION—*continued.*
barratry, when master or crew guilty of, 62
barrels, damage through heating, liability, 204
battens, description of cargo in charterparty as, 99
Beachy Head, proper place for look-out off, 486
beacons, duty of harbour authority as to, 645
management of, 627
meaning of, 627
" being overtaken," meaning of, 400
berth, arrival at, provision as to exact place of, effect of, 184
when necessary to constitute, 261
consignee's duty to select discharging, 262
delay of ship in getting to, liability as to, 182, 183
inaccessibility or unavailability of, as affecting discharge, 262
loading, charterer's right to name, 183
notes, when terms between parties contained in, 147, 148
removal to another, liability of charterer, 184
rights of charterer on naming, 261, 262
bill of exchange, bottomry bond as security for, effect of, 73, 74
freight not discharged by dishonoured, 307
indorsing over to banker, effect of, 162
seller's right to draw on buyer on tender of bill of lading, 160, 161
lading, agent's authority to sign, extent of, 145
an acknowledgment of receipt of goods, 144, 145
as a document of title, 146, 147
negotiable instrument, extent of, 166, 167
between shipowner and indorsee, effect of, 148
evidence of contract with shipowner to pay freight, 298
quantity shipped, 145, 146
shipment, statutory provision as to, 155
" clean," meaning of, 151
contract under, where ship demised and not demised, 169, 170
definition of, 144
difference between terms of charterparty and, effect of, 169
discharge of shipowner on presentation of, 167, 168
drafting of, 151
effect where charterparty a demise of the ship, 169, 170
shipper is the charterer, 168, 169
exceptions in charterparty as part of, 177
existence of charterparty as affecting, 148, 149
form of, 150, 151
holder of, as person entitled to receive cargo, 264
when in position of shipper, 173
subject to shipowner's lien, 285, 286
inconsistent terms of charterparty not incorporated in, 177
incorporation of terms of charterparty in, 175, 176
indorsement of, effect of, 165, 166
insertion of a name in, effect of, 144
liability of indorsee in respect of, 165
to pay freight, 296
master under, when exceeding authority, 155
shippers for freight as affected by issue of, 293
lien of agent on, 288
limits of authority of master on signing, 155
matters in which shipowner liable where master signs, 154
mortgage or pledge of, 147, 162, 163
omission of negligence clause from, where contained in charterparty, effect of, 107
position of shipowner under, where ship not working under charterparty, 168
possession of more than one by shipper, effect of, 157, 158
practice as to, where delivered in a set, 152
presumption of authority of master to sign, 154
provision as to freight in, 106, 107
liability to general average contribution, 322
for carriage of goods freight free, effect of, 308, 309
payment of freight in, 303, 304
primage in, 311

SHIPPING AND NAVIGATION—*continued.*
bill of lading, provision in charterparty for signing by master, 107
qualification by signature of master, practice, 156
reference in charterparty as to, construction of, 285, 286
to charterparty in, construction of, 176
reservation of right of disposal effected by, 160
right to receive, 152
rights of shipper under, 171, 172
seller's right to draw bill of exchange on buyer on tender of, 160, 161
set of, 152
signature by master, when binding on shipowner, 174
person other than master, effect of, 173, 174
signing of, 153
stamping of, 151
statements in, binding shipowner, 145, 146
statutory rights of consignee or indorsee under, 164, 165
stipulations as to, in charterparty, 105, 106
in charterparty giving master authority to sign, 174, 175
terms of contract contained in, 148
through, payment of freight under, 149, 150
when contract expressed in, 149
transfer of, as equivalent to transfer of goods, 159, 160
effect of, 157
mode of, 158, 159
to agent, 159
consignee, effect of, 172, 173
when passing no property, 163, 164
transhipment of cargo through, 234, 235
when shipowner not bound by, 173
master's signature to, 146
shipper not compelled to accept terms of, 172
written statement as to quantities in, effect of, 142
sale, transfer of property in British ships by, 21, 22
binnacle light, not a proper stern light, 402
births, duty of master of ship as to, 64, 348, 658
blockade, rights under charterparty as affected by, 109
Board of Trade, appointment of emigration officers by, 353
as superintending shipping authority, 649
confirmation of bye-laws of pilotage authorities by, 600
control of lighthouse authorities by, 632
local marine board by, 654, 655
various authorities by, 651
over ship's measurements, 19, 20
duty to furnish copies of Sea Regulations, 362, 363
enforcement of authority of, 649, 650
establishment of local marine boards by, 652, 653
exercise of powers of pilotage authority by, 609
inquiry at instance of, 594, 595
power as to certificates and inquiries, 649
certifying passenger ship, 332—334
inquiries and investigations, 594, 595
making pilotage orders, 596
on survey of ship, 17
relating to distribution of deceased seaman's effects, 58, 59
to appoint surveyors and inspectors, 650
enforce mercantile laws, 652
make collision regulations, 359, 360
regulations by, as to steerage passengers, 338
reports of shipping casualties to be made to, 590
to be made to generally, 652
boarding wreck without authority, liability, 556
bond, limit of pilot's liability on his, 605, 615
" bonus," inclusion in term " wages," 53
bottomry bond, enforcement of, 73
form of, 69, 70
holder's rights where ship lost by default of another vessel, 73

SHIPPING AND NAVIGATION—*continued.*
bottomry bond, issue of, essentials to, 70
loss of vessel as affecting, 73
maritime lien in respect of, 620
master's duty before raising money by, 70
to communicate with owner before giving, 71
nature of, 69
negotiability of, 73, 74
no liability to contribute to salvage reward, 586
pledge of ship by way of, 69, 70
postponement of master's claim for wages to, 53
priority of claims in respect of, 623
rights of holders as against mortgagees, 29
risk undertaken by lender on, 71
security obtained by, extent of, 70
when payable, 72, 73
who may make advance on, 72
form of contract of, 241, 242
nature of contract by, 241
principle applied where several loans raised on, 246
breakdown of machinery, effect on payment of freight, 105
British flag, as to the law in relation to use of, 11, 660, 661
Government vessels, exemption in respect of salvage award, 560, 561
India, as to meaning of, 332
national character, assuming or concealing, penalty, 11, 32, 33
possessions, inquiries in, 593
places as to which orders of recognition of certificates have been made, 38, 39
power of Board of Trade where certificate granted to passenger steamer in, 335
to authorise inquiries as to casualties in, 593
recovery of light dues in, 631
ship, accommodation for seamen in, provision for, 46
adjustment of compasses of, 77, 78
certificated officers to be carried by, 38
closing the registry of, 19
deserters from, how dealt with, 59, 60
division into shares, 18, 19
fire hose on, provision of, 78
life-saving appliances on, provision of, 78
marking of, 17, 18, 78, 79
mortgage of, formalities, 23, 24
name of, provisions as to, 17
owners of, who may be, 16
ownership of, how acquired, 15
port of registry of, what is, 17, 18
prohibition of transfer of, 23
registration of, 16, 17
abroad, effect of, 612
return home of seamen wrecked on, provision for, 56, 57
storage of grain in, 80, 81
survey of, 16, 17
transfer of, mode of, 21, 22
unseaworthy, liability on sending to sea, 77
broker, payment of commission to, provision for, 136—138
sale or letting of passages, licensing of, 350
brokerage clause, stipulation in charterparty relating to, 136
when commission payable under, 137
bullion strong room, must be reasonably fit, 188, 189
shipowner's duty as to, 113
buoying of wreck, duty and liability as to, 555
buoys, duty of harbour authority to lay down, 645
management of, 627
meaning of, 627
burden of proof, as to ambiguous stipulations in charterparty, 130, 131
existence of salvage agreement, 570, 571
speed of "keep out of the way" vessel, 455
cases of antecedent and subsequent negligence, 511
collision cases, in, 500, 501

SHIPPING AND NAVIGATION—*continued.*
burden of proof, defence of inevitable accident, in, 535, 536
shifting on proof of damage by collision, 538
where overtaken vessel is run down, 402
Bute Docks, Cardiff, local navigation rules affecting, 481
bye-laws, binding nature of, 647
confirmation of harbour, 646
exemption from compulsory pilotage by, 611
harbour authority's power to make as to fines, 643, 645, 646
objections to, rights of pilots and dock authorities as to, 600
pilotage authority, of, confirmation of, 600
posting of copy in harbour, 647
power of pilotage authorities to make, purposes, 599, 600
proof of, 647
"cabin passenger," definition of, 332
cable ship, lights to be carried by, 386, 387
Canadian waters, narrow channels in, 466
canal owner, limitation of liability of, 612—617
canals, exception as to "perils of the sea," when applicable to, 110
navigation in, 376
cancellation clause, charterparty, in, effect of, 97, 98
salvage agreement, of, grounds of, 572
"cannot get out of the way," meaning of phrase, 387
capture, deviation for purpose of escaping, effect of, 95
captured ship, recovering or restoring, as salvage services, 558
care, rules afloat and ashore as to, compared, 505
salvor's duty to show reasonable degree of, 577
cargo, acceptance by shipowner, how far bound as to, 195, 196
amount to be carried, stipulations as to, 101
as subject of lien for purposes of salvage services, 579, 580
authority of master as to sale of ship or, 75, 76
carriage of dangerous goods as, charterparty should provide as to, 100, 101
charterer's duty to describe, 99
have ready for loading, 190, 191
procure, 191, 192
combustible, regulations as to, 643
conflicting claims to, shipowner's duty as to, 264, 265
conveyance to place of loading, charterer's duty as to, 192
deductions allowed on valuation for purposes of salvage reward, 588
definition for purposes of salvage reward, 559
delay in procuring, caused by circumstances contemplated, effect of, 193, 194
when source a colliery, effect of, 193, 194
delivery of, place of, 258, 259
demand by consignee after master commences landing, rights, 279, 280
description in charterparty, 99, 100
deterioration of, master's duty to check, 226, 227
discharge of, "at consignee's risk and expense," effect of, 268, 269
duties of shipowner apart from stipulations as to, 266, 267
regulations as to, 642, 643
shipowner on delivery of, 265
stipulations affecting duties of parties as to, 267, 268
where berth not available or inaccessible, 262
excessive amount of, shipowner's right to refuse, 197, 198
failure by charterer to ship proper cargo, measure of damages, 209
fitness of ship to carry, need of, 214
general average loss of, when arising, 317, 318
grain, of, stowage of, 80, 81
hypothecation of, conditions justifying, 242—245
definition of, 240, 241
must be partly in its interest, 244
landing of, when necessary to preservation, 227, 228
shipowner's rights as to, begins, 280, 281
loading and discharge of, provision in charterparty for, 119—121
loss of, as affecting right to advance freight, 312
master's power over, during voyage, 222
to land and warehouse, 279, 280

SHIPPING AND NAVIGATION—*continued.*
cargo, master's power to raise funds on the, 243—245
meaning of, for salvage purposes, 559
measure of damages for failure to provide, 207, 208
non-delivery of, 289, 290
misdescription of, effect where bill of lading is qualified, 99
nature of, prohibited on emigrant ship, 345, 346
to be procured by charterer, 191, 192
non-delivery of, measure of damages as to, 289, 290
option to select, provision in charterparty as to, 100
postponement of rights of lender on, 246
preservation of, master's duty as to, 224 *et seq.*
provision of, when charterer excused from, 192, 193
rights of shipowner where not as described, 197
shipper on delivery of, 199
risk attaching to delivery to ship of, 199, 200
sale of, by master, duty to communicate with owner before sale, 253
in preservation of, effect of, 250
necessity for, what amounts to, 251, 252
of whole, when justifiable, 252, 253
payment of freight after, 254
shipowner's liability for, 249, 250
to complete voyage, authority, 249
master's power as to, 76, 228, 248
shipowner's duty as to preservation of, 224
storage by shipowner, nature of place for, 188
of, as affecting seaworthiness of ship, 213
particular kinds of shipowner, liability as to, 189, 204
transhipment during voyage, master's rights as to, 222
kinds of, 233, 234
on cargo owner's behalf, 239, 240
to earn freight, effect of, 237, 238
under contract, liability, 234
unloading of, consignee's duty as to taking delivery on, 271
liability on delay in acceptance on, 271
obligation as to, 254, 255
shipowner's default in, effect of, 272, 273
valuation for purposes of general average contribution, 324
weight or measurement of, to ascertain freight, 308—310
cargo owner, contribution to salvage reward as between shipowner and, 586, 587
exercise of master's implied authority on behalf of, 229—231
hypothecation of cargo on behalf of, 247
inability to communicate with, as condition of hypothecation of cargo, 244, 245
liability to expenses where master has implied authority to deal with cargo, 231
general average contribution, 322
under salvage agreement, 573
master's duty before sale of cargo to communicate with, 253
implied authority on behalf of, 228
power to bind, on transhipment, 240
position of, on hypothecation of cargo by master, 241
right as against owners of carrying ship, 542
colliding vessel, 542, 543
to arrest of ship, 546
in respect of jettison, 74, 75
on wrongful sale of cargo, 247, 248
to be communicated with before cargo dealt with, 231
recover loss in consequence of collision, 541
where both vessels at fault, 522
cargo improperly sold, 76, 77
salvage agreement as affecting, 573
shipowner's liability to, 232
transhipment of cargo on behalf of, effect of, 239, 240
carriage of mails, regulations, 354—356
casks, responsibility for storage of, 203, 204
water, provisions as to an emigrant ship, 339
casualties, *and see* shipping casualties.

SHIPPING AND NAVIGATION—*continued.*
casualties, duty to report, 590
report of, form of, 590
cattle, live, shipowner's duty as to cargo of, 189
prohibition as to carriage of, in emigrant ship, 346
watering of, master's duty as to, 225
"cause," meaning in law of negligence, 509
cause of action, negligence as, 499, 500
certificate, as to agreement with crew, 43
medical stores, penalty for proceeding without, 45
exhibition by master or owner of passenger ship, 334
illegal use of, liability of ship to forfeiture on, 33
issue to passenger steamer, 333, 334
liability of owner or master of passenger steamer plying without, 334, 335
measurement of foreign ship, of, effect of, 615, 616
of clearance, granting of, 81, 82
competency, granting of, 38
offences relating to, 38
preservation of, 39
production by master, 39
recognition where granted in British possession, 38
discharge, duty of master as to, 55
mortgage or sale, where transaction abroad, 30
officer, delivery of judgment where cancelled or suspended, 594
jurisdiction to deal with, constitution of court, 592, 593
passenger steamer's, power of Board of Trade when granted in British possession, 335
penalty on failure by master or owner of steamer to exhibit, 334
registration, of, detention of vessel pending production of, 16, 17
registry, of, admissibility as evidence, 31, 32
evidence of nationality of British ship, 20
granting of, 20, 21
indorsement on change of master or ownership, 21
lost, furnishing of new in lieu of, 21
provisional, when granted, 21
when required to be delivered up, 21
survey, of, granting of, 17
power of the Board of Trade as to, 17
transfer of master or mate to another ship as affecting, 602
certificated cook, carriage by ships, provisions as to, 44
officers, British ships liable to carry, 38
certificates, power of Board of Trade as to, 649
cesser clause, charterer's liability to pay chartered freight as affected by, 294, 295
construction of, 133
insertion in charterparty, effect of, 133, 134
meaning of "loading excepted" in, 133
change of course, when justified in fog, 424
chartered ship, liability for collision by, 526, 527
of owner in respect of, 34
charterer, acceptance of ship arriving at port of loading, 179, 180
amount of cargo to be provided by, 102
berth named by, nature of, 184
construction of stipulations designed to relieve, 130
delay in arrival of ship at berth, when falling on, 184
delivery of goods to place of loading by, duty as to, 198, 199
destruction of goods during loading as affecting liability of, 201, 202
discharge from contract by delay or deviation, 93
duty as to naming port of discharge, 255
to have cargo ready for loading, 190, 191
procure a cargo, 191, 192
ship cargo according to description, 99
effect of bill of lading where goods shipped by, 168
exceptions relieving, from consequence of delay, 129, 130
failure to provide cargo, when excused, 192—195
ship proper cargo, measure of damages, 209
indemnity to shipowner by, where master signs bills of lading, 107

SHIPPING AND NAVIGATION—*continued.*
charterer, liability for his stevedore's defective stowage, 203
on naming an unsafe port, 256, 257
to general average contribution, 322
pay chartered freight as affected by cesser clause, 294, 295
freight, 293, 294
not affected by ownership of goods, 294
limitation of liability for damages, 612—617
losses to which limitation of liability applies to, 613
obligation of, extended by stipulation, 118, 119
option to name port of discharge, 97
outbreak of war as affecting contractual liability of, 193
payment of dispatch money to, effect of, 126
freight by, where goods sold during voyage, 72
where ship under, 297, 298
position of parties where shipper is not, 169—172
premature readiness of ship as affecting, 193
principal exceptions inserted for protection of, 131—133
principles prevailing where contemplated circumstances prevent providing of cargo by, 193, 194
right as to freight against consignee, 298
on naming a berth, 261, 262
to damages for delay on non-arrival of ship at port of loading, 178, 179
where shipowner fails to provide ship, 209, 210
demurrage and lay days, 124, 125
name loading berth, 183
place agent on vessel during loading, 119
salvage reward, 565, 566
stowage by, effect on liability of shipowner, 205, 206
when disqualified from claiming salvage reward, 565, 566
excused for failure or delay in loading, 200, 201
no right under charterparty to carry passengers, 327
not liable for loss of vessel, 99
stevedore the servant of, 207
time begins to run against, 126, 127
charterparty, admissibility of parol evidence to explain terms of, 140, 141
alterations and additions to, principles governing, 142
" and/or " in, effect of, 100
arbitration clause in, 136
brokerage clause in, 136, 137
cancellation clause in, effect of, 97, 98
cesser clause in, effect of, 133, 134
chartering ship as general ship in, effect of, 100
construction of, a question for court and jury, 141
rules of, 138—141
contract between shipowner and charterer is the, 175
of carriage not necessarily expressed by, 147, 148
definition of, 84
operation of, 84, 85
under bill of lading where ship not demised by, 170—172
dangerous goods as cargo, provision as to, 100, 101
demise, by, kinds of, 85
rights of charterer under, 86
description of cargo in, 99, 100
ship in, 91
duty of shipowner as to provision of ship under, 103
effect of bill of lading in addition to, 148, 149
where ship demised by, 169, 170
where under seal, 88, 89
exceptions as to fitness of ship no protection to shipowner, 189
in, how far mutual, 118
protecting charterer, when operative, 201
existence of, as affecting position of shipowner, 168
express lien conferred upon shipowner by, effect of, 285—287
stipulations as to deviation in, nature of, 96, 97
inconsistent terms of, not incorporated in bill of lading, 177

SHIPPING AND NAVIGATION—*continued.*
charterparty, incorporation of terms in bill of lading, 175
liability of shipowner may be regulated by, 107, 108
nature of, where not by demise, 86
negligence clause in, effect of, 116
not by demise, rights of charterer under, 86, 87
option as to selection of cargo, provision as to, 100
parties to, 88
penalty clause in, operation of, 135, 136
perils excepted from shipowner's contract of, 108
persons not bound by terms of, 175
preliminary voyage may be provided for in, 97
reference in bill of lading to, construction of, 176
rules of agency applicable when not under seal, 89, 90
scope of exceptions relating to loading, 194, 195
signing of bills of lading by master, provision for in, 106. 107
stamp duty on, 87, 88
stipulation in, as to amount of cargo, 101, 102
arrival at specified port, 182, 183
in dock, 183, 184
bringing cargo to ship, 118, 119
damages, 135, 136
day of sailing or arrival, liability of shipowner, 93, 94
different rates of freight, when occurring, 104
disbursements, 104
payment of dispatch money, 128, 129
precise spot of berth, effect of, 184
provision of full cargo in, 102
reporting of ship, 137
time for loading and discharge, 119, 120
voyage, effect of, 94
that cargo be loaded and discharged with customary despatch, effect of, 121
stipulations in, excusing charterer from delay or failure to provide cargo, effect of, 194, 195
relieving the charterer, 129, 130
which are conditions precedent, 91, 92
test of condition precedent in, 143
whether by demise or not, 86
time of voyage, conditions of, 92, 93
provision for successive voyage in, effect of, 93
stipulations contained in, 98
usual provisions of, 104, 105
unauthorised, agent's liability under, 90
unstamped, effect of, 87
value of written and printed parts of, 141, 142
when disregarded, 170
master no authority to vary terms of, 174
shipper's liability to pay freight not affected by, 292, 293
written and printed parts of, relative value of, 141, 142
chief officer, as successor to master on death at sea, 40
clearances, duty of master to obtain, 218
necessity for, before ship sails, 81
power to withhold on non-compliance with statutory provisions as to ship's papers, 43
non-payment of tonnage rates, 639
shipowner's duty to obtain, 126
"close-hauled," duty of vessel when, 425
how vessel is ascertained to be, 430, 431
when vessel is, 431—433
"close-hauled on the port tack," duty of vessel hove to and appearing to be, 432, 433
Clyde, local navigation rules affecting, 481
coal hulk, when ceasing to rank as a ship, 14, 22
supply of, necessary to seaworthiness, 215

SHIPPING AND NAVIGATION—*continued.*
coastguards, right to apportionment of salvage reward, 584
when entitled to salvage reward, 569, 570
coasting licence, not necessary to yacht owners, 661
collateral negligence, not material in attaching blame, 505
when damage never "caused" by, 508
colliery, delay in providing cargo from, effect on rights of parties, 193, 194
working days, meaning of, 123
collision, *and see* risk of collision.
assistance after, ship to blame no right to salvage for, 546
between tug and tow and third vessel, division of damages, 521
liability, 527, 528
burden of proof in case of, 500, 501
cargo owner's right to recover loss in consequence of, 541
compulsory pilotage as affecting liability for, 529, 530
consideration of "cause" of, 509
damage to another vessel without, 506
departure from rules may be necessary to avoid, 367
distribution of loss where more than two vessels at fault, 521
duty of both vessels when one alone cannot avoid the, 445, 446
injured party to mitigate damage by, 538
keep-on vessel to assist in preventing, 450, 451
to stand by and render assistance on, 371, 372, 535
stop and reverse to avoid, 460
entry of particulars in log, 372
exception against, when shipowner protected by, 114
exercise of jurisdiction *in personam* when damage caused by, 546
history of general regulations for preventing, 372, 373
instances where subsidiary rule applied and not applied to antecedent negligence, 515, 516
interpretation of articles framed to prevent, 472, 473
rule as to one vessel keeping course to prevent, 446
keep-on vessel's duty to take action to avoid, 449, 450
liability where chartered ship in, 526, 527
limit of liability in case of, 617
limitation of time of action for, 524
yacht owner's liability in case of, 661
meaning of, 359, 360
negligence causing damage by, 499, 500
of both vessels causing, 507
presumption as to liability for, 525
proof of negligence in case of, rules, 501, 502
regulations for preventing, authority making, 359, 360
see Sea Regulations.
rights *in rem* in respect of, 545
of master and crew on, 543
third innocent vessel as to damages for, 522
to salvage award as affected by, 563
rule as to division of loss by, since 1911...517, 518
governing construction of rules by navigating officer in avoiding, 471, 472
salvage reward not affected by statutory duty to assist on, 563
sea regulations applicable to foreign vessels as to, 12
shipowner's liability for, presumption, 525, 526
rights as to damages on, 542
subsequent loss after damage by, presumption as to, 538, 539
subsidiary rule as to negligence in cases of, 512, 515
vessels may be excused for not dropping anchors to prevent, 484, 485
when antecedent fault not the cause of, 512, 513
flare shown "in sufficient time to prevent," 398
shipowner excused from liability in respect of, 111
the result of an inevitable accident, 535
with wreck, liability as to, 533, 534
colonial courts, jurisdiction as to inquiries and investigations into shipping casualties, 592
light dues, recovery of, 631, 632
ships, application of Merchant Shipping Acts to, 13
"colonial voyage," definition of, 332
colours, *see* flag.

SHIPPING AND NAVIGATION—*continued.*
combustible cargo, supervision of, in harbour, 643
commission, liability to pay, provision for, 137, 138
payment for services rendered to ship, provision for, 137
rate usually payable under brokerage clause, 136
when payable under brokerage clause, 137
Commissioners of Irish Lights, area of control of, 628
constitution of, 628
Northern Lighthouses, area managed by, 627, 628
common carrier, shipowner as, 195, 196
liability as, 325, 326
danger, right to general average contribution as affected by, 316
compasses, adjusting of, regulation as to, 77, 78
compensation, liability for payment on abuse of distress signals, 479
pilots, of, provision for, 597, 605
seamen's right to, on shortage of provisions, 44
wrongful discharge of seaman as ground of claim for, 52
complaint, duty of master where seaman or apprentice desires to make, 46
compulsory pilot, liability of tow as affected by charge of, 529
not the "person in charge," 371
pilotage, as affecting liability of vessel in fault, 519, 520, 529, 530
distressed seamen are not passengers for purposes of, 57
districts, exemptions as to abolished, 610
meaning of, 610
seaworthiness of vessels in, 215
exemption by bye-law from, 611
of pleasure yachts from, 660
proof of, 530
provision for, 598
in pilotage order as to, 599
right of action as affected by, 500
shipowner's liability as to, 611
ships excepted as to, 610, 611
subject to, 609, 610
condition precedent, shipowner's failure to perform as to loading, effect of, 192, 193
statements on face of charterparty amounting to, 142
stipulation in charterparty amounting to, 91, 92
subsequent events as affecting, 143, 144
test of, in charterparty, 143
conflict of laws, as affecting contract for carriage of passengers, 329
construction of charterparty in case of, 141
conservancy authority, definition of, 554
limitation of liability of, 612—617
powers as to removal of wrecks, 554
consignee, conduct of, as affecting liability to unload, 278, 279
delay in acceptance of delivery, by, when unable to rely on shipowner's default, 272
delivery of goods to, under mate's receipt, 153
duty as to discharge of cargo, 267
taking delivery of cargo, 271
unloading of cargo where no time fixed, 274, 275
to discover arrival of ship, 263, 264
pay freight, 164
take goods after knowledge that he can receive them, 281
failure of, to discharge ship, excuses for, 272, 273
liability apart from statute, 166
for delay in unloading cargo, extent of, 273, 274
when taking discharge at own risk and expense, 268, 269
where time fixed for acceptance of cargo, 271, 272
obligation to unload, when arising, 254, 255
right on coming forward after master commenced landing cargo, 279, 280
paying ship dues, 631
to damages in case of delay on voyage, 289
indemnification for loss, extent of, 291
select berth of discharge, 262

SHIPPING AND NAVIGATION—*continued.*
consignee, rights of charterer as to freight against, 298
where alternative methods of delivery are available, 269
statutory liability to pay freight, 295, 296
transfer of bill of lading to, effect of, 172, 173
when liable to general average contribution, 322, 323
consignments, shipowner's duty as to sorting, 270, 271
constructive total loss, rights of defendant to wreck where plaintiff recovers, 539
consular officer, inquiries abroad by, 593
contract by charterparty, definition of, 84
master, effect of, 65
of carriage, charterparty not necessarily expresses, 147, 148
document in which found, 175
interests involved during performance of, 315
towage, *and see* towage.
obligations relating to, 357, 358
ticket, as affecting right of recovery for personal injuries through collision, 543, 544
issue to ship's passenger, when necessary, 336, 337
production by passenger to emigration officer, 337
transhipment of cargo to earn freight as affecting, 237, 238
contractor, owner of wreck may be liable for acts of, 534
contribution, as between cargo owner and shipowner, 586, 587
owners for damages for loss of life, 523, 524
assessment of salved property for purposes of, 587
award, finality of, 589
general principles as to, 586—589
reward for life salvage, in respect of, 587
salvage services, in respect of, liability for, 586
control of ship, where ship held in shares, 36
conversations, contract of carriage may be inferred from, 147, 148
conversion, shipowner, by, what amounts to, 152
convoy, warranty for, effect of, 83
cook, ships compelled to carry a, 44
steerage, carriage in emigrant ship, 341, 342
costs, priority of solicitor's lien for, 625
security for, on appeal from judgment on inquiry or investigation, 594, 595
county court, appeal by pilot to judge of, 609
jurisdiction in respect of damage to cargo, 546
"course and speed," meaning in article 21...446, 447
"course," meaning of, 475
Court of Appeal, power to award salvage reward, 582
court of summary jurisdiction, inquiry by, 592, 593
courts of survey, duties of, 662
Cowes, local navigation rules affecting, 481
creditors, claims to property of deceased seaman by, 59
crew, agreement with, *see* agreement.
binding effect of salvage agreement on, 572, 573
carriage of letters by, illegality of, 354, 355
insufficient, liability as to, 495
lists of, delivery compulsory, 657, 658
to be sent to Registrar-General, 657
necessity for furnishing ship with adequate, 213
right as to loss occasioned by collision, 543
to salvage reward, 565
salved vessel, of, may be salvors, 567
share of, in salvage reward, 583
supplying officers and, as salvage service, 558
wages of, when a general average expense, 321
when disqualified from claiming salvage reward, 565, 566
crossing ahead, duty of "keep out of the way" vessel to avoid, 453
river, in, duty as to, 497, 498
"crossing rule," application in general, 436
open water and at sea, 436, 437
narrow waters and rivers, 437—439
of narrow channel rule in connexion with, 470
to vessels in rivers on opposite courses, 439, 440

SHIPPING AND NAVIGATION—*continued.*
"crossing rule," application where river has two channels, 440, 441
context of, 436
exclusion in certain circumstances, 442
when not applying, 437
vessel not within, 436
crow's nest, as place for look-out off Beachy Head, 486
Crown, freedom from arrest of ships of, 533
purchase of wreck for, 553
right to unclaimed wreck, 552, 553
current, duty to keep in view the effect of, 496
custom, admissibility of parol evidence as to, 140, 141
as affecting right to salvage reward, 566
discharge of cargo as affected by, 266, 267
of the port, as to discharge into lighters, effect of, 270
unloading, stipulations excluding, 268, 269
consignee's absolute duty as to unloading cargo not affected by, 274
discharge of cargo as affected by, 276, 277
loading and discharge of cargo as affected by, 118, 119
customary dispatch, provision for loading and discharge with, effect of, 121
customs, right of search of mail ship by officers of, 356
cutting fine, not permissible where risk of collision exists, 429
damage, another vessel, to, without collision, 506
arising in exceptional cases, 505, 506
cargo, to, facts to be taken into consideration as to, 226
prevention of spreading of, duty of master as to, 227, 228
collision, by, jurisdiction of county courts over, extent, 360
limitation of time of action for, 524
through negligence causing, 499, 500
harbour, to, recovery of cost of, 644
maritime lien for, when arising, 618, 619
meaning of "reasonable diligence" in case of lien for, 627
priority of lien for, 622
proof required from shipper as to, 156, 157
received while rendering salvage services, rights as to, 546, 547
ship, to, seaman's liability for, 61
damaged goods, liability of shipowner as to, 156, 157
vessel, towing, as salvage service, 562
damages, "arrival" of ship as affecting right to, 181, 182
charterer's liability for in case of demurrage, 125
division of, how ascertained, 520, 521
statutory rule, 516, 517
for detention, charterer's liability to pay when naming an unsafe port, 256, 257
general, recovery of, 537
interest as, 541
limitation by contract, 290, 291
of liability for, 521, 612—617
losses incurred by substituting vessel as, 540, 541
measure of, in case of total loss, 538
respect of damaged goods, 291
on breach of contract by shipowner to deliver, 288
non-delivery of cargo, 289, 290
principles as to, 536, 537
where charterer fails to provide a cargo, 207, 208
ship proper cargo, 209
shipowner fails to provide ship, 209, 210
provision in charterparty as to, 135, 136
recovery of, under Admiralty Court Act, 1861...544
shipowner's liability as to, for delay in arriving at port of loading, 179
right to, where cargo not ready, 191, 192
statutory limitation of liability for, 614
danger, as essential to claim to salvage reward, 558, 559
justification for departure from Sea Regulations, 370
life, to, the first consideration, 576
nature of, necessary to general average contribution, 317

SHIPPING AND NAVIGATION—*continued.*
danger, property, to, degree of, as affecting amount of salvage reward, 576
vessel in, setting in motion, fetching or bringing assistance to, 557, 558
dangerous goods, authority of master to jettison, 74
charterparty must stipulate as to carriage of, 100, 101
prohibition against carriage in emigrant ship, 345, 346
provisions relating to carriage of, 79
when shipowner may refuse to take, 197
vessels, precautions to be taken as to, 493, 494
Danube, local navigation rules affecting, 481
day, length of a, 123, 124
days, meaning of, 122
saved, charterer not entitled to take into account, 126
" dead freight," meaning of, 101
" dead slow," justification for going, 423, 424
death, British ship, on, returns to be made as to, 64, 348, 658
entry in log-book of, 58
pleasure yacht, on, provisions not applicable to, 660
seaman, of, payment of wages on, 51
provisions relating to, 58
deceased seaman, administration of effects of, 58, 59
creditors' claims to property of, 59
duty of master in respect of, 58
offences and penalties relating to property of, 59
deck cargo, carriage of wood goods as, regulations as to, 80
on emigrant ship, regulations as to, 80
foreign ships, provisions relating to, 12
jettisoning of, no general average contribution on, 317, 318
liability to be jettisoned, 74
meaning of, 79
usage of trade as affecting carriage of, 205
when added to ship's registered tonnage, 80
lines, regulations as to marking ship with, 78, 79
shelter, provision on passenger steamer, 336
declarations of survey, transmission to Board of Trade, 333
deductions, allowed on valuation of cargo for salvage purposes, 588
ship for salvage purposes, 587, 588
liability of seamen's wages to, 50
delay, arrival at port of loading, when shipowner liable as to, 178, 179
exceptions relieving charterer from consequences of, 129—133
in action, danger where risk of collision exists, 429
passenger's right of action in respect of, 83
provision of cargo, in, effect where circumstances contemplated, 193, 194
risk of, in reaching place of delivery after arrival, upon whom falling, 263
unloading, in, natural conditions of port of discharge as affecting, 275, 276
" deliver, always afloat," as distinguished from " lie afloat," 256
delivery, cargo, of, by shipowner, effect of, 147
person entitled to, 264
to ship, effect of, 199
place of, 198, 199
purchaser or mortgagee no right to refuse, pending payment of freight, 309
receiver's liability discharged by, 553
demise, charterparty, by, kinds of, 85
nature of charterparty where not by, 86
position of shipowner where charterparty not by, 170
test whether charterparty by, or not, 86
demurrage, " arrival " of ship for purposes of, 181—184
charterer not liable for, where default attributable to shipowner, 120
charterer's liability as affected by employment of stevedore, 206
to, on naming an unsafe port, 256, 257
days, charterer's right to, 124
duty of consignee or indorsee to pay, 164, 165
exception excusing charterer from delay in providing cargo, effect of, 195

SHIPPING AND NAVIGATION—*continued.*
demurrage, lien for, application of, 135
meaning of, 121, 122
payment of, in absence of stipulation, 125
special contract required in respect of, 134, 135
when payable, 125, 126
payment ceases, 126
depth of water, duty of harbour authority as to, 647
deputy superintendent, mercantile marine offices, of, acts which may be done by, 656, 657
appointment of, 655, 656
derelict, definition of, 549, 559, 560
recovery of, as affecting the payment of freight, 589
salvage of, as affecting freight, 589
saving, as salvage services, 557
ship, duty to report, 590
deserters, British ship, from, how may be dealt with, 59, 60
keeping of list of, 63
desertion, countries affected by reciprocal orders in respect of arrest for, 62
facilities to foreign countries as to arrest of seamen for, 62
liability of seaman in respect of, 61
loss of right to wages on, 49
unseaworthiness as an answer to, 61, 62
destitute seamen, provisions relating to, 56, 57
detention, shipowner's right to expenses of, after collision, 539, 540
deterioration, drying of goods to prevent, master's duty as to, 228
master's duty to check, 226, 227
detonating signal, right of vessels to use, 406
"detonating signal that cannot be mistaken for a distress signal," meaning of, 407
deviation, barratry, when amounting to, 113
discharge of charterer from contract by, 93
express stipulations as to, effect of, 96, 97
interests of cargo to be considered in question of, 227
justification of, 83
liability of shipowner for, where ship under charterparty, 95
valid excuses for, 95, 96
disabled vessel may be liable for subsequent damage, 369, 370
disablement signals, provision for, 386—388
disbursements, master's right to maritime lien for, 620
priority of master's lien for, 623, 624
discharge, boats, from, liability in respect of, 118
cargo, of, custom of the port as affecting, 118, 119, 276, 277
duty of respective parties as to, how regulated, 265, 266
readiness for, what amounts to, 263
regulations as to, 642, 643
shipowner's duties apart from stipulations as to, 266, 267
stipulation in charterparty as to, 120, 121
stipulations affecting parties' duties as to, 267, 268
where berth not available or inaccessible, 262
"in turn," provision as to, 127, 128
seamen, of, 55, 56
where ship sold abroad, 56
discipline, offences against, 60
powers of master as to, 59
disobedience, liability of seamen in respect of, 60, 61
dispatch money, provision for payment of, effect of, 128, 129
disputes, as to receiver of wreck's fees and expenses, how determined, 549
title to unclaimed wreck, how dealt with, 553
wages of seamen in case of foreign-going ships, how settled, 48
between harbour and conservancy authority, reference, 554
distraint, recovery of light dues by, 631
tonnage rates by, 638, 639
distress, deviation to assist ship in, effect of, 95
signals, abuse of, liability for, 479, 562
in Sea Regulations, 1910...479
distressed seamen, not passengers for purposes of pilotage, 57
dock dues, recovery as damages, 539
duty of vessel lying in, 490

SHIPPING AND NAVIGATION—*continued.*
dock, duty of vessels entering and leaving, 498, 499
jurisdiction in respect of damage by collision with, 547
master, liability of shipowner as affected by orders of, 532, 533
meaning of, 634
obeyance to orders of, 499
owners, limitation of liability of, 612—617
stipulation in charterparty as to arrival in, effect of, 183
doctor, when ship compelled to carry, 45
document of title, bill of lading as a, 146, 147
documents, duty of master to carry necessary, 213
dredging stern first, duty of steamship going up river as to, 496, 497
dry-docking, recovery of costs of, as damages, 539
dues, light, *see* light dues.
dumb barge, as vessel requiring lights, 380, 381
good seamanship, special rules of, for, 494, 495
may be held a " rowing boat," 381
meaning of, 494
navigation of, 494, 495
right of, in fog on river, 420
towed when lashed to tug, 389
dunnage, nature of, 203
shipowner's duty to provide, 203
Dutch steam pilot vessels, sound signals to be given by, 410
effects, deceased seaman, of, meaning of, 58
embezzlement, stores or cargo, of, seaman's liability for, 61
emigrant, licence required to solicit, 352
object of the Merchant Shipping Acts to protect, 11
offence of making false representation to, 352
recovery of passage money by relanded, 343
right to subsistence money where voyage delayed, 347
runner, definition of, 351
duty to wear badge, 352
fee of, when recoverable, 352
ship, carriage of medical officer on, 341
steerage steward and cook in, 341, 342
certificate of clearance for, regulations as to, 81, 82
" emigrant ship," definition of, 331
emigrant ship, duty of chief officer of customs where ship bound to British possession, 344
foreign, carriage of interpreters in, 342
inspection of medical stores before clearance of, 341
issue of rations, on, regulations as to, 339, 340
legal proceedings in respect of, 353
liability to obtain further certificate of clearance, 82
maintenance of steerage passengers delayed by wreck of, 348
master's bond as necessary to clearance of, 343, 344
medical inspection of, provision for, 342
stores on, regulations as to, 340, 341
number of steerage passengers to be carried in, 337, 338
passenger lists, provisions relating to, 344, 345, 348
power to make regulations as to, 330
prohibition of sale of spirits to steerage passengers of, 330
provision with fire engine, 78
provisions, water and stores for, 338, 339
regulations as to carriage of deck cargo on, 80
of Board of Trade as to steerage passengers in, 338
sanitary regulations concerning, 330
steerage passengers' rights at end of voyage of, 347
steward to be carried by, 341
survey of, provision for, 335
emigration officers, appointment of, 353
power to deal with sick persons, 343
protection of, 353
power of harbour authority as to, 646
emoluments, inclusion in term " wages," 47
Employers' Liability Act, as to definition of " seamen " for purposes of, 15
" end on or nearly end on," meaning of, 434, 435

SHIPPING AND NAVIGATION—*continued.*
endangering ship, liability of master or seamen in respect of, 62, 63
" engaged in trawling," meaning of, 398
English Channel, speed of sailing vessels in, 419
ensign, grant of privilege to members of yacht clubs as to, 660, 661
Royal Yacht Squadron, of, 660, 661
entry, goods before landing, of, effect where owner fails as to, 280, 281
for landing, of, at wharf other than that at which ship discharging, 281, 282
equipment, negligence in, effect of, 502
ship, of, provisions relating to, 77, 78
equitable assignment, freight, of, rights of assignee, 302, 30
interests, recognition of, extent of, 30, 31
establishments, lighthouse authorities, of, 633
evidence, documents relating to registration of ship as, 32
entries in log book as, 82
protest as, 84
register as, of ownership, 34
examination, persons concerning wreck by the receiver of wreck, 550
excepted ships, list of, 610, 611
execution of process, exemption relating to mail ships as to, 355, 356
expenditure, when recoverable as a general average sacrifice, 319, 320
expenses, lighthouse authorities, of, provision of, 632, 634
extra remuneration, when seaman may claim, 50, 51
extraordinary expenses, lighthouse, provision of, 633, 634
fair-way, as distinguished from mid-channel, 467, 468
duty of persons in charge of vessel aground in, 498
meaning of, 406, 467, 468
when vessel justified in anchoring in, 498
false declaration, as to qualification, penalty, 33
statement, liability of seaman on making, 62
fault, as distinguished from negligence, 517
division of damage or loss in proportion to, 516—518
nature of, where the cause of damage or loss, 519
" fault of the vessel," meaning of, 518, 519
" fault or privity," meaning of, 614
fault, presumption of, for breach of Sea Regulations, 534, 535
on failure to stand by and render assistance, 535
felony, sale of wreck in foreign port as amounting to, 556
ferry steamer, liability for proceeding in a fog, 417
final sailing, what constitutes, 219, 220
finders of wreck, duties of, 551
fines, imposition on crew, regulations as to, 50
fire engine, provision of emigrant ship with, 78
hose, provision on British sea-going steamship, 78
protection of shipowners from liability in respect of, extent of, 111, 112
saving property or life from vessel on, as salvage service, 558
fires, power to regulate use of in harbour, 643
fishing boat, *see* fishing vessel.
ground, speed of vessels over, 487
vessel, apprenticeship on, 41
day signals of, 395
duty of sailing vessel to keep out of way of, rule, 471
steamers passing among, 397
fog signals by, 395
lights to be carried by, 393, 394
meaning of, 396
provisioning with boats and lifebuoys, 78
sailing vessel to give way to, 444, 445
steam, navigation where incumbered, 396, 397
treatment of owners of, in respect of salvage reward, 583
" fishing with drift-nets," meaning of, 398
flag, British, liability of ship improperly using the, 11
nature of, as carried by merchant ships, 11
signal for pilot, 11
flare-up light, duty of vessel being overtaken when showing, 402
right of fishing vessels to use, 395
showing by pilot-vessels, 392
vessel being overtaken must show, 399

SHIPPING AND NAVIGATION—*continued.*
flare-up light, vessel's right to attract attention by showing, 406, 407
when shown in sufficient time to prevent collision, 398
floating derelicts, duty to report, 590
stranded vessel, as salvage service, 557
" flotsam," meaning of, 548, 549
fog, approaching bank of, duty of vessel when, 413
change of course in, when justified, 424, 425
circumstances not justifying stoppage of engines in, 422
density of, speed depending on, 416
dumb barge's right on river in a, 420
duty of vessel in neighbourhood of, 420
exception protecting charterer from accident caused by, 132
ferry steamer's liability for proceeding in a, 417
look-out in, 411, 412
position of vessel ascertained in, 421, 422
signals, duty of look-out as to, 411, 412
failure to stop on hearing, liability, 422
fishing vessels, by, 395
former regulations as to, 410, 411
inspection of ship's, 363
liability for not being heard, 411
neglect to sound, 411
powers making regulations as to, 359, 360
vessel moored to position connected with shore not to give, 414
unable to get out of the way, for, 388
when tug is " towing " for purpose of sounding, 414
sound-signals, regulations as to, 409—411
to be given by steamer or sailing vessel in, 410
speed of ships in, 414, 415, 417, 418
stoppage in, 423
of engines in, 416, 417, 420
when technically existing, 412
foghorn, absence of mechanical, no excuse for not giving warning, 369
foreign country, application of Sea Regulations to ships of, 376
reciprocity in respect of arrest of deserting seamen in, 62
discharge, seamen, of, 56
foreign-going ship, delivery of agreements with crew on arrival of, 43
official log-book of, 82, 83
engagement of seamen for, 42
meaning of, 38, 42
outward bound, notification of change in crew by master, 43
payment of wages of seamen on, 47, 48
Government vessels, exemption in respect of salvage award, 560, 561
judgment *in rem,* binding effect of, 76
port, selling wreck in, offence of, 556
foreign seamen, liability of master or owner importing, 56
ship, application of Merchant Shipping Acts to, 12, 13
detention of, 546
duty of consul-general on wreck of, 552
liability to arrest on claim for necessaries, 67, 68
tonnage rate, 637
observance of Sea Regulations by, 375
ownership of, when court will entertain question of, 37
registration abroad making British ship a, 612
regulations as to providing with lifebuoys, 78
tonnage of, how ascertained, 615, 616
wreck of, claim to, 552
state, freedom from arrest of ships of, 533
station, inquiry by naval officers on, 593
warships, when within Sea Regulations, 408
waters, narrow channels in, 465, 466
foreigner, failure to make application necessary on sale of ship to, penalty, 33
forfeiture, liability of ship to, 11, 33
seizure of ship liable to, officers entitled to effect, 33
wages, of, when seaman liable to, 49
formal investigations, constitution of court holding, 592, 593
holding in respect of shipping casualties, 592

SHIPPING AND NAVIGATION—*continued.*
foul berth, definition of, 489
liability on vessel giving a, 489
fraud, validity of salvage agreement as affected by, 571
freight, advance, what constitutes, 313, 314
when payable, 311, 312
allowance for, where shipowner obtains other employment on default of charterer, 208, 209
amount payable for, rule governing, 307, 308
as subject of maritime lien for salvage services, 579, 580
assessment for salvage service ending at port of destination, 588, 589
other than port of destination, 588
assignment by shipowner, effect of, 301, 302
at risk, how dealt with for purposes of salvage reward, 588
breakdown of machinery as affecting payment of, 105
charterer's liability to pay, 293, 294
classes of, where ship under charter, 297, 298
commencement of voyage necessary to payment of, 314
consignee's statutory liability to pay, 295, 296
definition for purpose of salvage, 560
delivery of goods essential to claim for, 304, 305
different rates of, when specified in same charterparty, 104
dishonoured bill of exchange no discharge for, 307
equitable assignment of, effect of, 302, 303
expense of ascertaining amount of, by whom payable, 310
failure to deliver goods as affecting shipowner's right to, 305, 306
forwarding of goods by another's ship, as affecting payment of, 306, 307
general average loss of, when arising, 318, 319
holder of maritime lien having right as against, 303
implied authority by master to receive, 297
contract to pay, 292
insurer's right to, in case of total loss, 301
liability of indorsee of bill of lading to pay, 296
to assessment for salvage reward, 588
lien for, existence of, 134
nature of, which must be provided for, 134, 135
where part paid in advance, 284
of shipowner for bill of lading, 171
extent of, 283, 284
lump, provision for payment of, effect of, 310
master's power to bind owner in respect of, on transhipment, 240
right to hypothecate for necessaries, 69, 70
mortgage of ship as affecting assignee of, 303
payment of, 299, 300
nature of, passing to mortgagee of a ship, 26, 27, 300
not payable where bill of lading provides "freight free," 308, 309
earned under unlawful contract, 307
note, nature of, 148
when terms between parties contained in, 147, 148
ownership of goods immaterial as affecting liability to pay, 294
part owner's right to sue for, 297
payment after sale of cargo by master, 254
by charterer where goods sold during voyage, extent of, 72
of advance freight as affecting balance of, 313
primary liability of shipper, 291, 292
under a through bill of lading, 149, 150
where part goods only delivered, 306
weight or bulk of cargo increased or decreased during voyage, 309
possession by mortgagee as affecting right to, 26, 27
pro ratâ, nature and payment of, 314, 315
provision in bill of lading for payment of, 106, 107, 303, 304
rate of, how ascertained, 308, 309
payable by shipper, 171
recovery of derelict as affecting payment of, 589
repayment of, where ship lost, extent of, 105
rights of assignee of, as against first mortgagee in possession, 29

SHIPPING AND NAVIGATION—*continued.*
freight, rights of assignee of, as against second mortgagee, 29
charterer against consignee as to, 298
sale of cargo during voyage as affecting, 249, 250
ship as affecting payment of, 298, 299
salvage of derelict as affecting, 589
shipowner, ability of, to deliver as affecting right to, 304, 305
as person primarily entitled to receive, 296, 297
right to withhold goods pending payment of, 164
shipper's liability to pay as affected by issue of bill of lading, 293
stipulation contained in voyage charter as to, 103, 104
transhipment of cargo to earn, effect of, 235—238
use of own ship by shipper as affecting payment of, 292
valuation for purposes of general average contribution, 324, 325
when master can pledge, 72
not returnable on loss of goods, 235
payable, 303, 304
the subject of salvage, 560
frozen meat, shipowner's duty on carriage of, 189
frost, exception protecting charterer against, 132
fruit cargo, master's duty during voyage with, 225
"full speed astern," nature of order, 457
funds, raising of, by hypothecation of cargo, when permissible, 243
gas float, not a ship, 375
general average contribution, adjustment of, 323, 324
enforcement of, 323
persons liable to, 322, 323
requisites to claim for, 316
valuation of cargo, ship and freight for purposes of, 324, 325
when not recoverable in case of collision, 541
definition of, 315
expenditure, shipowner's right to recover, 319, 320
expense, port charges and pilotage dues as, 321
reloading and warehousing charges as, 321, 322
repairs to ship as, 320, 321
unloading charges as, 321
wages of crew as, 321
expenses, expenses in port of refuge as, 320
lien for, existence of, 134
of shipowner for, 284
loss, cargo, of, how may arise, 317, 318
freight, of, when arising, 318, 319
ship, of, when arising, 319
provision for payment in bill of lading, 151
shipowner not protected against contribution in case of fire, 112
when shipowner liable for, 187
collision regulations, history of, 372, 373
table of, App. i. *et seq.*
damages, right to recover, 537
lighthouse authority, *and see* lighthouse authorities.
power as to removal of wreck, 554
General Lighthouse Fund, constitution of, 633
Register and Record Office, control and supervision of, 63, 64
lists of seamen to be returned to, 63, 64
general ship, ship chartered as, effect of, 100
getting under way, duty of vessel when, 484
giving-way vessel, duty not to cross ahead of keep-on vessel, 543
of, 432
rights as to manœuvring of keep-on vessel, 448
in exercising duty to keep out of the way, 457
good order and condition, effect of statement in bill of lading that goods shipped in, 156, 157
seamanship, avoidance of collision by, 456, 488
fog, in, rules as to, 410, 416, 495
rules of, extent of, 483
in narrow waters, 496 *et seq.*
special vessels, 490 *et seq.*

SHIPPING AND NAVIGATION—*continued.*
good seamanship, rules of, special weather, 495
usual events, 484 *et seq.*
goods, acknowledgment of receipt of, bill of lading as, 144—146
damaged, measure of damages in respect of, 291
shipowner's liability in respect of, 156, 157
delivery essential to shipowner's right to, 304
duty of owners of, on arrival in harbour, 638
failure to deliver as affecting shipowner's right to freight, 305, 306
fitness to receive, as condition of seaworthiness, 188
part delivery of, as affecting payment of freight, 306
possession of, bill of lading as effecting, 146, 147
power of harbour master where left on quay, 642
safety of, shipowner's liability as to, 107, 108
transfer by bill of lading, 159, 160
Government rules, Sea Regulations not to interfere with, 407
ships, exemption from claim for salvage reward, 560, 561
power to register, 16
registration as British ships, 375
grain, stowage of, provisions as to, 80
green hides, prohibition of carriage in emigrant ship, 345, 346
guano, prohibition of carriage on emigrant ship, 345, 346
gunpowder, harbour regulations as to, 643, 644
guns, harbour regulations as to, 643
harbour authority, duty as to buoys, lights, beacons and sea marks, 645
provision of lifeboat and rocket apparatus, 645
tide gauge, barometer, and weather report, 645
to post copies of bye-laws, 646, 647
employment of meters and weighers by, 643
liabilities of, 647, 648
limitation of liability of, 612—617
meaning of, 554, 612, 634
power as to fines and lights, 643
making of bye-laws, 645, 646
removal of wreck, 554
combustible cargo, precautions as to, 643
damage to, liability of shipowner as to, 644
recovery of cost of, 644
depositing of refuse matter in, regulations, 644
dues, duties of ship on arrival as to, 637, 638
duty of vessels approaching in opposite directions, 498, 499
jurisdiction in respect of damage done by ship to, 547
management of vessels entering, 639, 640
master, disobedience to directions of, liability, 641
duty on repairing or cleansing of harbour, 641, 642
liability of shipowner as affected by orders of, 532, 533
meaning of, 634, 640
obedience to orders of, 499
power as to goods left on quays, 642
mooring of vessels, 639, 640
to remove obstructions, 642
powers of, generally, 640, 641
wrongful exercise of powers by, liability, 642
meaning of, 554, 634
moving ship in, who may be employed in, 605
rate, collection of, 634, 635
rights on payment of, 635
reservation of rules for, 477, 478
safety of, provision for, 643, 644
harbours and inland navigation, reservation of rules for, under Sea Regulations, 477—479
hatches, when master must batten down, 225
heating, shipowner's liability in respect of, 204
hire of ship, master's implied authority to contract for, 65
His Majesty's ships, meaning of, 375
home-trade passenger ship, master's right to refuse to admit passenger on, 330
meaning of, 38, 330
steamer, equipment of, 336

SHIPPING AND NAVIGATION—*continued.*
home-trade ship, agreement with seamen for, nature of, 42
delivery of official log-book of, 82, 83
meaning of, 42, 611
payment of seamen's wages in, 48
House of Lords, appeal in respect of salvage reward to, 581, 582
hove-to, duty of vessel, 432, 433
Humber rules, application of, 481
" hurt or injury," seaman, to, what it includes, 45
hypothecation of cargo, conditions justifying, 242—245
definition of, 240, 241
on behalf of cargo owner, 247
powers of lender on, 241
rights of lender under, 245, 246
ship or freight, master's authority as to, 69, 70
ice, deviation to escape collision with, effect of, 95, 96
exception protecting charterer against accident caused by, 132
strengthening of ship to encounter, as condition of seaworthiness, 215
identification, method of achievement of, 11
illegal trading, liability of ship to forfeiture for, 33
illness, master or seaman, of, liability of owner as to, 45, 46
immoderate speed, what may amount to, 418, 419
impeding navigation of ship, seaman's liability for, 61
importing goods, discharge of lien on, statutory provisions as to, 287, 288
" in charge," meaning of, 371
" in or near coast," as to meaning of, 550
in personam, rights of salvor, 580, 581
in rem, extent of judgment, 617
foreign judgment, effect of, 76
rights of salvor, 579, 580
statutory rights, how enforced, 626
" in sight of one another," meaning of phrase, 473, 474
" in sufficient time to prevent collision," meaning of, 398
" in the forward part of the vessel," when anchor light is, 405
" in turn," meaning of, 128
provision in charterparty as to loading or discharging, 127, 128
incapacity, owners under, transfer of ship to, registered in name of, 23
incoming vessel, duty to wait for outgoing, 498, 499
indemnification, loss, for, extent of consignee's right to, 291
settlement of the, 537
independent salvors, apportionment of reward between, 584
indorsee, duty to pay freight, 164
liability apart from statute, 166
transfer of bill of lading by, 158, 159
indorsement, bill of lading, of, effect of, 165, 166
inevitable accident, instances of, 411
no right of action where damage caused by, 500
when collision the result of, 535, 536
infant owner, transfer of ship registered in name of, 23
information, as salvage service, 557, 558
injury, master or seaman, to, owner's liability for, 45, 46
inland waters, application of Sea Regulations to, 478
reservation of rules for, 477
inquiries and investigations, classes of, 591
inquiry, constitution of the court of, 592, 593
naval officers on foreign station may hold, 593
power of Board of Trade to order, 649
preliminary, when and by whom held, 591, 592
procedure at, 594
on appeal from finding of, 594, 595
institution of, 594
refusing to attend, on order of Board of Trade inspector, penalty, 651
rehearing and appeals from finding, 594, 595
inspection, ship's medical stores and anti-scorbutics, of, 45, 341
provisions, of, 44, 339
inspectors of ships, appointment and duties of, 650, 651
insurance, advance freight, of, effect of, 313, 314
payable subject to, effect of, 313
interests involved in maritime adventure as subject of, 315

SHIPPING AND NAVIGATION—*continued.*
insurance, right to effect in respect of steerage passengers, 349, 350
insurer, right to freight on total loss of ship, 301
interest, recovery as part damages through collision, 541
intermittent light, duty of vessel showing, 402
International Convention on safety of passenger traffic, 78
interpleader, when shipowner must resort to, in respect of claims to cargo, 264, 265
interpreters, carriage on emigrant ship, 342
investigations, formal, constitution of court holding, 592, 593
holding of, 592
procedure on institution of, 594
rehearing of, power of the Board of Trade as to, 594
when and how held, 591, 592
"jetsam," meaning of, 548, 549
jettison, authority of master to, 74
dangerous goods as subject of, 74
master's power as to the cargo, 228
"necessity" to, meaning of, 75
judge's report of inquiry, duty as to delivery, 594
judgment, as to cancellation or suspension of officer's certificate, delivery of, 594
creditors, postponement of rights of, to those of registered mortgagee, 28, 29
powers of arrest of mortgaged ship, 28
in rem, extent of, 617
foreign, effect of, 76
satisfaction of maritime liens in order of, 622
jurisdiction, application of Merchant Shipping Acts to foreign vessels within the, 12
keep-on vessel, duty to assist in avoiding collision, 450, 451
keeping course, duty of keep-on vessel as to, 448
steamer approaching another in winding river as to, 447
vessel not giving way as to, 445, 446
meaning in respect of sailing ship, 451, 452
rule, when departure from justified, 448, 449
vessel, duty of, 432
when sailing ship justified in departing from rule as to, 452, 453
King's enemies, non-liability of shipowner for damage caused by, 107
running without lights to escape, 369
stipulation as to, application of, 108
Regulations, how far power of warship to change course affected by, 449
knowledge, salvor's duty to show reasonable degree of, 577
laches, as affecting rights under maritime lien, 580
"lagan," meaning of, 549
landing cargo or persons, as salvage service, 557
stage, not a "vessel," 14
landowner, indemnification where salvage left on land of, 550
lascars, production of list of, liability to penalty in respect of, 43
return where found destitute, 56
right to engage, provisions as to, 43
latent defects, defects not excluded by exception as to, 115
launching a vessel, warnings to be given in respect of, 484
lay days, charterer's right to make use of, 124, 125
meaning of, 121, 122
leakage and breakage, loss covered by exception of, 115, 116
legal proceedings, *and see* proceedings.
in respect of emigrant ships, 353
offences in respect of emigrant ships, 353
lender, bottomry bond, on, risk undertaken by, 71
position of, where taking bottomry bond as security for bills of exchange, 73, 74
rights under a hypothecation of cargo, 245, 246
letters, illegal carrying of, 354, 355
liberty to call, stipulation in charterparty conferring, effect of, 96
tow, rights of master under stipulation giving, 96, 97

SHIPPING AND NAVIGATION—*continued.*
licence, emigrant runner's, how obtained, 352
necessary to passage broker, 350
passage broker's, how obtained, 350, 351
pilot boats, for, necessity, 393
pilot's, grant of, 600, 601
no liability implied by grant of, 601
revocation or suspension of, 601
supply or engage seamen, to, granting of, 43, 44
"lie afloat," as distinguished from "deliver, always afloat," 256
lien, agent on bill of lading, of, 288
application of proceeds of sale of goods by shipowner for, 282
charges not subject to, 285
clause, nature of liens conferred by, 134, 135
demurrage for, application of, 135
enforcement of general average contribution by, 323
holder of bill of lading as subject to shipowner, 285, 286
maritime, *see* maritime lien.
master, of, for unpaid passage money, 329
when arising, 68
mortgagee's liability in respect of, 25
nature of, to be created by special contract, 285
seaman's, on ship for wages, 53
shipowner's, discharge of, 287, 288
duration of, 287
extent of, 283, 284
when lost, 288
where goods landed and warehoused, 282
part goods lost, 150
statutory provision preserving master's, on landing cargo, 280
life, danger to, as affecting amount of salvage reward, 576
necessary salvage service, 562
the first consideration in assessing salvage reward, 576
right to salvage reward in respect of, 561
salvage, apportionment of contribution in respect of, 587
claim for, priority of, 561, 562
saving appliances, duty of owners and masters to provide, 78
of, as excuse for deviation, 95
statutory duty to assist in saving, 561
lifeboat crews, apportionment of salvage reward between, 584
when ranking as salvors, 570
provision and maintenance of, 645
service, meaning of, 554
lifebuoys, ships liable to carry, 78
light dues, calculation of, 630
colonial, recovery of, 631
liability of pleasure yachts to, 660
recovery of, 630, 631
ships liable to, 629, 630
lighter, not a ship, 377
lightermen, strike of, as affecting charterer's liability, 131
lighters, custom of the port as to discharge into, effect of, 269, 270
shipowner's liability to provide, 268
lighthouse authorities, as removal authorities, 554
establishments of, 633
exemption of premises of, 628
general, duties of, 630
powers of, 628, 629, 632
liability of, 628
definition of, 627
lighthouses, construction of, 628, 629
inspection and control of, 632
superintendence and management of, 627, 628
lighting of wreck, duty and liability as to, 555
lights, *and see* stern lights.
absence of, effect of, 382
alteration of, as showing a risk of collision, 430
application of regulations as to, mode of, 380
authorities making regulations as to, 359, 360

SHIPPING AND NAVIGATION—*continued.*
lights, breach of rules as to, 382
bright moonlight no excuse for not carrying, 381
bye-laws as to use of, harbour authority's power as to, 643
carrying in wrong place, liability, 385
duty of harbour authority as to, 645
look-out on river in reporting, 486, 487
fishing vessels, provisions, 393—395
fixing of, effect of regulations as to, 389, 390
inspection of ship's, 363
navigating officer's duty to observe, 429, 430
neglect to provide, no exoneration for, 477
object of regulations as to, 379, 380
obscuration of, effect of, 382, 383
pilot vessels, of, provisions as to, 392, 393
replacement where lost, duty as to, 381
rowing boats and vessels under 20 tons, 391
rules concerning, in Sea Regulations, 1910...379—383
shown by small vessels in bad weather, 390
vessel aground, 388
towed, 388
special cases where good seamanship requires showing of, 383
vessels, required to carry, 380
steam vessel of less than 40 tons, 391
under way, on, position of, 385
regulations, 384, 385
when towing, 385
vessels of less than 40 tons, 391
strict adherence to regulations as to, required, 381
telegraph cable ship, to be carried by, 386, 387
tow's liability for tug's, 491
towing, liability of tow as to, 381, 382
unusual, excuses and exceptions for showing, 381
vessel at anchor, of, 403
not under command through accident, on, 386
when tow liable in respect of tugs, 386
wrecks, on, liability, 383
wrong, liability for carrying, 381, 382
Limitation Act, 1623, application to seamen's wages, 54
limitation of action, against harbour authorities, 648
liability, collisions, in case of, 617
harbour authorities, of, 648
persons in whose favour applying, 612—617
statutory, 614
tonnage as affecting, 615, 616
where claim settled out of court, 617
time, action for damage by collision, for, 524
proceedings, procedure on, 616, 617
"limits of the United Kingdom," meaning of, 556
lists of crew, delivery and contents of, 657
load lines, provision for marking ship with, 79
loading, boats, from, liability in respect of, 118
cargo must be ready for, charterer's duty as to, 190, 191
charterer excused as to, where contract unlawful, 201
conveyance of cargo to place of, charterer's duty as to, 192
custom of the port as affecting, 118, 119
delay or failure in, due to contemplated cause, effect of, 201
delivery of cargo for purposes of, place of, 198, 199
destruction of goods during, as affecting charterer's liability, 201, 202
employment of stevedore for purposes of, effect of, 206, 207
exception protecting shipowner's responsible for, 198
exceptions to liability of charterer in respect of, 200—202
failure of shipowner to perform condition precedent to, effect of, 192, 193
or refusal of shipper to effect a, rights of shipowner, 196, 197
implied condition of seaworthiness during, 186, 187
"in turn," provision as to, 127, 128
liability of charterer to complete in case of obstructions, 180, 181
master's duty on completion of, 218

SHIPPING AND NAVIGATION—*continued.*
loading, notice of readiness to commence, duty of shipowner to give, 186
port of, charterer's duty to name a safe, 181
provision as to exact place of, 184
of ballast as affecting time for, 185
qualifying stipulations affecting shipowner's rights in respect of, 181
readiness of ship for purpose of, 177, 184, 185
regulations applicable to foreign vessels as to, 12
risk of shipowner in respect of, when attaching, 202
scope of exceptions in charterparty relating to, 194, 195
ship becoming unseaworthy during, non-liability of shipowner, 190
shipowner's default in respect of, liability, 200, 201
duty to obtain pratique before, 185, 186
liability in respect of, 203, 204
supervision of, duty of shipowner to provide a master for, 203
time for, provision in charterparty as to, 119, 120
stipulations in charterparty as to, 179, 180
local Acts, repeal by Pilotage Order, 598
local authority, meaning of, 479
rules of, requirements as to validity of, 478
light dues, recovery of, 631
lighthouse authorities, constitution of, 628
powers of, 629
marine boards, constitution of, 653
control by Board of Trade, 654, 655
election of elective element of, 653
establishment of, 652, 653
mercantile marine offices, where existing, 655
powers and duties of, 653
validity of proceedings of, 654
navigation rules, districts in which existing, 480—483
judicial decisions on, 481—483
observance of, 479, 480
rules, narrow channel rule as affected by, 470
lock-outs and strikes, exception protecting charterer against, 131, 132
lodging-houses, seamen's, provisions relating to, 54
log-book, engineer's, effect of entries in, 82
entry in, nature of, 82
when to be made, 82
of name of member of crew refusing to take anti-scorbutics, 45
offences in, 63
particulars of collision in, 372
statement as to leaving seaman abroad, 48
proof of desertion by, 49
look-out, absence of, as breach of Sea Regulations, 486
astern, when no necessity for, 486
duty as to fog signals, 411, 412
in reporting lights on river, 486, 487
on tug as to, 486
fog, in, 411, 412
good, burden of proof as to, 501
what constitutes, 485, 486
neglect to keep proper, no exoneration for, 477
proper, considerations in deciding what is a, 486
place for off Beachy Head, 486
loss, division between tug and tow and third vessel, 529
of, how ascertained, 520
statutory rule of, 516, 517
general average, 315
must take place on board the ship, 613
of cargo, proximate cause of, how arrived at, 232, 233
right to advance freight as affected by, 312
life, contribution as between shipowners in respect of damages for, 523, 524
right of action for damages in respect of, 523
profit, as part damages for collision, 540

SHIPPING AND NAVIGATION—*continued.*
loss of profit, failure of shipowner to provide ship, on, 210
ship, repayment of freight in case of, 105
report to be made of, 658
statutory duty to report, 590
particular average, 315
losses, nature to which liablity limitation applies, 613, 614
"lower passenger deck," definition of, 332
lucifer matches, prohibition of carriage on emigrant ship, 345, 346
lump freight, provision for payment of, effect of, 310, 311
lunatic owner, transfer of ship registered in name of, 23
machinery, breakdown of, as affecting payment of freight, 105
shipowner's duty to supply in respect of cargo, 189
magistrate, appeal by pilot to, 609
mail bag, meaning of, 354
ships, application of Order in Council as to, 354
exemptions in respect of, 355, 356
freedom from arrest, 356
right of search by officers of customs, 356
mails, carriage of, 354—356
Manchester Ship Canal, application of local rules to, 481
Sea Regulations not applicable to, 376
when position of vessel "ascertained" in fog in, 421, 422
"managing owner," a commercial as distinguished from legal expression, 590
managing owner, duty to report loss of ship, 590
liability to account, 36
nature of office and power of, 35
registration of name and address of, 18
marine store dealers, powers of receiver of wreck as to licensing of, 551
Maritime Conventions Act, 1911, application of, 524, 525
liabilities under, 518
rule of division of damage under, 516, 517
statutory jurisdiction in respect of damage under, 545
maritime lien, *and see* lien.
bottomry and *respondentia* bonds, for, 620
enforcement of, 625
extinction of, 626, 627
foreign court may establish, 617
liability of mortgagee in respect of, 25
master's right in respect of disbursements to, 620
nature and extent of, 617
object of, 545
priority of claim to salvage as a, 622, 623
master's claim to, 623, 624
where several actions arise out of one cause 622
property to which attaching, 619
right of holder in respect of freight, 303
rights of mortgagees deferred to, 29
salvage creating, 619
to what attaching, 545
transfer of, rule as to, 625, 626
wages, for, to what attaching, 620
when accruing in respect of salvage services, 579, 580
arising, 545, 618, 619
liens, priority as between, 580, 621, 622
property, as subject of salvage, 559, 560
what is, 559, 560
marking British ship, of, provision for, 17, 18, 78, 79
pleasure yachts, exemptions of, from, 660
marriages, duties of master as to, 64, 82, 657
master, acts of, amounting to barratry, 112, 113
without the exception "perils of the seas," 110, 111
advances by, right of recovery, 67
appointment or removal of, powers as to, 40
as agent of shipowner in ordering repairs, 246, 247
authority of, as to necessaries, 66, 67

SHIPPING AND NAVIGATION—*continued.*
master, authority of, general, 64, 65
limitations on, 65, 66
over passengers, 329
scope of, 67
to bind shipowner, extent of, 154, 173—175
hypothecate ship or freight, 69, 70
jettison, 74, 75
sell cargo, extent of, 248, 249
bond, of, necessity for, to clearance of emigrant ship, 343, 344
claim for wages postponed to that of bottomry bond holder, 53
delivery of ship's papers by, 64
deviation from course by, when excused, 95, 96
discretion of, as to obeying Sea Regulations, 366, 367
duty as to births, 64, 348, 658
care of cargo, 224, 225
certificate of seaman's discharge, 55
deaths, 58, 64, 82, 348, 658
dismantling vessel on entering harbour, 639, 640
illegal conveyance of letters, 355
maintenance of ship during voyage, 220
marriages, 64, 82, 657
passenger lists, 344, 345
preservation of goods, 237
provision of life-saving appliances, 78
record of fines, 50
repair of ship during voyage, 221, 222
sale of cargo, when justified, 253, 254
tonnage rates on arrival in harbour, 637, 638
on completion of loading, 218
reaching port of refuge, 221, 222
to assist proper officer to effect arrest, 355, 356
check deterioration of cargo, 226, 227
communicate with cargo owner, 231
owner of cargo before sale, 253
give notice as to floating derelicts, 590
obey owner's instructions, 66
observe conduct of pilot, 531
proceed to discharging berth, 262
report casualties, 590
engagement of, nature of contract of service, 40
grant of certificate of competency to, 38, 39
pilotage certificate to, 601
implied authority of, to receive freight, 297
on behalf of cargo owner, exercise of, 229—231
nature of, 228
inability to communicate with cargo owner as condition of right to hypothecate cargo, 244, 245
indorsement of certificate of registry on change of master or ownership, 21
injury or illness of, owner's liability for, 45
liability for disobedience to Sea Regulations, 362, 363
exceeding authority in signing bill of lading, 155
negligence, 526
on failing to render assistance, 372
improper sale of cargo, 76, 77
lien of, for disbursements, 67, 68
unpaid passage money, 329
statutory provision protecting, 280
limitation of authority of, on signing bill of lading, 155
when binding, 154
meaning of, 59, 355
offences by, in respect of Pilotage Regulations, 607, 608
personal responsibility of, 65
pilot boat, of, duty of, 605, 606
pilotage offences by, 607, 608
position as trustee for owner, 65
power to bind shipowner, 154, 173—175
hypothecate cargo, 240—247

SHIPPING AND NAVIGATION—*continued.*
master, power to hypothecate ship or freight, 69—74
jettison cargo, 74, 75
land and warehouse cargo, 278, 279
sell cargo, 76, 77, 247—254
ship, 75, 76
tranship cargo, 74, 239, 240
powers as to discipline, 59
practice to qualify on signature by, 156
presumption as to authority to sign bill of lading, 154
priority of lien of, for wages and disbursements, 623, 624
production of certificate by, 39
recovery of wages by, 53
right as to carriage of dangerous goods, 79
loss occasioned by collision, 543
transhipment, 74
in seeking port of refuge, 223, 224
to maritime lien for disbursements, 620
refuse admittance to passenger, 330
tranship cargo during voyage, 222, 223
sale of cargo by, for its preservation, effect of, 250
powers, 76, 77, 247—254
shipowner's liability as to, 249, 250
ship by, powers, 75, 76
share of, in salvage reward, 583
signature of bill of lading by, as agent for charterer, effect of, 175
signing of bill of lading by, 153
stipulation in charterparty as to signing of bills of lading by, effect of, 106, 107
successor to, on death at sea, 40
supervision of loading of cargo by, 203
transfer to another ship, effect on certificate, 602
transhipment of cargo by, rights as to, 74, 236, 237
when freight can be pledged by, 72
having no authority to vary charterparty, 174
wrongful sale of cargo by, 247, 248
master's bond, 343, 344
list, preparation of, after delivery of passenger list, 344, 345
mate, grant of pilotage certificate to, 601
transfer to another ship, effect on certificate, 602
mate's receipt, delivery of goods to consignee under, necessity for, 153
effect of delivery of, 152, 153
exchange of bill of lading for, 152, 153
handing over and effect of, 151, 152
loss of goods after delivery of, effect of, 151
mistake in, when master not liable, 156
transfer of, effect of, 153
when terms between parties contained in, 147, 148
measure of damages, breach of contract by shipowner to deliver, on, 288
non-delivery of cargo, on, 289, 290
partial failure to provide ship, 210
principles as to, 536, 537
where charterer fails to provide a cargo, 207, 208
ship proper cargo, 209
refuses to name a berth, 261
ship delayed on voyage, 289
shipowner fails to provide ship, 209, 210
vessel damaged but not lost, 539
measurement, ascertainment of freight by means of, 308—310
countries adopting British system of, 19, 20
ship, of, rules as to, 19, 20
mechanical foghorn, non-use of, effect of, 412
medical inspection, emigrant ships, of, provision for, 342
officer, emigrant ship on, when must be carried, 341
stores, carriage by ship, provision for, 45
emigrant ship, on, inspection before clearance, 341
provisions as to, 340
Mediterranean Sea, meaning of, 393
Medway bye-laws, application of, 481

SHIPPING AND NAVIGATION—*continued.*
mercantile documents, delivery to Registrar-General, 658
laws, power of Board of Trade to enforce, 652
Mercantile Marine Fund, abolition of, 632, 633
mercantile marine offices, establishment of, 655, 656
liability of officers of, 655, 656
superintendents of, appointment and duties of, 656
Merchant Shipping Acts, application to colonial ships, 13
foreigners, 12
object of the, 10, 11
merchant ships, flag carried by British, 11
Mersey rules, application of, 481
meters, employment by harbour authority, 643
mid channel, as distinguished from fair-way, 467, 468
misconduct, liability of master for, 65
salvors, of, effect, 577, 586
misdemeanour, disobedience to Sea Regulations as, 362
misrepresentation, salvage agreement as affected by, 571
mist, speed of vessels in, 414, 415
sound signals to be given by steamer or sailing vessel in, 410
when technically existing, 412
mistake, mate's receipt, in, when master not liable, 156
moderate speed, object of imposing, 415
what may be, 415, 416, 418, 419
money orders, seamen's, provision for issue of, 52
mooring of pleasure yachts, 661
vessels, regulations as to, 640, 641
mortgage, bill of lading, of, effect of, 147, 162
British ship, of, formalities of, 23, 24
ship, of, assignee of freight as affected by, 303
discharge of, 30
nature of, 24, 25
payment of freight as affected by, 299, 300
with her appurtenances, effect of, 24
mortgagee, ship, of, amount of freight payable to, 300
bankruptcy of mortgagor as affecting, 27
freight as affected by possession by, 26, 27
maritime lien as affecting rights of, 29
nature of freight passing to, 300
no right to refuse delivery of cargo pending payment of freight, 309
non-liability to claim of creditors, 26
possession by, how obtained, 25
power of sale of, 27
priority over judgment creditors of mortgagor, 28, 29
right to possession, 25
rights and liabilities on taking possession, 26
of assignee of freight where possession in, 29
law governing, 24
shares of, non-liability in respect of liens of part owners, 26
subsequent, right to possession, 300, 301
mortgagor, liability to reimburse mortgagee in respect of maritime lien, 25
name of British ship, provisions as to, 17, 18
narrow channel, allowance for behaviour of other vessel in, 469, 470
definition of, 465—467
duty of steam vessels in, rule, 465
fog in, behaviour in, 421
speed in, 416
positive duty of steamer in, 468, 469
rule, application of, 440—442
construction of, 465, 466
crossing rule as applied in connexion with, 441, 442
history of, 465
local rules as affecting, 470
not applying to vessel swinging, 469
channels, Canadian, 466
foreign waters, in, 466
list of, in British territorial waters, 465, 466

SHIPPING AND NAVIGATION—*continued.*
narrow channels, Queensland, 466
waters, application of crossing rule in, 437, 439
navigation in, 496—499
National Insurance Act, 1911, as to definition of seamen under, 15
national ship, liability in case of, 533
nationality, British, penalty on concealment of, 11
nautical assessors, appointment to assist in inquiries and investigations, 592
naval courts, constitution and jurisdiction of, 662
officers, inquiry on foreign station by, 593
" navigate with caution until danger of collision is over," meaning of, 423
navigating, as salvage service, 557
officer, duty as to bearing of approaching vessel, 429
to observe lights of approaching vessel, 429, 430
provision as to obeying and construing of rules by, 471, 472
navigation, accident of, when shipowner may be liable in respect of, 114, 115
local rules of, observance of, 479, 480
negligence in, 502
nature of, 503, 504
owner's liability for, 502, 503
" near relative," meaning of, 51
necessaries, liability of ship to arrest on claim in respect of, 67, 68
master's authority as to, 66, 67
meaning of, 68, 69
priority of statutory lien for, 624
proof required on claim in respect of supply of, 69
necessity, meaning of, as reason for sale of ship by master, 75, 76
negligence, acts of, antecedent and subsequent, 510, 512
as the " cause," a question of fact, 509
arising from act of one vessel only, 506, 507
breach of Sea Regulations, 364
as affecting salvage reward, 577
applied in exceptional cases, 505, 506
both vessels, of, 507
burden of proof, 114, 500, 501
" cause " in law of, meaning of, 509
clause, acts of negligence not covered by, 116, 117
as usual clause in bill of lading, 150, 151
effect where master also owner, 116
form and scope of, 117, 118
implied conditions not affected by, 116, 117
matters sometimes covered by, 132, 133
omission from bill of lading when contained in charter-party, effect of, 107
purpose and effect of insertion of, 116
statutory provisions in United States affecting insertion of, 116
collateral, immaterial, 505
during voyage, what amounts to, 221
equipment, in, 502
kinds of, where both vessels to blame, 510
liability for collision in the case of a chartered ship, 526, 527
of harbour authority for, 648
master for, 65, 526
shipowner liable for, 110, 111, 203
more than two vessels, by, 516
nature of cause of action for collision through, 499, 500
principles of liability for, 507—509
proof in collision cases, rules, 501, 502
shipowner's liability for loss outside the exception " perils of the seas " on account of, 110, 111
simultaneous, instances where both to blame for, 510
stevedore, of, shipowner's liability for, 206, 207
negligent navigation, by whom caused, 502
liability of owner for, divisions of, 503, 504
nature of, 503
negotiable instrument, bill of lading as, extent of, 166, 167
bottomry bond as, 73, 74
nets, not part of a ship, 360

SHIPPING AND NAVIGATION—*continued.*
Newport, application of local rules to, 481
" not under command," meaning of, 387
notice, readiness of ship, of, stipulation as to, 127
repairing or cleansing harbour, as to, duty of harbour master, 641, 642
when required of readiness to land goods, 281, 282
obstructing salvage of wreck, offence of, 550, 556
obstruction, Board of Trade inspector, of, penalty, 651
harbour master's power to remove, 642
master's duty to proceed until meeting with an, 258, 259
ship arriving at port of loading, to, provision for, 180, 181
voyage of ship, to, what amounts to, 259, 260
offences, by persons other than pilots, 608
pilots and masters, in respect of pilotage regulations, 606—608
master's power over passengers as to, 329, 330
officer on watch, want of due care by, what amounts to, 485, 486
officers and crew, supplying, as salvage service, 558
appointment and discharge of, 40
contract of service between owners and, 40
granting of certificates to, 38, 39
Royal Navy, of, right to apportionment of salvage reward, 584
share of in salvage reward, 583
official log, *and see* log.
delivery to marine superintendent, 82, 83
duty to carry, 82
entries to be made in, nature of, 82
entry of offences in, 63
" on approaching her," meaning of, 455, 456
open boats, lights to be carried by, 393
" open boats," meaning of, 397
ordinary skill, meaning of, 504
Ouse, application of local rules to the, 481
outgoing vessel, duty of incoming vessel to wait for, 498, 499
overhauling sailing vessel, duty of, when going down river, 433
overloading, as affecting seaworthiness of ship, 213, 214
overtaken vessel, burden of proof as to stern light is on, 402
lights to be shown by, 399
rights and duties of, 463, 464
overtaking, conditions implied as to, 401
meaning of, 400
vessel, application of rule to sailing vessel as, 464
definition of, 400, 461—463
duty of sailing vessel as, 445
to keep out of way of overtaken vessel, 461, 462
see hull or sails, 402
right to change course, 400
warning to when crossing astern, 401
when should slacken speed, 458, 459
owner, cannot be guilty of barratry, 112
cargo, of, when having no claim to general average contribution, 316
duty to provide ship with life-saving appliances, 78
report casualties, 590
instructions of, master's duty to obey, 66
liability for disobedience to Sea Regulations, 362, 363
generally, 33, 34
in respect of master's contracts for necessaries, 67
under salvage agreement entered into by master, 572, 573
property in danger, of, rights as to additional assistance, 585
right as to direction of salvors, 585, 586
on offer to take delivery, 281
to salvage reward, 565
where goods landed for assortment, 281
when disqualified from claiming salvage, 565, 566
" owners," meaning of under Maritime Conventions Act, 1911...519
ownership, British ship, of, how acquired, 15
change of, report to be made as to, 658
register as evidence of, 34
transmission of, by operation of law, effect of, 22, 23

SHIPPING AND NAVIGATION—*continued.*
ownership, vesting in unqualified persons, 23
oyster dredgers, lights to be carried by, 395
packing, shipowner's right to refuse goods the subject of improper, 197
parol evidence, admissibility to explain terms of charterparty, 140, 141
particular average, definition of, 315
passage broker, appointment of agent of, 351
definition of, 350
duty to exhibit list of agents or runners, 351
licence for, how obtained, 350, 351
required by, 350
money, recovery by relanded emigrant, 343
steerage passenger delayed by wreck of vessel, 348
on breach of contract of carriage, 346, 347
when payable, 329
passenger, contract tickets to be issued to, 336, 337
definition of, 331
liability to produce contract ticket to emigration officer, 337
list, identification established by, 613
master's duty in respect of, 344, 345
preparation of master's list after delivery of, 345
master's right to refuse admittance to, 330
ship, adjustment of compasses of, 77, 78
certificate for, issue of, 333, 334
certificated officers to be carried by, 38
equipment of, 336
steamer, definition of, 331
liability of owner or master of, on plying without certificate, 334, 335
penalty on travelling without paying fare, 345
survey of, owner's duty as to, 332, 333
passenger's luggage, as merchandise, 613
subject to lien for unpaid passage-money, 329
passengers, authority of master over, 329
carriage of letters by, illegality of, 354, 355
conflict of laws as affecting contract for carriage of, 329
conveyance of, position of shipowner as to, 327
forwarding of wrecked, 349
offences by, power of master on, 329, 330
right as to commencement of voyage, 328, 329
of action on non-compliance with warranties, 83
to special train where ship unpunctual in arrival, 329
rights in respect of damage by collision, 543, 544
where both vessels at fault, 522, 523
share of, in salvage reward, 583
safety of, liability of shipowner as to, 327, 328
shipowner's liability to, for negligence, 328
when entitled to salvage reward, 568
pauper boys, apprenticeship of, 41
penalty, attached to master's bond, 344
clause, operation of, in charterparty, 135
demanding or receiving fee for surveying emigrant ship, 335
disobedience to Sea Regulations, for, 362, 363
failure of master to post up scale of provisions in emigrant ship, 340
owner of passenger ship to send declarations of survey to Board of Trade, 333
to carry certified cook, 44
medicines and anti-scorbutics, 45
pay fare or show ticket on passenger ship, 330
register alterations to ship, 31
improper use of flag, 11
issue and production of contract tickets, as to, 337
liability of unlicensed emigrant runner as to use of badge, 352
on disobedience to order of Board of Trade inspector, 651
making false representation to emigrant, 352
marking and registration of ships, as to, 32, 33
master's liability on failing to make entries in official log-book, 82

SHIPPING AND NAVIGATION—*continued.*
penalty, non-compliance with regulations as to steerage passengers at end of voyage, 347
supply of water to emigrant ship, 339
non-production of provision list to steerage passengers, 340
offence against regulations affecting emigrant ship, 330
by master preventing arrest, 356
relating to property of deceased seamen, for, 59
stowaway's liability to, 345
taking unauthorised fees for finding seamen or apprentices, 44
travelling in passenger steamer without paying fare, 345
perils, fitness to encounter, as a condition of seaworthiness, 187, 188, 211—213
"perils of the sea," meaning of, 110, 111
perils of the sea, stipulation in charterparty as to, application of, 110, 111
usually excepted from shipowner's contract, 107, 108
perishable goods, time for sale of, 283
permission to sail, duty of master to obtain, 218
permit for shipment of cargo, charterer's duty to obtain, 190
personal injuries, right of action for damages in respect of, 523
representatives of personal sufferers, right as to injuries through collision, 543, 544
service, rule as to, in salvage operations, extent of, 565
sufferers, rights in respect of damage by collision, 543, 544
pier, jurisdiction in respect of damage by collision with, 547
master, meaning of, 634
pilot boat, approval and licensing of, 393, 605
characteristics of, list, 606
duty of master of, 605, 606
claim to salvage reward by, when justified, 567
compensation of, provision for, 597
under the Workmen's Compensation Act, 605
crossing rule when two vessels manœuvring to take up, 437
duty of, 530, 531
keep-on vessel on taking up, 447
flags, master's duty to display, 606
fund, payment of receipts by pilotage authority into, 603
liability for claiming excessive rate, 567
collision, extent of, 530
on his bond, 605
licence of, grant of, 600, 601
implies no liability, 601
revocation or suspension of, 601
limitation of liability of, 605
offences by, acts amounting to, 606, 607
right of appeal of, 609
to salvage reward, 604
rights and obligations of, 604
seaworthiness of vessel compelled to carry, 215
signal for, 11
signals, nature of, now in force, 606
duty to display, 606
Trinity House, limit of liability of, 615
unqualified person may not act as, 605
vessel, lights of, 392, 393
use of, 393
when "engaged on her station on pilotage duty," 393
pilotage authority, appeal against decision of, 608, 609
creation of, 597
definition of, 598, 599
establishment of, 597
expenses of, provisions for, 603
grant of pilots' licences by, 600, 601
liability not implied by grant of pilot's licence by, 601
power of Board of Trade to exercise powers of, 609
to submit reorganisation scheme, 597
purposes for which bye-laws may be made by, 599, 600
returns by, 604
revocation or suspension of pilots' licences by, 601

SHIPPING AND NAVIGATION—*continued.*
pilotage authority, Trinity House as, 599
certificate, alteration where master or mate transferred, 602
application for grant of, 601
extent of, 601, 602
form of, 601, 602
grant to alien, 602
master or mate, 601
offences for which suspended or revoked, 608
revocation or suspension of, 602
time for which in force, 602
districts, establishment and alteration of, 597
dues, as a general average expense, 321
basis and amount of, 603
liability for, 603, 604
who is liable for, 603, 604
offences, commission and punishment of, 606—608
order, confirmation of, 598
establishment of pilotage authorities and districts by, 597, 598
making of, 597
matters provided for in, 597
preparation by the Board of Trade, 596, 597
provision for compulsory pilotage by, 598
pilotage district under, 610
regulation of compulsory pilotage districts by, 610
repeal of local Acts by, 598
organisation, revision of, 596, 597
rates, basis and amount of, 603
regulations, offences by pilots and masters in respect of, 606—608
piloting, as salvage service, 557
piracy, liability of ship to forfeiture where engaged in, 33
nature of offence of, 62, 113
pirates, deviation to escape, effect of, 95
exception as to, nature of, 113
plant, shipowner's duty to supply in respect of cargo, 189
pleasure yachts, deaths on, provision not applicable to, 660
ensigns of, privileges granted in respect of, 660, 661
exemptions as to marking, 660
liability to light dues, 660
limitation of owner's liability for collisions, 661
mooring of, 661
officers and crew of, statutory provisions not applicable to, 659
privileges granted to owners holding Admiralty warrants, 661
pledge, bill of lading, of, effect of, 162, 163
plundering wreck, offence of, 550, 556
poor law relief, charge on seaman's wages in respect of, 57
enforcement of charge in respect of, 57
port charges, as a general average expense, 321
meaning of, 182, 220
of destination, assessment where salvage service ends at port other than, 588
salvage service ending at, effect of, 588, 589
discharge, actual state of affairs at, as affecting liability to unload, 277, 278
arrival at, what amounts to, 260—262
considerations necessary by charterer in naming, 256
natural conditions of, as affecting reasonable time for discharge, 275, 276
option of charterer to name, 97
shipowner's duty to reach, 257
safe, meaning of, 255, 256
situation of, where not named, 255
"so near thereto as she can safely get," effect of condition, 257, 258
unreasonable delay in arriving at, liability, 289
loading, advances made to master at, not necessarily advance freight, 313, 314

SHIPPING AND NAVIGATION—*continued.*
port of loading, arrival at, effect of provisions of charterparty as to, 181, 182
in dock or basin at, effect of provisions of charterparty as to, 183
duty of charterer to name, 178
ship to reach, provision as to, 180
implied condition as to ship arriving at, 93
naming of, duty of charterer as to, 181
provision in charterparty as to ship proceeding to, 92, 93
stipulation substituting, in case of war, meaning of, 193
time at which ship must arrive at, 177, 178
when shipowner's duty to arrive at fulfilled, 182
Port of London, maintenance of office of Registrar-General of Shipping and Seamen in, 657
port of refuge, duty of master on reaching, in unseaworthy condition, 221, 222
expenses in as general average expenses, 320
master's right in seeking, 223, 224
registry, British ship, of, what is, 17, 18, 20
registration to be effected at, 20
right to change, 20
possession, first and subsequent mortgagee's right to, 299—301
ship, of, by mortgagee, as affecting payment of freight, 299, 300
by, effect on right to freight, 26, 27
how obtained by mortgagee, 25
right of mortgagee to, 25
to where held in shares, 35
possessory lien, definition and effect of, 621
extinction of, 626, 627
how satisfied, 626
priority of, 624, 625
rights of mortgagees deferred to, 29
post letters, definition of, 354
postal officer, meaning of, 354, 355
pratique, duty of shipowner to obtain, 185, 186
precautions, observance of proper, Sea Regulations as to, 479
preliminary act, not filed by owners of landing stage, 14
inquiries, shipping casualties, into, when and by whom held, 591, 592
voyage, provision for in charterparty, 97
" prescribed for a vessel at anchor," meaning with reference to signals and lights, 399
preservation of cargo, sale by master to effect, effect of, 250—253
primage, payment of, provision in bill of lading for, 311
principal, liability under charterparty not under seal, 89, 90
rights and liabilities of agent under charterparty in case of unnamed or undisclosed, 90
priorities, as between registered and unregistered mortgagees, 27, 28
priority, lien for necessaries, 624
maritime lien for salvage, of, 622, 623
liens, of, 621, 622
master's and seamen's liens, of, 623, 624
private signals, registration of, 408, 409
saving for, 407
pro ratâ freight, nature and payment of, 314, 315
proceedings, limitation of liability, for, 616, 617
local marine boards, of, validity of, 654
power of Board of Trade to take, 649, 650
profits, distribution of, procedure on, 36
loss of, as part damages for collision, 540
prolonged blast, duration of, 409
blasts, two, usefulness of, 413, 414
property, danger to, degree of, as affecting amount of salvage reward, 576
liberty to save, effect of stipulation as to, 97
salved, nature of, subject to pay general average contribution, 317
value as affecting assessment of reward, 576, 577
protest, nature of a, 84
use as evidence, 84
provisional certificates, registry, of, when granted, 21
provisions and water, penalty on failure to provide proper, 44

SHIPPING AND NAVIGATION—*continued.*
provisions and water, regulations as to, 44, 338
on emigrant ship, 338
proximate cause, loss of cargo, of, how arrived at, 232, 233
Public Authorities Protection Act, 1893, application to emigration officers, 353
public officer, when salvage reward may be obtained by, 569
pumps, use for preservation of cargo, 227
purchaser, cargo, of, position of, where sale wrongful, 248
for value, postponement of rights of unregistered mortgagee to those of, 28
no right to refuse delivery pending payment of freight, 309
"quality unknown," effect of statement in bill of lading, 156
quantum meruit, recovery of seamen's wages on a, 42
quay, damage to, liability of shipowner for, 644
quays, power of harbour master when goods left on, 642
Queensland, narrow channels in, 466
raft, not a wreck, 559
rain storms, sound signals to be given by steamer or sailing vessel in, 410
speed of vessels in, 414, 415
ranking of liens, *see* priority.
rate, tonnage, *see* tonnage rate.
rations, issue on emigrant ship, regulations as to, 339, 340
"reasonable care," meaning in reference to navigation, 503
skill," meaning when referring to navigation, 503
receiver of wreck, appointment and remuneration of, 549
claim to salvage reward, 569, 570
discharge of liability of, 553
disposal of unclaimed wreck by, 553
duties of, 549—552
examination of witnesses as to cargo of wreck by, 550
exemption from trespass, 550
liability discharged by delivery, 553
penalty for withholding property from, 551
persons authorised to act in absence of, 550, 551
power of sale of, 552
to require assistance, 550
powers in executing duties, 550
remuneration of, 549
rights as salvor, 570
withholding wreck from, penalty, 551
red ensign, right to use the, 11
register, application to, how and by whom made, 18
as evidence of ownership, 34
book, admissibility as evidence, 31, 32
duty of registrar as to keeping, 18
inspection of, 18
registered mortgage, discharge of, 30
transfer of, form and effect of, 30
mortgagees, privileges between, 28
ranking of, 28
tonnage, basis of, 19
Registrar-General, appointment and removal of, 657
duty as to list of crews, 657
registration, alterations affecting the particulars of ship, of, 31
British ships, of, object of, 11
detention of ship until production of certificate of, 16, 17
duty of shipowner as to, 16, 17
effect of, 16, 17
exemptions from, 16, 659
Government ships, of, power as to, 16
mortgage of ship, of, 23, 24
name and address of managing owner, 18
private signals, of, 408, 409
regulations as to, 657—659
renewal of, when may be effected, 31
survey of ships prior to, 17
title, of, ownership of British ship as affected by, 15
where effected, 20
registry, certificate of, granting of, 20, 21

SHIPPING AND NAVIGATION—*continued.*
registry, closing the, 19
reloading charges, when a general average expense, 321, 322
removal of wreck, authorities having powers as to, 554, 555
expenses of, 555
removing vessel from danger, as salvage service, 558
remuneration, *see* wages.
repair, extent to which owner of damaged vessel entitled to, 539
repairs, how far master bound to effect, 223
hypothecation of cargo for purposes of, 242, 243
master as agent of shipowner in ordering, 246, 247
negligence arising from leaving port without effecting, 221, 222
rights of master in seeking port to effect, 223, 224
when a general average expense, 320, 321
repatriation of seamen, recovery of expenses of, 541
report, casualty, duty to make, 590
form of, 590
judge holding inquiry, of, 594
officers required to furnish to Board of Trade, 652
shipping casualty, of, duty as to and form of, 590
reporting ship, provision in charterparty for, 137
respondentia bonds, no liability to contribute to salvage reward, 586
maritime lien in respect of, 620
nature of contract of, 241
restitutio in integrum, application of maxim, 537
restraints of princes, stipulation as to, nature and application of, 109
returns, duty of Registrar as to, 31
pilotage authorities, by, 604
revenue cruisers, right of crews of, to apportionment of salvage reward, 584
officers, right to search mail ships, 356
reversing engines, duty in certain cases as to, 422, 423, 460
of steamer in fog as to, 423, 424
meaning of "if necessary" when referring to, 456, 457
rule to be observed by "keep out of the way" vessel as to, 454
rights *in personam,* salvor, of, in respect of salvage reward, 580, 581
rem, salvor, of, in respect of salvage reward, 579, 580
riots, compensation of owner of vessel in respect of damage from, 550
exception protecting charterer against, 132
risk of collision, alteration of lights showing a, 430
application of "crossing rule" when there is, 436
rules as to, 428
circumstances authorising departure from rule in case of, 427
conflict of rules obviating the, 426
cutting fine not permissible when acting on account of, 429
danger of delay where existing, 429
duty of steam vessel when red light appears on starboard bow with, 454
how may arise, 428, 429
meaning of, 427, 428
must appear before rules apply, 428
regulations where steamers meeting end on, 433—435
rule for construing rules with regard to, 471, 472
rules governing sailing vessels in case of, 425, 426
delay, in reaching place of delivery after arrival, upon whom falling, 263
salving property, in, as affecting salvage reward, 578
river, antecedent neglect not cause of collision in, 515
application of "crossing rule" in navigation of, 438, 439
duty as to navigating, when warping or there is risk of smelling the ground, 497
of look-out in reporting lights on, 486, 487
steamer proceeding in fog up, 417
vessel crossing or turning in, 497, 498
exception as to "perils of the sea," when applicable to, 110
keeping course in winding, meaning of, 447
liability of vessel navigating by warping, 370
local rules and practices as to, affecting narrow channel rule, 470
navigation in, 496—499

SHIPPING AND NAVIGATION—*continued.*
river, navigation where divided into two channels, 440, 441
reservation of rules for, 477, 478
speed of vessels in a, 487
waiting at bend of tidal, 496
"robbers," exception including term, effect of, 113
rocket apparatus, provision and maintenance of, 645
rowing boat, lights of, 391
when within provisions as to lights, 392
Royal Navy, apportionment of salvage reward to officers and men of, 584
officers and men of, when entitled to salvage reward, 569
payment of wages on seaman leaving to join, 48
right of seaman to leave ship to join, 63
Sea Regulations, not bound by, 408
Yacht Squadron, ensign of, 660, 661
rules concerning lights etc. in Sea Regulations, 1910...379—479
"runners," as crew for purposes of salvage apportionment, 583
running days, meaning of, 122
"running free," as distinguished from "close-hauled," 431
to meaning in rules, 433
duty of vessel when, 425, 431
how vessel is ascertained to be, 430, 431
no distinction as between "has the wind aft" and, 431
sacrifice, property must be subject of, to claim general average contribution, 317
safe port, meaning of, 255, 256
safety valve, provision to boilers in passenger steamer, 336
sailing and steering rules, under Sea Regulations, 1910...425 *et seq.*
from port, master's duty as to, 219
what constitutes, 219, 220
rules in Sea Regulations, 1910...425 *et seq.*
powers making, 359, 360
smack, distance at which hull and sails of visible, 402
telegrams, provision in charterparty for, 119
vessel, application of rule as to stern lights to, 401
departure from keeping course rule by, when justified, 452, 453
duty as overtaking vessel, 415
to sounding tacking signal, 414
in case of fog, 418
of keep-on, when meeting steamer, 452
steam vessel where there is risk of collision with, 442, 443
tug and tow to keep out of the way of, 492
when hove-to to give way to, 443
to give way to steam drifter when shooting nets, 443
keep clear of, when "going about," 488
out of the way of fishing vessels, 471
trawlers, 397
when close-hauled on the port tack, 432, 433
overhauling vessel on river, 433
fishing vessels do not give way to, 444, 445
liability as to lights when towing pilot boats, 382
lights to be carried by, 388
meaning of "keeping her course" when referring to, 451, 452
sound signals to be given by, in fog, snow, or rain storm, 410
speed held immoderate for, 419, 420
in fog, 418, 419
tug and tow, not subject to rule as to giving way to, 444
when under way, 388, 389
vessels, application of overtaking rule to, 464
duty as between, 492, 493
navigation where meeting end on, 434
sailors' homes, appropriation of land for, 57
sale, employment in lieu of, mortgagee not compelled in respect of, 27
mortgagee's power of, 27
of cargo, by master, effect of wrongful, 247, 248
necessity for, what amounts to, 251, 252
power as to, 76, 77
when justified, 250—253

SHIPPING AND NAVIGATION—*continued.*
sale of cargo, by shipowner in discharge of lien, application of proceeds, 282, 283
wharfinger or warehouseman, time for, 283
master's authority as to, extent of, 248
duty as to, where necessary, 253, 254
power as to, 228
ship, assignee of freight as affected by, 303
duty of owner when disputing, 76
foreigner, to, failure to make application in respect of, penalty, 33
payment of freight as affected by, 298, 299
under foreign judgment *in rem*, 76
when ordered at instance of part owners, 37
salvage agreement, abandonment of rights by seaman under, illegality of, 573, 574
cancellation of, grounds of, 572
cargo owners' liability under, 573
definition of, 570
exorbitancy or inadequacy of, effect of, 571, 572
form and proof of, 570, 571
fraud or misrepresentation as affecting validity of, 571
non-performance of, salvor's rights as to, 571
one of several salvors cannot bind others by, 573
persons bound by, 572, 573
reopening after settlement, grounds of, 571, 572
when set aside, 571
assignment not permitted by seaman, 54
assistance, duty to render, 371
award, finality of, 589
expenses, recovery as damages, 539
injured ship, of, owners of vessel to blame, no right in respect of, 546
life, of, statutory duty as to, 561
maritime lien for, when created, 619
property as subject of, 559, 560
res in case of, 619
meaning of, 557
operations, labour involved in, as affecting reward, 578
obstructing, offence of, 550, 556
plundering during, offence of, 550
principle of, unknown at common law, 579
priority of maritime lien for, 622, 623
receiver of wreck's right to deposit on land, 550
reward, abandonment of claim by seaman to, statutory provisions as to, 572, 573
appeal in respect of, grounds of, 581, 582
apportionment of, 573, 582—586
assessment by the court, 575
of freight at risk for purposes of, 588
circumstances affecting, 575, 576
claim by pilot, when justified, 567
for, when may be disqualified, 565, 566
coastguards may be entitled to, 569, 570
contract of towage as affecting tug owner's right to, 568, 569
custom or agreement as affecting right to, 566
danger and success essential to claim for, 558, 559
to life and property as affecting amount of, 576
exception to rule that success necessary to, 564
exemption of British and foreign Government vessels from, 560, 561
grounds of appeal in respect of, 581, 582
inclusion of salvor's expense or loss in, 578, 579
intervention of second set of salvors as affecting, 585
length of salvage operations as affecting, 578
liability of freight to assessment for, 588
to be proportioned, 587
limitation of amount of, 574, 575
loss or expense of salvor added to, 578, 579
misconduct as affecting, 577
negligence as affecting, 577

SHIPPING AND NAVIGATION—*continued.*
salvage reward, owner's share in, proportion of, 582, 583
position of tug and tow as to, 568, 569
proportioning of liability to, 587
recovery of, rights *in personam* as to, 580, 581
rem as to, 579, 580
remuneration of salvor's services by, 557
right of lifeboat crew to, 570
officers and men of Royal Navy as to, 569
passengers to, 568
pilots to, 604
public officers to, 569
receiver of wreck to, 569, 570
ship's agent to, 567, 568
tug to, 358
to, how arising, 558
in respect of life, 561
risk to salving property as affecting, 578
salvor's rights *in rem* in respect of, 579
ship's agent's right to, 567, 568
statutory duty to assist on collision not affecting, 563
success as essential to claim to, 563, 564, 581
usage as affecting division of, 574
value of salving property employed as affecting, 577, 578
vessels exempt from claims for, 560, 561
voluntary service as affecting claim to, 566, 567
service, assessment where ending at port other than port of destination, 588
damage received while rendering, rights, 546, 547
danger to property or life as condition of, 562
essence of, 562
how rendered, 557, 558
must be voluntary, 562, 563
nature of, 557
salved property, assessment of, place of, 587
consideration of value of, in ascertaining amount of award, 576, 577
salving property, value employed as affecting salvage reward, 577, 578
rights of owner of, 565
salvors, apportionment as between several sets of, 584, 585
care, skill and knowledge must be shown by, 577
crew of salved vessel may be, 567
independent, apportionment of reward as between, 584
intervention of second set of, effect on reward, 585
liability for negligence while rendering salvage services, 547
loss or expense of, as addition to salvage reward, 578, 579
misconduct of, as affecting rights *inter se,* 586
owner's right to direct, 585, 586
performance of services by different sets of, effect of, 573
persons entitled as, 564, 565, 568 *et seq.*, 604
property of, risk to, as affecting salvage reward, 578
value of, as affecting assessment of salvage reward, 577, 578
rotation in which favoured, 584, 585
sanitary regulations relating to an emigrant ship, 330
saving of life, rights of deviation for purposes of, 95
property, liberty as to, special condition giving, 97
savings banks, seamen's, establishment of, 52
sea-going ship, definition of, 14
vessels, definition of, 377
fishing, meaning of, 396
marks, duty of harbour authority as to, 645
Sea Regulations, absence of look-out as breach of, 486
application to inland waters, 478
area of application of, 376, 377
1910, preliminary article, 373—379
article 1...379—383
2...384, 385
3...385, 386
4...386—388

SHIPPING AND NAVIGATION—*continued.*
Sea Regulations, 1910, article 5...388—390
6...390, 391
7...391, 392
8...392, 393
9...393—399
10...399—402
11...403—406
12...406, 407
13...407—409
14...409
15...409—414
16...414—425
17...425—433
18...433—436
19...436—442
20...442—445
21...445—453
22...453, 454
23...454—460
24...461—464
25...465—471
26...471
27...471—473
28...473—477
29...477
30...477—479
31...479
as to day signals, fishing boats, 395
distress signals, 479
fog signals, 409—414
fishing boats, 395
lights, anchor, 403—406
cable ship, 386, 388
fishing boats, 393—399
generally, 379—383, 406, 407
pilot vessels, 392, 393
private signals, 407—409
sailing vessel under way, 388, 389
small vessels, 390—392
steam vessel towing, 385, 386
under sail, 409
way, 384, 385
vessel aground, 403, 406
being overtaken, 399—402
towed, 388—389
not under command, 386—388
local rules, 477—479
sound signals, 473—477
speed in fog, 414—425
steering and sailing rules:—
fishing boats, 471—473
generally, 425 *et seq.*
narrow channel rule, 465—470
overtaking vessel, 461—464
sailing vessels, 425—433
steam vessel and sailing vessel, 442—445
vessels crossing, 436—442
meeting, 433—436
authorities having power to make, 359, 360
breach as to lights, effect of, 382
is subject to knowledge of master that rule applies 366
construction of, 360, 361
copies of, duty of Board of Trade to furnish, 362
departure from, may be a positive duty, 370, 371
disobedience to, effect of, 361
duty of "keep out of the way" vessel as to speed, 454
vessel not giving way as to keeping course, 445, 446

SHIPPING AND NAVIGATION—*continued.*
Sea Regulations, exceptional cases in which not applicable, 366, 367
exceptions to, creation of, 368
division into classes, 368, 369
extent of application, 360
Government rules not to be interfered with by, 407
international interpretation of, 361
interpretation of, 472
judicial construction of former, effect of, 362
master cannot alter, 365
may be too strictly adhered to, 367
motive for, 361
must be observed by all vessels, 374, 375
negligence arising from breach of, 364, 506, 507
no justification for neglect of proper precautions, 477
non-existence of appliances affecting compliance with, 369, 370
obedience to, the principle insisted upon, 364, 365
penalties for disobedience of, 362, 363
presumption of fault for breach of, 534, 535
principles with regard to the observance of, 363
provision as to obeying and construing of rules by navigating officer, 471, 472
qualification of articles by Article 16...420
ships of the Royal Navy not bound by, 408
usages overridden by, 365, 366
"sea risk," meaning of, 71
seal, effect of charterparty when under, 88, 89
seaman, deceased, master's duty in respect of, 58
seamen, abandonment of rights under salvage agreement by, 573, 574
agreement on engagement of, provisions as to, 41, 42
complaints by, duty of master as to, 46
definition of, 14
discharge abroad, duty of master, 56
of, 52, 55, 56
on sale of ship abroad, 56
duties of, 60
entry into navy by, payment of wages on leaving merchant ship, 48
injury or illness of, liability of owners in respect of, 45
liability of wages to charge for poor law relief to families, 57
licences to engage or supply, granting of, 43, 44
lien of, on ship for wages, 53
lodging-houses for, provisions relating to, 54
loss of right to wages, 49
payment of wages in case of death, 51
when in foreign-going ship, 47, 48
left abroad, 48, 49
persons who have been regarded as, 14, 15
priority of lien for wages due to, 624
provisioning of, during currency of agreement, 44
qualification of, 39, 40
rating of, 39, 40
registration and returns respecting, 63, 64
rescission of contracts with, powers, 43
right to compensation where proper provisions not provided, 44
leave ship to join the navy, 63
recover unspecified wages on a *quantum meruit,* 42
Royal Navy, of, right to apportionment of salvage reward, 584
supply of, taking unauthorised fees for, 114
wages of, extent of right as to, 46, 47
liability of shipowner for, 34
payment of, 47
remittance of, 52
wrongful discharge of, 52
"seamen," when term includes apprentices, 55
seaworthiness, at commencement of voyage, 211
breach of condition of, what constitutes, 188, 189
documents and papers to be carried by ship in state of, 213
fitness to carry cargo as affecting, 214

SHIPPING AND NAVIGATION—*continued.*
seaworthiness, implied condition of, during loading, 186, 187
overloading as affecting, 213, 214
provisions relating to, 77
scope of condition as to, 187, 188
stowage of cargo as affecting, 213, 214
strengthening of ship to encounter ice as condition of, 215
time at which necessary, 217
want of, consequences affecting shipowner in respect of, 217, 218
what amounts to, 211—213
where voyage divided into stages, 214—216
" seaworthy," definition of, 211
Secretary of State, duty as to destitute lascars, 56
security for costs, appeal from judgment on inquiry or investigation, on, 595
seller, indorsement of bill of exchange to banker by, effect of, 162
protection of, courses adopted for the purpose of, 160—163
right of stoppage *in transitu,* 159, 160
servants, harbour authority's liability for acts of, 647, 648
set-off, when available in respect of freight, 302
settlement out of court, shipowner's right to limit liability on, 617
" shall, so far as the circumstances of the case admit, stop her engines," meaning of, 422
shareholders, ship, in, as tenants in common, 34, 35
shares, division of ship into, 18, 19
liability to forfeiture, 33
rights of mortgagee of, 24, 25
ship, alterations to, when registration necessary of, 31
arrest in respect of claim for necessaries, 67, 68
arrival of, consignee's duty to discover, 263, 264
what amounts to, 260, 261
as to meaning of, 374
British, closing the registry of, 19
marking of, 17, 18
ownership of, how acquired, 15
registration of, 16, 17
survey of, 17
who may be owner of, 16
carriage of doctor, medicines and anti-scorbutics on, 45
change of employment of, report of, 658
clearances necessary to sailing of, 81
condition of, shipowner's duty as to, 216, 217
control of, where held in shares, 36
damage done by, when maritime lien arising on, 618, 619
deductions allowed on valuation of, for salvage purposes, 587
definition of, 14, 612
description in charterparty, necessity for, 91, 92
discharge of seamen on sale abroad, 56
disposal to unqualified person, 22
general average loss of, when arising, 319
hire of, master's implied authority for, 65, 66
jettisoning cargo which is a danger to, master's right as to, 74
liability to forfeiture, 33
on improper use of British flag, 11
light dues, 629, 630
loss of, repayment of freight in case of, 105
statutory notice required as to, 590
or abandonment of, report to be made of, 658
marking of, 78, 79
master's authority to sell cargo or, 75
meaning of, 331
measurement of, rules as to, 19
mortgage of, as affecting payment of freight, 299, 300
formalities of, 23, 24
with appurtenances, effect of, 24
moving in harbour, persons who may be engaged in, 605
part owner's liability, extent of, 35
owners in, nature of ownership of, 34, 35
passenger's rights as to special train on unpunctual arrival of, 329
premature readiness of, effect of, 193

SHIPPING AND NAVIGATION—*continued.*
ship, proceeding of, stipulation as to, under voyage charter, 92, 93
prohibition of transfer, 23
provision with life-saving appliances, 78
provisioning of, regulations as to, 44
registration of, 657—659
sale of, as affecting payment of freight, 298, 299
enforcement of bottomry bond by, 73
under foreign judgment *in rem*, 76
when ordered at instance of part-owners, 37
seaworthiness of, at commencement of voyage, 211
nature of, 187, 188
seizure of forfeited, officers entitled to effect, 33
stipulations in charterparty as to, which are conditions precedent, 91, 92
transfer of ownership of, report of, 658
unsafe, power to detain, 81
unseaworthy, liability on sending to sea, 77
valuation for purposes of general average contribution, 324
of, 587, 588
when a "wreck," 49
"arrived" at port of loading, 181, 182
ready to discharge, 263
subject to compulsory pilotage, 609, 610
to proceed to port of loading, 177, 178
wilfully endangering, offence of, 62, 63
ship's agent, right to salvage reward, 567, 568
articles, *see* agreement with crew.
husband, duty to report loss of ship, 590
right to deduct disbursements when authorised to receive freight, 297
papers, delivery by master, 64
master's duty as to, 213
shipbuilder, limitation of liability for damages, 612—617
shipowner, acceptance of cargo by, how far bound as to, 195, 196
other employment by, on default of charterer, effect of, 208, 209
alteration of destination after shipment by, duty as to, 199
as contracting party under bill of lading, 170
person primarily entitled to receive freight, 296, 297
assignment of freight by, effect of, 301, 302
bill of lading as affecting, 147
breach of condition of seaworthiness by, what constitutes, 188, 189
contract to deliver by, measure of damages on, 288
contract of carriage between charterer and, where found, 175
contribution to salvage reward as between cargo owner and, 586, 587
conversion by, what amounts to, 152
default in loading by, rights of parties on, 200, 201
unloading cargo, effect of, 272
discharge from liability, 167
on delivery of cargo, 265
duty as to delivery where goods entered for landing or warehousing at some other wharf, 281, 282
discharge of cargo apart from stipulations, 266, 267
employment of average adjuster, 325
preservation of cargo, 224
proceeding to port of loading, 177, 178
readiness of ship for loading, 177
sorting out different consignments, 270
survey of passenger ship, 332, 333
the loading of cargo, 203, 204
in providing ship under charter, 103
on landing goods in absence of consignee, 280, 281
to arrive at port of loading, when fulfilled, 182, 183
obtain pratique, 185, 186
place ship in readiness to load, 184, 185
reach port of discharge, 257
supply seaworthy ship, 216, 217
towards pilot, 531

SHIPPING AND NAVIGATION—*continued.*
shipowner, duty where alternative modes of delivery available to consignee, 269
cargo consigned to several consignees, 270
conflicting claims made to cargo, 264, 265
engaging to arrive in dock, 183, 184
exceptions as to fitness of ship no protection to, 189, 190
extent to which responsible for stowage, 101
failure to deliver goods as affecting right to freight, 305, 306
perform condition precedent to loading, effect of, 192, 193
provide ship by, measure of damages, 209, 210
how far bound by agent's signature to bill of lading, 145
ignorance of consignee as to arrival, liability, 263, 264
landing of cargo by, effect on liability, 280
liability as bailee, 326
common carrier, 325, 326
to compulsory pilotage, 611
damaged goods, 156, 157
repair of ship during voyage, 223
for breach of condition as to seaworthiness, 186, 187
damaged goods, extent of, 291
delay in arriving at port of loading, 178, 179
deviation or delay, under charterparty, 94
expense in calculating amount of freight, 310
improper stowage, 203, 204
loss or damage to cargo, 232
master's failure to check deterioration of cargo, 226 227
negligence in preserving cargo, 225
negligent navigation, 502, 503
safety of goods, extent of, 107, 108
passengers, 327
in respect of chartered ship, 34
of, generally, 34
on sale of cargo by master, 249, 250
to consignee or indorsee, 165
general average contribution, 112, 322
passenger for negligence, 328
provide lighters, 269
strong room, 113
under charterparty as to voyage stipulation, 94, 95
nature of, 88—90
custom to pay wharfage dues, 269, 270
exceptions against collisions, strandings or accidents of navigation, 114, 115
where cargo improperly sold by master, 76, 77
charterparty contains stipulation as to date of sailing or arrival, 93, 94
exception includes words " robbers " and " thieves," 113, 114
more cargo jettisoned than necessary, 74
lien for bill of lading freight, 171
of, duration of, 287
extent of, 283, 284
for general average, 284, 285
when lost, 288
part goods lost, 150
limitation of liability for damages, 612—617
delay, as subject of contract, 290, 291
losses, 613
to passenger, 328
matters in which bound by master under bill of lading, 154
nature of act of God exempting, 108
negligence clause as a protection of, 116, 117
non-delivery by, when exception in charterparty no excuse, 171, 172
notice of readiness to load to be given by, 186
object of exceptions in charterparty the protection of, 118
position as to conveyance of passengers, 327

SHIPPING AND NAVIGATION—*continued.*
shipowner, position where bill of lading transferred to consignee, 172, 173
cargo hypothecated by master, 246, 247
ship under demise, 169, 170
presumption as to liability for collision, 525, 526
protection against liability in respect of fire, extent of, 111, 112
obstruction in arriving at port of loading, 180, 181
where responsible for loading, 198
qualifying stipulations in charterparty as to loading affecting, 180, 181
responsibility of, when attaching, 202
right to advance freight, extent of, 312
call upon consignee to take delivery of cargo, 254
contract out as to limit of liability, 612
freight subject to ability to deliver, 304, 305
where goods forwarded by another ship, 306, 307
general average contribution, 316
receive freight where ship chartered, 297, 298
refuse excessive amount of cargo, 197, 198
goods improperly packed, 197
to allow ship to proceed to unsafe port, 255
rights and liabilities under bill of lading where ship not under charterparty, 168
as to acceptance of goods when not a common carrier, 196
carriage of dangerous goods, 197
freight where cargo owner wrongfully takes possession of cargo, 307
in respect of damage due to collision, 542
where cargo not as described, 99, 100, 197
claim settled out of court, 617
shipper fails or refuses to load, 196, 197
sale of goods by, in discharge of lien, application of proceeds, 282, 283
signature of bill of lading by master as binding on, 174
effect where signed by another person, 145
statements in bill of lading binding on, 145, 146
stipulations in charterparty affecting, 92
unseaworthiness of ship as affecting, 217, 218
when burden of proof as to unseaworthiness rests on, 218
entitled to demurrage, 125, 126
not bound by bill of lading, 173
liable in respect of stowage, 205, 206
under bill of lading signed by master, 154
protected by exception as to perils of the seas, 110, 111
Shipowners' Negligence (Remedies) Act, 1905, detention of ship causing damage under, 544
shipper, duty to deliver cargo at place within reach of ship's tackle, 198, 199
towards principal, 152
holder of bill of lading when in position of, 173
liability for freight as affected by issue of bill of lading, 293
position of parties where charterer is not the, 169, 186
primary liability of, for payment of freight, 291, 292
proof of damage required from, 156, 157
rights of, where ignorant of terms of charterparty, 172
on delivery of cargo, 199
under the bill of lading, 171, 172
use of own ship by, effect on payment of freight, 292
shipping casualties, duty to report, 590
inquiries and investigations held in respect of, 591—595
provisions relating to, 590—595
"shipping casualty," meaning of, 591
shipping investigations, *see* inquiries.
sick persons, power of emigration officer to deal with, 343
side lights, fixing of, possibility a question for Trinity Masters, 390
showing by small vessels "in sufficient time to prevent collision," 390, 391
small vessels, of, 390
siege, rights under charterparty as affected by, 109

SHIPPING AND NAVIGATION—*continued.*
signal, "prescribed for a vessel at anchor," effect of, 399
two prolonged blasts, of, usefulness of, 413, 414
signals, display by pilot, 606
neglect to carry or sound, no exoneration for, 477
of distress, wrongful, danger as arising from, 562
liability as to, 562
provision of sea-going passenger ship with, 336
sound, for fog, regulations as to, 409
where vessel aground, 388
simultaneous negligence, at the last by both vessels, 510
instances of both to blame for, 510
skill, degree required in sudden difficulty, 504, 505
duty of salvor to show reasonable degree of, 577
reasonable or ordinary, meaning of, 503, 504
rules afloat and ashore as to, compared, 505
strikes and lock-outs, what is implied by phrase, 131
sugar, shipowner's duty on carriage of cargo of, 189
slackening speed, duty of giving-way vessel as to, 454—457
officer in charge of steamer as to, 458
small sailing vessels, sound signals to be given by, 410
vessels, duty in manœuvring, 494
lights of, in bad weather, 390
smelling the ground, duty of vessel where there is risk of, 497
smoke, speed of vessel obscured by her own, 458, 487
smuggling, liability of seaman for, 61
master's act of, as amounting to barratry, 112, 113
snow, sound signals to be given by steamer or sailing vessel in falling, 410
speed of vessels approaching, 413
in falling, 414, 415
when technically falling, 412
"so near thereto as she can safely get," port of loading, to, effect of insertion in charterparty, 180
effect of provision, 257, 258
soliciting emigrants, licence required in respect of, 352
solicitor's lien, priority of, for costs in shipping action, 625
sound signals for fog, Sea Regulations as to, 409, 410
vessels in sight of one another, Sea Regulations as to, 473—477
importance when manœuvring, 476
intention of article setting out, 473
time for giving, 475
when duty arises in respect of, 474, 475
where vessel goes "full speed astern," 476
speaking, liability on going alongside for purpose of, 489
special damage, none where consignee suffers damage from delay in delivery, 290
train, passenger's right to, where ship unpunctual in arrival, 329
weather, liability as to guarding against, 495
speed, cases in which held to be immoderate, 418
circumstances affecting, 415, 416
dangerous rate of, how determined, 487
density of fog as affecting, 416
duty of "keep out of the way" vessel as to, 454
fishing ground, over, 487
giving-way vessel, of, distinction between rule and obligations of good seamanship as to, 457, 458
effect of rule as to operations relating to, 457
in fog etc., Sea Regulations as to, 414—425
moderate, what is a, 415, 416
regulating "if necessary," application, 456, 457
sailing vessels in fog, 418, 419
of, when held immoderate, 419, 420
steamers in fog, 417, 418
river, 487
vessels in fog, mist, snow or rain, of, regulations, 414, 415
where vessel obscured by her own smoke, 458, 487
spirits, privileges granted to yacht owners in respect of, 661
prohibition of sale to steerage passenger on emigrant ship, 330

SHIPPING AND NAVIGATION—*continued.*
St. Lawrence river, application of Article 18 to, 436
stamp duty, contract ticket not subject to, 337
bill of lading, on, 151
standing by, after collisions, right to salvage reward as affected by, 563
duty as to on collision, 535
when a salvage service, 557
too close, liability in respect of, 488
"stationary," meaning and effect of, 398, 399
"statute adult," definition of, 331
statutory lien, enforcement of, 626
extinction of, 626, 627
priority in respect of wages, 624
when attaching, 621
limitation of liability for damages, 614
steam drifter, when "under way," 378
not within Article 26...471
sailing vessel must in certain cases give way to, 443
fishing vessels, navigation of incumbered, 396, 397
pilot vessel, lights of, 392
pinnaces, lights carried by, 391
trawler, when sailing vessel must give way to, 445
vessel, a sailing vessel when under sail only, 373
allowance for behaviour of other vessel in narrow channel, 469, 470
definition of, 377
distance at which must give way to sailing vessel, 443, 444
duty as "keep out of the way" vessel, 454, 455
to waiting at bend, 496
when in neighbourhood of fog, 420
keep-on vessel to assist in avoiding collision, 450, 451
meeting sailing vessel coming up river, 429
passing among fishing vessels, 397
proceeding up river in fog, 417
red light appears on the starboard bow with risk of collision, 454
the "keep out of the way" vessel, 454
lights on, when less than 40 tons, 391
towing, 385
under way, 384, 385
meaning of, 374
narrow channel, rule affecting, 465, 469
obligation of good seamanship apart from rules imposed upon, 459, 460
positive duty in narrow channel, 468, 469
proceeding up river stern first, duty as to, 496, 497
regulations where meeting end on, 433—435
rules of good seamanship in avoiding collision by, 456, 488
signal to be carried by, when under sail, 409
signing of bill of lading in case of a, 153
sound signals to be provided on, 409
speed in fog, 417, 418
stoppage of engines in fog by, object of, 420
when to keep out of way of sailing vessel, 442, 443
under sail, 409
vessels, when "end on or nearly end on," 434, 435
steerage passage, definition of, 332
liability for procuring by false representation, 352
"steerage passenger," definition of, 332
steerage passengers, forwarding in case of wreck, 349
insurance of, rights as to, 349, 350
issue of rations to, 339, 340
list to be supplied by master on arrival in British Islands, 344, 345
maintenance where delayed through wreck, 348
number carried in emigration ship, limit of, 337, 338
prohibition of sale of spirits on emigrant ship to, 330
recovery of passage-money by, 346, 347

SHIPPING AND NAVIGATION—*continued.*
steerage passengers, recovery of passage-money where wrecked during voyage, 348
regulations to be observed as to accommodation of, 338
restrictions as to carriage of goods likely to interfere with health of, 345, 346
right to remain on board at end of voyage, 347
subsistence-money where voyage delayed, 347
unlawful landing of, what amounts to, 347
steering and sailing rules under Sea Regulations, 425, 426
gear, steamer's liability in respect of, 485
rules in Sea Regulations, 1910...425—433
powers making, 359, 360
stern lights, application of rule to sailing vessel lying to, 401
binnacle light not a substitute for, 402
duty where overtaking vessel crossing astern as to, 401
right of vessels to carry fixed, 399, 400
time for showing, 401, 402
vessels being overtaken, on, rule, 399, 400
stevedore, employment of, as affecting charterer's liability for demurrage, 206, 207
liability in respect of, 206, 207
liability for defective stowage by, when the servant of charterer, 203
when the servant of the charterer, 207
steward, steerage, when carried on emigrant ship, 341, 342
stipendiary magistrate, inquiry by, 593
stoppage *in transitu,* right not defeated by mortgage or pledge of bill of lading, 162, 163
seller's right of, 159, 160
of engines, circumstances not justifying, 422
degree of fog necessitating, 416, 417
general duty as to, 460
justification for departure from rule as to, 459
meaning of "if necessary," referring to, 456, 457
object of, when in fog, 420
rule to be observed by "keep out of the way" vessel as to, 454
steamer's duty in fog as to, 420
stores, carriage and inspection of, 44
storm, deviation where ship driven out of course by, 95, 96
exception protecting charterer from accidents caused by, 132
stowage, as affecting seaworthiness of ship, 213, 214
defect in, not covered by negligence clause, 117
expenses of, liability of shipowner for, 202
extent to which shipowner may be liable for, 101
improper method of, not allowed, 103
liability where undertaken by charterer, 205, 206
place of, 205
provision for broken, effect of, 103
shipowner's liability for improper, 203, 204
stowaways, liability to penalty, 345
punishment and treatment of, 62
stranded vessel, floating, as salvage service, 557
stranding, exception against, when shipowner protected by, 114
when certificate cannot be suspended on, 592
strikes and lock-outs, exception protecting charterer against, 131
consignee's duty to unload not affected by, 273
strong room, shipowner's duty to provide where bullion carried, 113
subsidiary rule, in cases of damage by collision through negligence, 512—515
subsistence money, steerage passenger's right to, where voyage delayed, 347
success, essential to earning of salvage reward, 558, 559
sudden difficulty, degree of skill required in, 504, 505
Suez Canal, application of local rules to, 481
summary proceedings, recovery of wages by, 52, 53
sunken cargo, raising, as salvage service, 557
vessel, cost of raising as damages in collision, 539
raising, as salvage service, 557
superintendent, duty on entering seamen, 39

SHIPPING AND NAVIGATION—*continued.*
superintendents, mercantile marine offices, of, duties of, 656
survey, emigrant ship, of, provision for, 335
passenger steamer, of, owner's duty as to, 332, 333
ship prior to regulation, of, 17
surveyor-general of ships, appointment of, 650
surveyors of ships, appeal against actions of, 650
appointment of, 650
inspection of ship's lights and fog signals by, 363
powers of, 363
swinging vessel, narrow channel rule does not apply to, 469
tackle, supplying to vessel in danger, as salvage service, 558
Tees, application of local rules to the, 481
telegrams, sailing, charterparty usually provides for sending, 119
telegraph cable ship, day signals to be shown by, 386, 387
lights to be carried by, 386, 387
sound signals to be given by, 410
territorial waters, British, narrow channels in, 465, 466
Thames, application of local rules to, 482, 483
navigation of dumb barges in the, 494, 495
rule as to navigating against tide in, 459, 460
speed in fog on the, 416
theft, protection of cargo from, 225
"thieves," exception including term, effect of, 113, 114
third innocent vessel, rights as to damages, 522
party, recovery of cost of damage to harbour from, 644
through bill of lading, payment of freight under, 149, 150
when contract expressed in, 149
tidal river, waiting at bend of, 496
waters, application of Sea Regulations to, 376
meaning of, 548, 554
tide, duty to keep in view the effect of, 496
gauge, provision of, 645
time charter, option to continue for further term under, 98, 99
stipulations contained in, 98
usual provisions of, 104, 105
discharge, of, stipulation in charterparty as to, 120, 121
loading of cargo, for, provisions in charterparty as to, 119, 120, 179, 180
terms used in charterparty relating to, 122—124
when beginning to run against the charterer, 126, 127
title to ship, transmission of, 22, 23
tobacco, privileges granted to yacht owners in respect of, 661
tonnage, basis of calculation, 19
dues, foreign, exemption of yachts from, 661
limit of liability as affected by, 615, 616
rate, composition of, 637
disputes as to amount of, how settled, 639
duty of master as to, 637, 638
enforcement of, 638
exemptions from, 636, 637
exhibition of list, 635, 636
how ascertained, 635
liability of foreign ships to, 637
owner evading payment of, 638
payment on goods unshipped in harbour, 638
powers as to levying, 635
total loss, insurer's right to freight in case of, 301
measure of damages in case of, 538
tow, control of tug by, 358
dumb barge lashed to tug as a, 389
exemption from liability when in charge of compulsory pilot, 529
liability for lights of tug, 491
in respect of volunteer tug, 529
where tug fails to show towing lights, 381, 382
liberty to, stipulation in charterparty as to, effect of, 96, 97
lights to be carried by, 388
when liable for absence of lights on tug, 386
towage, construction of contract of, 359
contract of, obligations relating to, 357, 358

SHIPPING AND NAVIGATION—*continued.*
towage, contract of, provisions of, 357
obligations imposed by contract of, 357, 358
recovery as damages, 539
right of tug to salvage reward as affected by contract of, 568, 569
towing, as salvage service, 557
damage arising from, as salvage service, 562
damaged vessel, of, as form of salvage service, 562
lights, liability of tow as to, 381, 382
object of, 385, 386
regulations as to, 385
tug attached to steamship not begun to tow is not, 414
transfer of mortgage, form and effect of, 30
transhipment, cargo, of, during voyage, master's rights as to, 222, 223
kinds of, 233, 234
liability when taking place under contract, 234
master's rights as to, 74, 236, 237
on cargo owner's behalf, 239, 240
to earn freight, 235—238
under through bills of lading, 234, 235
or persons, of, as salvage service, 557
shipowner's lien not lost by, 284
transport, exemption from arrest in salvage action, 560, 561
trawler, duty of sailing vessels to keep out of the way of, 397
granting of certificates of competency to skipper and second hand of, 38
information given by lights of, 397
lights to be carried by, 324, 325
when "under way," 378
trawling, judicial notice of nautical facts relating to, 398
meaning of "engaged in," 398
trespass, exemption of receiver of wreck in respect of, 550
Trinity House, as pilotage authority, 599
meaning of the, 627
pilot, limit of liability of, 615
powers of, 629
Regulations, application of, 363
superintendence and management of lighthouses by, 627, 628
Masters, inspection of vessels lights by, 385
trust, notice of, not registrable, 30, 31
trustee, position of master as, 65
tug and tow, collision between, liability, 527
with third vessel, liability, 527, 528
duty as between, 490—492
to keep out of way of sailing vessel, 492
fault of third vessel and, division of damages, 521
manœuvring for other vessels, 492
rule as to giving way to sailing vessel not generally applicable to, 444
assistance, liability for not taking, 485
conditions affecting obligations on, 358, 359
contract of towage as affecting right to salvage reward, 568, 569
controlled by tow, 358, 528, 529
duty as to giving way to sailing vessel, 443
look-out, 486
of, 358
at bend of river, 470
to render assistance where tow in collision, 371
show towing lights, 385, 386
when towing, 358
efficiency of, 357
exempting conditions no indemnity against damage caused by, 359
no implied warranty as to specified, 357
where performance by, impossible, 357
position with tow as to salvage reward, 568, 569
volunteer, tow's liability in respect of, 529
when salvage not recoverable by, 358
turning, river, in, duty of vessel when, 497, 498
two prolonged blasts, usefulness of, 413, 414

SHIPPING AND NAVIGATION—*continued.*
Tyne, application of local rules to the, 483
unclaimed wreck, *and see* wreck.
right of the Crown to, 552, 553
title to, power of receiver as to, 553
" under sail," definition of, 377
steam," definition of, 377
way," as distinguished from " under weigh," 378
definition of, 389
vessel not at anchor is, 405
when sailing vessel is, 388, 389
vessel is, 374, 378
United States, statutory provisions relating to inclusion of the negligence clause in, 116
unlawful contract, freight not payable where earned under, 307
release of charterer in respect of, 201
landing, steerage passenger, of, what amounts to, 347
unloading, actual circumstances at port of discharge as affecting liability as to, 277, 278
charges, when a general average expense, 321
consignee's duty as to, nature of, 273, 274
obligation as to, when arising, 254, 255
duty of consignee where no time fixed, 274, 275
parties as to, 265—268
master's duty to proceed to place of, 262
unqualified person, acquisition of ship by, penalty, 33
pilot may not act as, 605
transfer of ship to, effect of, 23
unregistered mortgagees, postponement of rights of, 28
unsafe port, consequences of naming, 256, 257
ship, power to detain, 81
unseaworthiness, a question of fact, 77
as an answer to charge of desertion, 61, 62
burden of proof as to, upon whom resting, 218
shipowner as affected by consequences of, 217, 218
not liable where arising during loading, 190
unseaworthy, defects which make ship, 212, 213
liability on sending ship to sea, 77
unpaid seller, right of stoppage *in transitu* not defeated by mortgage or pledge, 163
" upper passenger deck," definition of, 332
usage, admissibility of evidence as to payment of broker's commission, 137
parol evidence of, 140, 141
as affecting division of salvage reward, 574
deck cargo sanctioned by, 205
liability for delay in berthing of ship as affected by, 182, 183
may constitute exception to Sea Regulations, 370
Sea Regulations overriding, 365, 366
valuable consideration, necessary to pass goods by transfer of bill of lading, 163
valuation, ship, cargo and freight, of, deductions allowed on, 587, 588
for general average contribution, 324, 325
value of ship, what is, 587
ventilation during voyage, master's duty as to, 225
vessel aground, not within regulations as to lights, 380
at anchor, duty to keep clear of, 488
" vessel being towed," meaning of, 389
vessel, harbour master's powers as to, when entering harbour, 641
hove-to on the port tack, duty of, 432
in distress, duty of receiver of wreck as to, 549—551
length of, how determined for purpose of anchor lights, 403
meaning of, 14, 374, 375, 613
value of, for purpose of assessing damages, 538
when under way, 374
" vessels," meaning in Article 28...474
" visible," meaning where referring to lights, 379
vitriol, prohibition of carriage in emigrant ship, 345
voluntary service, necessary to claim of salvage reward, 566, 567
volunteer tug, tow's liability in respect of, 529

SHIPPING AND NAVIGATION—*continued.*
voyage charter, conditions of, 92, 93
provision for form of bill of lading in, 105, 106
stipulations as to freight contained in, 103, 104
commencement of, as necessary to payment of freight, 314
master's duty as to, 219
passenger's rights as to, 328, 329
condition of ship necessary to the, 216, 217
delay in prosecution of, rights of passenger as to, 328, 329
starting upon, liability, 219
on, measure of damages as to, 289
furnishing of adequate crew for the, 213
liberty to call or tow during voyage, effect of stipulations as to, 96, 97
maintenance of ship during, 220, 221
master's duty to check deterioration during, 226, 227
power over cargo during, 222
precautions to be taken by master during the, 224—226
proceeding during, duty of master as to, 220
repair of ship during, liability as to, 223
rights of majority and minority owners respectively as to, 36, 37
sale of cargo during, justification for, 250—252
to complete, master no authority as to, 249
stages, in, condition of seaworthiness fulfilled where, 214, 215
necessity for vessel to be seaworthy where, extent of, 215, 216
state of ship at commencement of, 211
steerage passengers' right to remain on board at end of, 347
stipulation in charterparty as to, effect of, 94
transhipment of cargo where continuance prevented, 239
wages, advance of, 51
assignment by seaman of, effect of, 54
disputes as to seamen's, how settled, 48
emoluments included in, 47
entries to be made in log-book relating to, 82
extra, when seaman entitled to, 50, 51
loss of right to, 49
maritime lien attaching for, 620
master's, delay in payment of, right to damages on, 47
priority of lien for, 623, 624
rights as to recovery of, 53
recovery by summary proceedings, 52
restrictions on action to recover, 53
right to sue for, when voyage ending in United Kingdom, 53
seaman's, agreement relating to, 41, 42
charge for poor law relief on, 57
lien on ship for, 53, 624
payment of, mode and place of, 47
on foreign-going ship, 47
home-trade ship, 48
where left abroad, 48, 49
remittance of, 52
right to, 46, 47
shipowner's liability for, 34
when a general average expense, 321
waiting at bend, duty of steamer as to, 496
war, exception protecting charterer against outbreak of, 132
outbreak of, as affecting charterer's liability to the contract, 193
stipulation substituting different port of loading in case of, meaning of, 193
warehouse, master's power to land and deliver cargo to, 278, 279
warehouseman, when shipowner incurs liability as, 280
warehousing charges, when a general average expense, 321, 322
warping, difficulties of, liability as to, 497
warranty, master, by, effect of, 65
of fitness, shipowner's liability for, 216, 217
warship, duty as to danger arising from ram of, 493, 494
exemption from claim to salvage reward, 560, 561
warships, departure from keeping course rule when meeting, 449
Sea Regulations not binding on, 408

SHIPPING AND NAVIGATION—*continued.*
water, carriage by ship, provision as to, 44
master's duty to preserve cargo from, 225
provisioning of emigrant ship with, regulations as to, 338, 339
weather report, duty of harbour authority as to, 645
working days, meaning of, 123
weighers, employment by harbour authority, 643
weight, ascertainment of freight by cargo's, 309, 310
weights and measures, duty to keep on ship, 44
wharfage dues, shipowner's liability under custom to pay, 270
wheat, description of cargo of, in charterparty, 99
whistling, officer in charge should err, if at all, on side of, 474
" wilful default," how construed, 362
will of seaman, provisions relating to, 58
" wind aft," duty of vessel having the, 425
how vessel is ascertained to have the, 430, 431
when vessel may be said to have the, 433
wines, privileges granted to yacht owners in respect of, 661
witnesses, expenses of, where attending Board of Trade inquiry, 651
wood goods, carriage as deck cargo, regulations as to, 80
wooden ship, valuation for purpose of general average contribution, 324
working day, length of, upon what depending, 123
days, meaning of, 123
Workmen's Compensation Act, as to definition of " seamen " for purposes of, 15
compensation of master or seaman under, 544
pilot under, 605
wreck, appointment of receiver of, 549
boarding, offence of, 556
collision with, liability, 533, 534
commissioner, formal investigation held by, 592
definition of, 46, 548, 559
duties of receiver regarding, 551, 552
finders of, duties, 551
foreign ship, of, claims to, 552
forwarding of passengers in case of, 349
lighting and buoying, liability, 555
lights on, liability, 383
maintenance of steerage passengers delayed in consequence of, 348
owner's claim to, 552
purchase for Crown, powers, 553
receiver's power to sell, 552
removal of, 554, 555
rioting in case of, compensation, 550
sale of cargo when ship a, when not justifiable, 251, 252
saving of, as salvage service, 557
selling in foreign port, offence of, 556
unclaimed, Crown's right to, 552, 553
disposal by receiver, 553
disputes as to title of, how determined, 553
title to, 553
when jetsam, flotsam or lagan becomes a, 549
ship is a, 49
withholding from receiver, penalty, 551
wrongful possession of, offence, 556
wrecked seamen, return to home port, provision for, 56, 57
writing, value of print and, of charterparty, 142, 143
wrongful discharge, rights of seaman on, 52
sale, cargo, of, position of parties on, 247, 248
signals of distress, danger arising from, 562
yacht, *see* pleasure yacht.
York-Antwerp Rules, adjustment according to, 323
under bill of lading under, 151

SMALL HOLDINGS AND SMALL DWELLINGS,
accounts, small holdings and allotments committee, of, audit of, 676
acquisition of land, expenses of, 686, 687
restriction of price payable on, 684, 685
small holdings, for, 679
advances, power to make, to tenant of small holding for purchase, 674

SMALL HOLDINGS AND SMALL DWELLINGS—*continued.*
advances, small dwellings, for, 696, 698
agreement, acquisition of land by, 678, 679
"agricultural holding," meaning of, 670
agriculture, user of small holdings for purposes other than, 690
allotments, assisting provision of, 675
interchange of lands for purposes of, 692, 693
annual charge, limitation of amount of, 675
arbitration, settlement of amount due for depreciation by, 683
questions affecting the acquisition of land by, 673
arbitrator, assessment of compensation by, where lands taken compulsorily, 681, 682
bankruptcy, proprietor of small dwelling, of, effect of, 699
Board of Agriculture and Fisheries, annual report by, 671
compensation paid by, 671, 672
payment of loss on scheme by, 678
powers and duties of, 670, 671
in relation to the Public Health Acts, 671
reports by county council to, 675
transfer of land by, 672
borrowing powers, county council, of, for purposes of small holdings, 693, 694
local authorities, of, for small dwellings, 701
breach of conditions, power of local authorities in respect of small dwellings on, 698, 699
capital money, application by county councils, 694
in respect of small dwellings, 701, 702
charge, annual, limitation of amount of, 675
meaning of, 675
Commissioners, Small Holdings, *see* Small Holdings Commissioners.
compensation, assessment where lands taken compulsorily, 681, 682
county council's right to, for improvements, 680
improvements on land compulsorily hired, for, 684
labourers for loss of employment, to, 692
payment out of Small Holdings Account, 673
to proprietor of small dwelling on giving up possession, 699, 700
power of Board of Agriculture and Fisheries to pay, 671, 672
tenants for disturbance, to, 692
where notice to treat withdrawn, 685
completion, sale of small holdings, on, 687, 688
compulsory purchase, considerations affecting, 685, 686
land by county councils, of, 680, 681
exempt from, 685
for purpose of scheme, 673
conditions of sale, on sale of small holdings by county council, 687—689
co-operative societies, power to form and assist, 675
society, meaning of, 675
county councils, accounts of, provisions as to, 694
adaptation of land for small holdings by, 686
application of capital moneys, 694
borrowing powers for purposes of small holdings, 693
cultivation of land leased to, 682
delegation of powers, 674, 675
duty to carry scheme into effect, 678
furnish Small Holdings Commissioners with information, 674
expenditure of, restriction on, 675, 676
expenses of, how defrayed, 694
scheme payable by, 673
fixing of rent payable by, powers, 690
letting of small holdings by, powers, 690
liability for depreciation, 683
power to acquire land for small holdings, 674
form and assist co-operative societies, 675
let unsold and superfluous land, 691, 692
provide small holdings, 673, 674
require sale of small holding, 689
preparation of scheme by, 677

SMALL HOLDINGS AND SMALL DWELLINGS—*continued.*
county councils, provisions as to pasture land held by, 683
registration of title of, 691
reports to be made by, 675
right to compensation for improvements, 680
interchange lands, 692, 693
rights as to timber and minerals, 683
sale of small holdings by, conditions on, 687
transfer of land to, 672
cultivation of lands leased to county council, 682
death of owner of small holding, effect of, 689
delegation of powers, county council's powers as to, 674, 675
small holdings and allotments committees, by, 676
depreciation, settlement of amount due by county council for, 683
disturbance, tenant's right to compensation for, 692
draft scheme, preparation of, 672
publication of, 677
specification of, 677
easements, provision in compulsory order as to, 686
Ecclesiastical Commissioners, payment to, where glebe land taken, 682
finance, provisions as to, 693, 694
glebe land, provision where land taken is, 682
hiring, land under compulsory powers, of, 682
necessary terms of, 682
improvements, compensation for where lands compulsorily hired, 684
county council's right to compensation for, 680
inquiry, holding of public, as to scheme, 678
instalments, payment of purchase-money by, 687, 688
interest, provisions as to payment of, 694
labourers, right to compensation for loss of employment, 692
adaptation by county council for small holdings, 686
compulsory purchase by county councils, 680, 681
considerations affecting compulsory acquisition of, 685, 686
land, letting of unsold or superfluous, by county councils, 691, 692
restriction of price for acquisition of, 684, 685
transfer to county councils, 672
when exempt from compulsory purchase, 685
Lands Clauses Acts, purchase of glebe land under, 682
land under, 680, 681
leased lands, landlord's power to resume possession of, 684
leasing of land, county council for small holding, to, 679
powers as to particular lands, 679
letting, small holdings, of, regulations as to, 690
limited owners, powers of leasing of, 679
local authorities, borrowing powers in respect of small dwellings, 701
expenses in respect of small dwellings, how defrayed, 700
having power to make advances for purposes of small dwellings, 695
inspection of small holding accounts of, 696
powers on breach of condition by proprietor of small dwelling, 698, 699
repayment by proprietors of small dwelling to, 697
inquiry, holding as to scheme, 678
loss, payment where scheme results in, 678
Metropolis, powers of authorities in, as to small dwellings, 702
minerals, right of county council as to, 683
mortgaged lands, effect of compulsory leases of, 684
notice to treat, compensation where withdrawn, 673, 685
order, as to compulsory hiring of land, 682
under Lands Clauses Acts, publication and confirmation of, 681
submission by county councils, 680
pasture land, provision against breaking up, 682, 683
possession of small dwelling, recovery of, 699
price, restriction on acquisition of land, 684, 685
Public Health Acts, powers of Board of Agriculture and Fisheries in relation to, 671
Works Loans Commissioners, powers as to lending for small holdings, 694
purchase-money, payment on sale of small holdings, 687, 688

SMALL HOLDINGS AND SMALL DWELLINGS—*continued.*
registration of title to small holdings, 691
renewal of lease of land compulsorily hired, 684
rent, fixing, where land compulsorily hired by county council, 683
reports, duty of Board of Agriculture and Fisheries to make, 671
county councils to make, 675
Small Holdings Commissioners as to, 677
right of way, sale subject to, 688
sale of small holdings, 687, 689
scheme, carrying into effect, 678
expenses of, how recovered, 673
local public inquiry as to, 678
payment where resulting in loss, 678
preparation by county council, 677
of draft, 672
publication of draft, 677, 678
specifications in draft, 677
security for advances on small dwellings account, provisions, 696, 697
Settled Land Acts, powers of tenant for life under, 679, 680
small dwellings, application of money in respect of, 701
authorities having power to make advances for, 695
bankruptcy of proprietors of, effect of, 699
conditions affecting advances in respect of, 697, 698
governing advances for purposes of, 695, 696
of letting by proprietors of, 698
disposal where local authority retakes possession of, 699
finance in respect of, provisions as to, 700—702
limits of expenditure in respect of, 700, 701
local authorities' powers on breach of conditions as to, 698, 699
powers in the Metropolis as to, 702
repayment by proprietors of, 697
of advances in respect of, 696, 697
sale of, procedure, 700
"small holding," definition of, 670
Small Holdings Account, payment of compensation out of, 671—673
payments to be made into, 671
and out of, 693
small holdings, acquisition of land for purpose of, 678, 679
adaptation of land for purpose of, 686
advances for purposes of, amount of, 696
to tenant on purchase of, 674
and allotments committees, audit of accounts of, 676
delegation of powers by, 676
establishment and constitution of, 676
conditions on sale by county council, 688, 689
death of owners of, 689
interchange of lands for purposes of, 692, 693
leasing of land for, 679
letting of, 690
power of county councils to acquire land for, 674
provide, 673, 674
sale of, by county council, conditions of, 687, 689
conditions governing, 689
user for purposes other than agriculture, 690
Small Holdings Commissioners, duties of, 672
duty of county council to give information to, 674
powers of, 672, 673
report on scheme by, 677
tenant for life, powers of sale, exchange, and leasing of, 679, 680
right to compensation for disturbance, 692
timber, county council's rights as to, 683
valuation, fixing of rent payable by county council by, 683
provisions as to method of, 683

SOLICITORS,
action, commencing without authority, effect of, 741, 742
compromise of, as affecting lien, 823

SOLICITORS—*continued.*
action, conduct of, retainer as to, 737
costs, for, time at which may be brought, 812
when delivery of bill not necessary before, 813
discontinuance of, right of solicitor as to, 743
name of solicitor acting must appear on record, 742, 743
special authority necessary to commence, 741
additional remuneration, when allowed, 765
administrator, liability for solicitor's costs, 730
admission, affidavit of employment necessary before, 715, 716
application for, 719
colonial solicitors, of, 722
defect in as ground for striking off the rolls, 847
examinations necessary before, 716
qualifications for, 710
screening of notices in respect of, 719
solicitors exempt from service under articles on, 710
stamp duty on, 719
affidavit, allowance in excess of scale, when made, 801
employment, of, necessary before admission, 715, 716
agency cases, allowances in, 802, 803
agent, *see* London agent.
allocatur, interest payable on amount shown by, 810
proceedings on, 813, 814
taxing master, issue of, by, 795
ambassadors. power to administer oaths, 857, 858
annual certificate, *see* practising certificate.
appeal, as to order for review of taxation, 796
complainant's right of, on finding as to solicitor's conduct, 855
refusal of pass certificate for the final examination, 719
intermediate examination, 718
to renew certificate, 722
solicitor's right of, from finding of statutory committee, 855
appointments, eligibility of solicitor for certain, 727, 728
arrest, solicitor's privilege from, 726
articled clerk, an apprentice, 710, 711
bankruptcy of master as affecting, 713, 714
death of solicitor as affecting rights of, 714
dismissal by master, rights on, 716
clerks, number which solicitor may take, 713
articles, defect in, as ground for striking off rolls, 848
employment under, must be exclusive, 714, 715
procedure where service not continuous, 714
provisions relating to, 712, 713
registration of, 713
service under, how far necessary, 711
period of, 711, 712
assignee of costs, rights of, 782
attachment, liability where acting without authority, 742
attendances, allowances on taxation for, 803
Attorneys' and Solicitors' Act, 1870, special agreement for costs under, 771—773
audience, right of solicitor as to, 723, 725
authority, acts falling outside the solicitor's authority, 744
of solicitor covered by, 743, 744
commencing action without, effect of, 741, 742
delegation of, liability on, 758
limits of, 741
partners, of, 758, 759
production of deed as, 744, 745
special, necessary as to contentious business, 741
under general retainer, 741
bankruptcy, as affecting retainer, 740
costs in matters of, 769, 770
effect on right to renewal of practising certificate, 721, 722
petition, right to present in respect of costs, 813
proof in, as affecting lien, 820
right of audience of solicitor in matters of, 723, 724
solicitor appointed trustee in, rights as to costs, 753

SOLICITORS—*continued.*
bankruptcy, solicitor, of, effect on articles of clerkship, 713, 714
barristers, offices held by, as solicitors, 710
bidding by solicitor having conduct of sale by court, 750, 751
bill of costs, contents of, 776, 777
delivery of, effect of, 778, 779
may be in parts, 777
ordered, 779
mode of, 778
necessity for, 774, 775
disbursements in, treatment of, 775, 776
failure to deliver, effect of, 776
London agent's charges in, treatment of, 775
naming of person charged in, 777, 778
necessity for signature, 777
non-delivery as affecting right to tax, 790
payment as admission of correctness, 788
rectification of, 779
taxation of persons entitled to, 781, 782
breach of trust, delegation of authority to receive money as not amounting to, 745
brief, instructions for and preparing, allowances, 801
cause of action, failure to investigate, liability, 755
certificate for costs, *see* allocatur.
chambers, right of audience of solicitors in, 724
Chancery Division, procedure on taxation in the, 790
change of solicitors, effect on right to costs, 740
lien as affected by, 818
charging order for costs, court making the, 827
may direct taxation as between solicitor and client, 827
none where recovery barred by Statutes of Limitation, 824
priority over garnishee order, 825
property subject to, 824—826
when court will make, 819, 823—827
who may apply for, 826, 827
cheque, receipt of payment by, requires special authority, 745, 746
clerk, liability for acts of, 758
client, acts of solicitor not binding on, 744
credit of, solicitor cannot pledge for counsel's fees, 741
liability to indemnify solicitor, 832
mortgage by solicitor to, effect of, 751, 752
relation between London agent and, 843, 844
right as to moneys in hands of solicitor, 839, 840
to papers, 740
tax bill of costs, 781, 782
sale to solicitor by, 748—750
solicitor may benefit under will of, when, 752
solicitor's authority to bind, 741
liability to pay over moneys received to, 837, 838
right to recover costs as against, 797, 798
clubs, retainer of solicitor by, 734
colonial authorities, issue of commissions in England by, 858
solicitors, admission of, 722
stamp duty and fees on admission of, 722
colonies, particular places as to which Orders in Council have been made, 722
commission to administer oaths, procedure to obtain, 858
where affidavit for use in colonies, 858
commissioner for oaths, appointment of, 857
duties of, 858
solicitors usually appointed, 858
commissioners, perpetual, *see* perpetual commissioners.
committal, as remedy for breach of undertaking, 827
Committee of Law Society, *see* statutory committee.
common law lien, enforcement of, 822, 823
extent of, 821, 822
property recovered on, 820, 821

SOLICITORS—*continued.*
Companies (Consolidation) Act, 1908, right of solicitor retained in respect of formation of company under, 734
company, retainer of solicitor for proposed, 733
complaint as to solicitor's conduct, procedure, 852, 853
compromise of action, effect on lien, 823
conduct money, allowance of, 801
none allowed to parties, 802
retainer by, 729, 730
consideration, receipt in deed as authority to receive, 744, 745
constructive trustee, solicitor no authority to constitute himself a, 760
contempt in procedure, liability of solicitor for, 829
contentious business, acting without authority in, effect of, 741, 742
costs against client in, 797, 798
in, 767—769
death or lunacy of client as affecting retainer in, 742
interest on costs in, 809, 810
negligence arising in, 755, 756
special authority necessary as to, 741
contract, arising between solicitor and client, 728, 729
liability to third parties by, 836
conveyancing business, liability of unqualified person acting in, 856
remuneration for, 760, 761
convict, power to make contract of retainer, 732
solicitor's right to interview, 732
copy documents, costs of, 805, 806
corporation, individual liability of members in matter of retainer, 733
retainer by, 732, 733
corrupt practices, as ground for striking off the rolls, 849
costs, additional, on expediting matter, 765
as between party and party, 799—807
solicitor and client, 797—799
bankruptcy, in, 769, 770
charging order in respect of, power of the court as to, 824, 825
completion of work under retainer as affecting right to, 738
conveyancing matters, in, 760, 761
delivery of bill necessary to recovery of, 774, 775
disallowance by taxing master, powers, 769
discretion of taxing master as to, 768, 769
higher scale, when allowed, 768
improper procedure in respect of taxation of, 792
inquiry into conduct of solicitor, of, rights as to, 853
interest on, when payable, 809, 810
judgment for, power of the court to enter, 814
liability of solicitor to pay, 832—834
matters in the Supreme Court, in, 767, 768
mortgage for, precaution to be taken as to, 811
nature of, in respect of which lien arises, 815, 816
of taxation, as between solicitor and client, 808, 809
party and party costs, of, 807, 808
personal liability of solicitor to pay, 832
recovery as against client, 797, 798
remedies for recovery of, 812—814
retainer necessary to claim to, 729, 730
scales in non-contentious business, 760—765
security for, solicitor's right to, 811
solicitor trustee, of, when chargeable, 752, 753
special agreement as to, statutes applicable, 770
Statutes of Limitation as affecting recovery of, 812, 813
taxation of, jurisdiction of the court as to, 780
undertaking to repay, liability on, 832
where regulated by statute, 807
counsel, allowance for two or more, when made, 804
when solicitor may be heard in absence of, 723
counsel's advice, as affecting liability for negligence, 755
fees, allowances for, 803, 804
client's credit cannot be pledged for, 741
failure to pay when money provided, offence of, 850
payable where Crown unsuccessful, 804

SOLICITORS—*continued.*
counsel's fees, stamped receipt for to be produced, 804
country certificate, *and see* practising certificate, 721
scope of, 843
solicitor, allowance for, on taxation, 803
relation between London agents and, 846
right to tax London agent's bill, 846, 847
county court, power to make charging order, 827
solicitor's right of audience in, 724
court, basis of the jurisdiction of the, 829, 830
creditor, right to taxation, 784
crime, conviction for, as ground for striking off the rolls, 849
criminal contempt, when solicitor guilty of, 828
damages, measure of, where guilty of negligence, 754
want of skill or knowledge giving rise to liability in, 753, 754
death, as affecting retainer, 739, 740
of client, as affecting retainer in contentious business, 742
solicitor, as affecting rights of articled clerk, 714
deed, production of, as authority to receive payment, 744, 745
defamation, when solicitor not subject to action for, 726
delegation of authority, liability in respect of, 758
delivery of bill of costs, effect of, 778, 779
failure as to, effect of, 776
may be in parts, 777
mode of, 778
necessity for, 774, 775
order for, 779
when not necessary before action, 813
pleadings, fees on, 801
deposit on sale, receipt by solicitor, effect of, 746
disallowance of costs improperly incurred, 798
disbursements, interest on, rate of, 810
treatment of, on delivery of bill, 775, 776
discharge of lien, methods of, 819, 820
disciplinary jurisdiction of the court, 828
disclosure, address of ward of court not the subject of privilege, 726
prevented by injunction where solicitor acts for opposing interests, 735
solicitor's rights as to, 726
discontinuance of action, right of solicitor as to, 743
discretionary fees, when allowed, 806, 807
dismissal of articled clerk by master, rights, 716
dissolution of partnership, effect of, 842
documents, inspection of, costs allowed for, 805
ownership of, 740
double costs, provisions as to, 807
ecclesiastical courts, right of audience in, 724
employment, affidavit of, necessary before admission, 715, 716
articled clerk, of, must be exclusive, 714, 715
enrolment, defect in, as ground for striking off the rolls, 848
entire retainer, effect of, on right to costs, 738
equitable mortgage, scale applicable to, 761
examination, notice of intention to attend for, 717
examinations, entitling articled clerk to reduced term of service, 712
necessary before admission, 716
executors, power to retain solicitor, 734, 735
expediting matter, special allowance on, 765
final examination, appeal on refusal of pass certificate, 719
exemptions as to the, 718, 719
subjects for, 718
when and where held, 718
general lien, retaining lien is a, 816
meeting of the Law Society, when held, 709
retainer, extent of, 741
gifts between solicitor and client, 747, 748
when valid, 748
goodwill, as assets of partnership, 842
High Court, right of audience of solicitor in, 723, 724
higher scale, when costs allowed on the, 768

SOLICITORS—*continued.*
hotel expenses, allowances on taxation, 802
House of Lords, costs in contentious business in the, 767
right of audience of solicitor in, 723
improper conduct, what may amount to, 851
language, liability of solicitor in respect of, 828
inanimate evidence, allowance of cost of, 802
indemnity costs, party and party costs as, 799
right of solicitor to, on giving undertaking, 832
infant, retainer by, when effective, 731
injunction, disclosure by solicitor prevented by, 735
inquiry into conduct, appeal from finding on, 855
application by solicitor himself, 853
for, 852
insanity, as affecting retainer, 739, 740
inspection of documents, allowance of costs of, 805
insurance commission, must be accounted for, 736
interest, costs, on, when payable, 809, 810
country solicitor not chargeable by London agent with, 845, 846
payment by solicitor on money improperly retained, 810
intermediate examination, books chosen for the, 717
exemptions as to, 717, 718
refusal to admit for, rights, 718
when and where held, 717
interpreters, allowance for on taxation, 802
item charges, scale of, 765
schedule applicable to, 765, 766
judgment for costs, interest on, 810
power of the court as to entry of, 814
King's Bench Division, taxation of costs in the, 792, 793
Law List, as evidence of solicitor's right to practise, 721
Law Society, the, bodies upon which represented, 710
charter of incorporation of, 707, 708
duties of, 709
eligibility of members of, 708
general meetings of, 709
history of, 707, 708
inquiry into conduct of solicitor by Committee of, 852—854
management of, 708, 709
original name of, 707
registration of articles with, 713
law stationers, acts which may be done by, 856
leases, remuneration in respect of, 763
scale of remuneration in respect of, 763
lien, against tenant for life, remainderman not affected, 817
at common law, extent of, 821, 822
bankruptcy or winding-up, no effect on, 817, 818
change of solicitors as affecting, 818
compromise of action as affecting, 823
conversion into money and payment into court, effect of, 819
discharge of, methods of, 819, 820
enforcement of, 822, 823
equitable title as affecting, 817
kinds to which solicitor entitled, 814
none against third parties, 816, 817
parting with subject of, as a discharge, 820
proof in bankruptcy as affecting, 820
property recovered on, 820, 821
retaining, a general lien, 816
costs in respect of which arising, 815, 816
property subject to, 814, 815
statutory, 823—827
waiver of, what amounts to, 820
liquidator, retainer of solicitor by, 735
lis pendens, failure to register as negligence, 756
London agent, authority of, 847
interest not chargeable by, 846, 847
not personally liable, 848
relation between client and, 844, 845

SOLICITORS—*continued.*
London agent, relation between country solicitor and, 846
remuneration of, 846
scope of country certificate, 844
solicitor's liability for acts of, 758
taxation of bill of, 846, 847
treatment of charges of in bill, 775
certificate, *see* practising certificate.
lunacy of client, as affecting retainer in contentious business, 742
lunatic, retainer by, 732
magistrates, no power to refuse solicitor a hearing, 724
managing clerk cannot address judge without leave, 724
married woman, retainer by, when effective, 731
master, qualifications of solicitor as, 713, 714
Mayor's Court, London, right of audience of solicitor in, 725
measure of damages, where solicitor negligent, 754
memorial, charges on registration of, 765
misappropriation, liability of partners for, 759, 760
misconduct, *and see* professional misconduct.
costs disallowed on, 769
misleading the court, as professional misconduct, 849
moneys received, conditions to give rise to the court's jurisdiction as to, 837, 838
extent of client's right as to, 839
improper retention of, 810, 811
liability in respect of, 837, 838
source not affecting solicitor's liability, 839, 840
mortgage, client to solicitor, by, validity of, 751
costs, for, precaution to be taken as to, 811
remuneration on sale accompanied by, 763
solicitor to client, by, effect of, 751, 752
mortgages, remuneration in respect of, 761—763
necessaries, retainer by infant may be as for, 731
negligence, arising in contentious matters, 755, 756
non-contentious matters, 754
cause of action for, when arising, 754
counsel's advice as affecting liability for, 755
disallowance of costs in case of, 769
facts not amounting to, 755
liability of solicitor for, 753, 754
measure of damages in liability for, 754
proof required in action for, 754
negotiable instrument, payment of bill of costs by, effect of, 787
receipt of payment by, requires special authority, 745, 746
non-contentious business, agreement for costs as to, 773, 774
authority of solicitor in, 744—746
interests on costs in, 809
negligence in, 756—758
remuneration for, 760—767
retainer in, nature of, 739
taxing master governed by scale in, 797
notice, intention to sit for examination, of, 717
liability of solicitor on neglecting to give to client, 828, 830
of discontinuance, right of solicitor as to, 743
receipt by solicitor acting for trustees, effect of, 746
oaths, persons who may administer, 857, 858
power of the court as to administration of, 857
officers of the court, liabilities of solicitors as, 827
official receiver, retainer of solicitor by, 735
order of course for taxation, application for, 790
forms of, 793
service of, 793
overcharge, as special circumstance upon which taxation ordered, 789, 790
papers, client's property in, 740
delivery up of, conditions precedent to order, 840, 841
"without prejudice," of no effect, 819
handing over on change of solicitors, 818
solicitor's lien on, 816

SOLICITORS—*continued.*
parliamentary commission, solicitor may be heard before, 725
deposit, solicitor's claim for costs against, 733
particular lien, at common law, 820, 821
partner, receipt by as binding firm, 746
right to retain solicitor, 730
partners, liability for acts of, 758
misappropriation, 759, 760
partnership, dissolution of, effect of, 843
goodwill as assets of, 843
premiums as profits of, 842, 843
profits of offices held by partners not funds of, 842, 843
property, as subject of charging order, 825, 826
qualification of solicitors to enter into, 842
party and party costs, as indemnity costs, 799
discretion of taxing master as to, 800
power to increase amount of items, 800
regulations governing taxation of, 799
special allowances in respect of, 800, 801
taxation, costs of, 807, 808
patent, proceedings in opposition to grant of, costs on, 799
perpetual commissioners, appointment and functions of, 859, 860
personal representatives, costs as between solicitor and client awarded to, 798
petty sessions, right of audience of solicitors at, 724, 725
pleadings, fees for delivery of, 801
practice, non-observance of rules of, liability for, 755
practising certificate, application for, 720
effect on costs of steps taken without, 720
issue of, 721
necessity for, 720
renewal of, 721, 722
stamp duties on, 721
what solicitors exempt from taking out, 720
preliminary examination, persons exempt from, 716, 717
when and where held, 716
inquiry, procedure as to, 852
premium, as profits of partnership, 842
when articled clerk not entitled to return of, 712
preservation of property, solicitor's lien in respect of, 821, 822
pressure, when a special circumstance upon which taxation ordered, 789
printed copies of pleadings, cost of, 805
priorities, as between successive solicitors, 819
privileges to which solicitor subject, 726—728
Privy Council, costs in matters before the, 767
procedure, contempt in, liability of solicitor for, 828, 829
process servers, acts which may be done by, 856
production of deed, as authority to receive payment, 744, 745
professional disbursements, what are, 775, 776
misconduct, acts amounting to, 850, 851
not amounting to, 851, 852
as ground for striking off the rolls, 850, 852
court is guided by circumstances in its finding of, 852
profit costs, none under bill where estate is insolvent, 753
limit of solicitor's right to make, 736
profits of office, not fund of partnership, 841, 842
promissory note, client taking, for money in solicitor's hands, effect of, 838, 839
promoters, company, of, retainer by, 733
public authorities, rights as to costs between solicitor and client, 799
examination, notes of solicitor's, power of committee of Law Society as to, 853
office, exemption of solicitor from, 726
purchase and sale, between solicitor and client, 748, 749
purchases, remuneration in respect of, 761—763
"qualified practitioner," meaning of, 857
quantum meruit, recovery on a, where special agreement exists, 773
right of solicitor on ceasing to act to recover on a, 738, 739
quarter sessions, right of audience of solicitors at, 724
readmission, notice on application for, 719

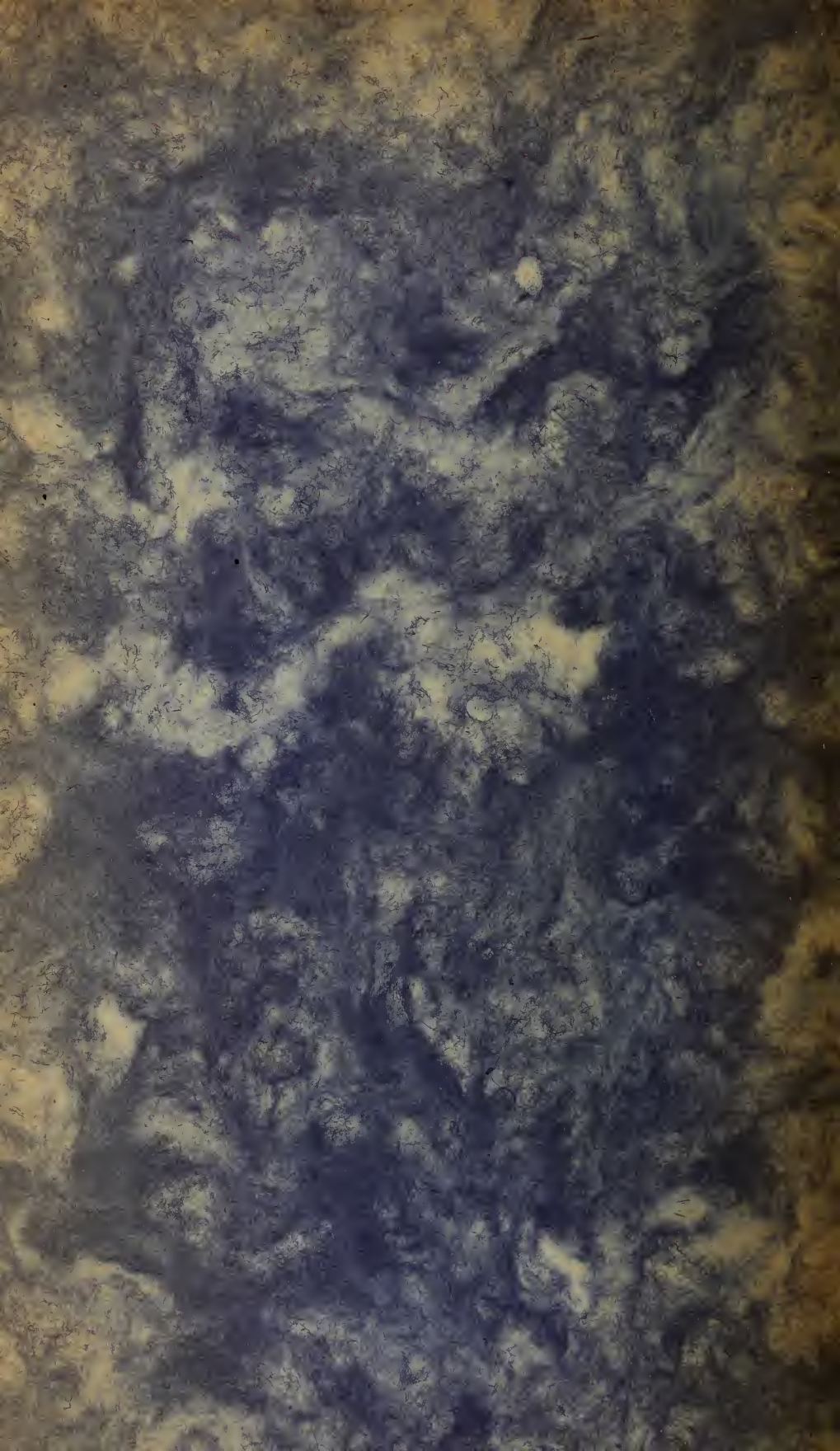
SOLICITORS—*continued.*
readmission, rights of barrister or solicitor as to, 719, 720
real property, as subject of charging order, 826
record, duty of solicitor to put name on, 742, 743
refresher fees, discretion of taxing master as to, 804, 805
Registrar of Solicitors, Law Society as, 709
registration, articles of clerkship, of, 713
memorial, of, costs in respect of, 765
practising certificate, of, 721
remainderman, not affected by lien against tenant for life, 817
remuneration, agreement under the Solicitors Remuneration Act, 1881, as to, 773, 774
conveyancing matters, in, 760, 761
how governed, 760
item charges, by, 765—767
limits of, 736
London agents, of, 845
preparation and completion of leases, 763
special agreement as to, 738, 770, 771
under the Act of 1870...771, 772
where matter expedited, 765
when recoverable on a *quantum meruit*, 739
rentcharge, remuneration where reserved in conveyance, 763, 764
repayment of costs, liability of solicitor on undertaking in respect of, 831
report, statutory committee, of, effect of, 854
retainer, absence of evidence of, effect of, 729
accepting for opposing interests, rule as to, 735
at a salary, 731
authority to bind client arising from the, 741
bankruptcy as affecting, 740
both sides, by, when not improper, 736
clubs or learned societies, by, 734
completion of work under, as affecting right to costs, 738
conduct an action, to, effect of, 737, 738
convict's power of, 732
corporation, by, 732, 733
costs out of moneys in hand, of, effect of, 787
death or insanity of parties affecting, 739
"final conclusion," relating to, what constitutes, 737
form of, 729
general, extent of, 741
infant, by, when effective, 731
joint and several, 730, 731
liquidator, by, 735
lunatic, by, 732
married woman, by, when effective, 731
may be by conduct, 729, 730
natural break in, when arising, 738
non-litigious matters, in, nature of, 739
partner's right to give, 730
principles governing, 728, 729
proposed company, on behalf of, 733
termination of, 737
trustee in bankruptcy or official receiver, by, 735
trustees and executors, by, 734, 735
when may be treated as an entire contract, 738
writing, when necessary, 729
retaining lien, property subject to, 814, 815
return of premium, articled clerk's rights as to, 712, 713
review of taxation, appeal as to order in respect of, 796, 797
order for, 795, 796
principles followed in ordering, 796
test of objections in application, 795
right of audience, *see* audience.
to practise, courts in which solicitor has, 722, 723
Rule Committee of the Supreme Court, representation of the Law Society on, 709, 710
salary, retainer at a, 731
sale, between solicitor and client, 748—750

SOLICITORS—*continued.*
sale by court, authority of solicitor having conduct of, 745
solicitor having conduct of, when may bid, 750
remuneration in respect of, 761—763
where accompanied by, 763
solicitor must show *bona fides* to uphold, 749, 750
Schedule I., remuneration under, 760—765
II., remuneration under, 765—767
scientific witnesses, allowances to, 802
secret commission, solicitor may not make, 736
security, charging order not made where solicitor accepts, 824
for costs, solicitor's right to, 811
service under articles, defect in as ground for striking off the rolls, 847
and see articles.
set-off, lien as affecting, 822
on taxation of costs, power of taxing master as to, 806
settling pleadings, allowance on taxation for, 803
signature, necessary to bill of costs, 777
solicitor, agreement with debt collector by, offence of, 856
and client, contract between, when arising, 728, 729
costs as between, where applicable, 797
gifts between, presumptions as to, 747, 748
no standing relation of, 737
relation necessary to application to pay over money received, 837
special order as to costs as between, when made, 798
taxation of costs as between, costs of, 808, 809
transactions between, 746—753
courts in which entitled to practise, 722, 723
disciplinary jurisdiction of the court over, 828
eligibility for certain appointments, 727, 728
liability for costs, 832—835
on allowing unqualified person to use name, 855
solicitor-litigant, when liable to summary jurisdiction of the court, 835
solicitor-mortgagee, costs which may be charged by, 761
solicitor, qualification when taking articled clerks, 713
right of audience of, 723, 724
to claim taxation of costs, 782
solicitor-trustee, no lien over trust fund, 817
provision in trust deed for costs of, effect of, 753
when profit costs not chargeable by, 752, 753
solicitor, when may act for both sides, 736
be heard in absence of counsel, 723
solicitors, appointment as commissioners for oaths, 858
offices held by barristers as, 710
Solicitors Remuneration Act, 1881, agreement for costs under, 773, 774
special agreement as to remuneration, provisions for, 738, 770, 771
cancellation where unreasonable, 772
effect where either party becomes incapable of performing, 740
enforcement where under the Act of 1870...773
form of, under the Act of 1870...771
position of third parties under, 773
rights of client setting up, 771
scope of, under the Act of 1870...771, 772
under the Solicitors Remuneration Act, 1881...773, 774
allowances on taxing party and party costs, 800
circumstances, taxation of costs allowed on, proof of, 785, 786
general meeting of the Law Society, how requisitioned, 709
jury, liability of solicitor for fees of, 834
order for taxation of costs, when made, 791, 792
remuneration, when allowed, 765
stamp duty on admission, 719
of colonial solicitor, 722
Statute of Limitations, as affecting recovery of costs, 812, 813
statutory committee, complaint to, 849
inquiry into conduct of solicitor by, 852, 854
report of, effect of, 854
lien, when applying, 823—827

SOLICITORS—*continued.*
striking off the rolls, appeal from order for, 855
application as to, procedure, 852, 853
grounds other than statutory, for, 849—852
power of the court as to, 848
professional misconduct as ground for, 850, 851
statutory grounds for, 848, 849
taking proceedings without authority as cause for, 742
submission to pay, when not necessary on application for taxation, 792, 793
Supreme Court, costs in matters heard in the, 767—769
suspension, power of the court to order, 851
taxation of costs, after payment, 788, 789
allowances for attendances, 803
counsel's fees, 803
in respect of witnesses, 802
application after one month of delivery, 785
payment, 787
twelve months, 785
for, 784, 785
order of course for, 791, 792
appointment for, 793, 794
between solicitor and client, 808, 809
discretion of taxing master as to allowances, 797
improper procedure as to, costs of, 792
inspection of documents allowed for on, 805
jurisdiction of the court as to, 780, 781
no order where application more than twelve months after payment, 790
order for, when made, 784, 785
party and party, 807, 808
persons entitled to, 781, 782
procedure in the Chancery Division as to, 790
King's Bench Division as to, 792, 793
review of, 795
service of order of course for, 793
set-off on, 806
special circumstances affecting, rule as to, 785, 786
submission to pay on application for, when not necessary, 792, 793
when at instance of solicitor, 809
requiring a special order, 791, 792
where parties differ, procedure on, 806
taxing master, allowance of special agreement by, 772
discretion as to costs, 768, 769, 797
counsel's fees, 803—805
in taxing party and party costs, 800
of, not usually interfered with, 796
duty where two or more parties represented by same solicitor, 801
issue of allocatur by, 795
power to order solicitor to pay interest, 810
powers of, 794
the Law Society, *see* Law Society.
third party, application to tax by, 786, 787
no lien against, 816, 817
position under special agreement, 773
right to claim taxation of bill, 782, 783
solicitor may be liable for negligence to, 754
solicitor's liability to, principles applicable, 835, 836
title, statutory liability of solicitor concealing instrument of, 837
tort, liability of solicitor in respect of, 837
travelling expenses, allowance on taxation, 802
treble costs, provisions as to, 807
trust deed, provision giving solicitor-trustee right to profit costs in, effect of, 753
fund, solicitor-trustee no lien over, 817
property, liability of solicitors dealing with, 760
trustee, costs of solicitor as, when chargeable, 752, 753
in bankruptcy, retainer of solicitor by, 735

SOLICITORS—*continued.*
trustee in bankruptcy, right of solicitor as to costs when appointed a, 753
trustees, costs as between solicitor and client awarded to, 798
power to retain solicitor, 734, 735
receipt of notice by solicitor acting for, effect of, 746
right to authorise solicitor to receive money, 745
undertaking, committal as remedy for breach of, 827
enforcement of solicitor's, 830
liability for contempt in respect of, 830
may be apart from litigation, 832
nature of, to be enforceable, 830, 831
repay costs to, liability of solicitor on, 832
when enforceable, 830
unnecessary proceedings, disallowance of costs of, 805, 806
unqualified persons, acts prohibited to be done by, 856, 857
liability on acting for, 848, 849
penalties for offences by, 856
prohibition against, 855, 856
unreasonable charges, as reason for taxation of bill, 785, 786
vexatious proceedings, disallowance of costs of, 805, 806
waiver of lien, what amounts to, 820
ward of court, address of, must be disclosed, 726
will, solicitor may benefit under client's, 752
winding-up proceedings, lien not affected by, 817, 818
retainer of solicitor in, 735
witnesses, allowances to, scale, 802
as to number allowed for qualifying, 802
power of the committee of the Law Society as to attendance of, 853

BRADBURY, AGNEW, & CO. LD., PRINTERS, LONDON AND TONBRIDGE.



133246 Law.D
H196

Author Halsbury, Earl of and others

Title The laws of England being a complete statement

UNIVERSITY OF TORONTO
LIBRARY

Do not
remove
the card
from this
Pocket.

Acme Library Card Pocket
Under Pat. "Ref. Index File."
Made by LIBRARY BUREAU